

# MICROFILM DIVIDER

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*Y. Costa Richardson*  
Operator's Signature

10/6/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1500

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Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1500

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 3, 2003

| Tape Number | Side A | Side B | Meter #  |
|-------------|--------|--------|----------|
| 2           | X      |        | 275-4375 |
|             |        |        |          |
|             |        |        |          |

Committee Clerk Signature *Elizabeth R. Fein*

Minutes: **Chair Keiser** opened hearing on HB 1500

**Rep. Monson** supports with written testimony.

**Rep. Severson** asked about the Board finances. In an interim hearing, the board said they have worked out the finance issues, but is the Board of Medical Examiners (BME) willing to take on the expenses of the Board of Podiatric Medicine and Surgery (BPMS). Rep. Monson said they would have to look at that. The Medical Examiners shouldn't have to inherit the current debt.

**Rep. Froseth** brought up the fact that during the last session they had passed a bill to allow the BPMS to go through the Bank of ND for a loan. He wanted to know if the board had used the opportunity. Rep. Monson did not know and deferred to Dr. Mathew.

**Rep. Keiser** informed the committee that action will not be taken today because the BPMS was meeting on 2/3/03.

**Dr. Cherian Mathew (Pres. of BPMS):** Opposed with written testimony. In addition, Dr.

Mathew noted that they were not comfortable settling with the Attorney General's office on the

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1500

Hearing Date February 3, 2003

four complaints left over from 1993 because the new board did not see the records. They asked for the records and were denied. In October they met and voted to formally request the records again. They reviewed the records in December. They were told by the carry-over board member to read the minutes from the previous board meetings. When the board finally read the minutes from Mr. Thune (legal counsel), they did not feel the minutes were helpful in deciding. He wanted to be clear that the board is not dragging their feet. They have been trying to get the correct info before making a decision.

**Rep. Froseth** asked how many members are new since August (the interim committee meeting).

Dr. Mathew said Dr. Lambert joined the Board after August, but the others came in July or August. In response to a question from Rep. Froseth, Dr. Mathew said the Board does have liability insurance. When asked by Rep. Froseth how they can reduce the financial responsibility of the board by the end of the year. Dr. Mathew said the dues have gone up, Dr. Gale pays \$750/mo because of disciplinary action and they board has started to do work the attorney had done before to cut down on attorney costs.

**Rep. Kasper** asked if Thune is still the attorney and whether or not there are still pending complaints. Dr. Mathew said there are still the four left over complaints and 2 new. Thune is still the attorney and will be until the complaints are settled. They can not afford a full-time attorney. Noted the new members are taking their jobs seriously and doing more work.

**Rep. Keiser** reminded Dr. Mathew that the board was created statutorily and that the primary function is not to collect money, but to take care of complaints. Asked if the board appreciates that ND has lost it's sovereign immunity and the state now becomes liable for the law suits if the board does not do their job. Dr. Mathew said he does realize this.

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Yolanda Richardson  
Operator's Signature

10/16/03  
Date

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House Industry, Business and Labor Committee

Bill/Resolution Number 1500

Hearing Date February 3, 2003

**Rep. Keiser** also reminded Dr. Mathew that the board has no right to deficit spend. They legislature has already given them the ability to get a loan from the Bank of ND and asked if the board would be OK with a bill for \$28000 to be solvent and have a reserve. Rep. Keiser made it clear they do not want to see cases dismissed because the board does not to pay for litigation. Dr. Mathew said he does understand. Rep. Keiser also noted it is unacceptable to be insolvent with impending litigation and that Thune could sue the state of ND. Rep. Keiser asked if the board was paying interest to Thune. Dr. Mathew said they are not paying interest and stated the board will not disregard complaints, but will also not waste time on frivolous complaints.

**Rep. Klein** asked for the names of the board members. They are Dr. Williams of Minot, Dr. Criswell of Grand Forks, Dr. Lambert of Bismarck, Kelly Schmidt of Bismarck, Michael Stone of Fargo, and Dr. Mathew of Dickinson. All members are Podiatric doctors, except Dr. Lambert and Kelly Schmidt, who is the lay person member. Rep. Klein asked if they had thought about reducing the number of members on the board.

**Rep. Froseth** asked if dues are in the statute. Dr. Mathew said they had come to the legislature to raise dues before. Rep. Froseth made the suggestion to raise dues to \$1000 until they are solvent and have a reserve.

**Rep. Severson** asked how Dr. Mathew felt about combining with the Board of Medical Examiners. Dr. Mathew said it could happen, but would rather not go into another board with baggage. They want to clean up the BPMS first.

**Rep. Froseth** wanted the record to note that the interim commerce committee was convinced that the board was working out their problem and should remain its own independent board.

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10/16/03  
Date

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number 1500

Hearing Date February 3, 2003

**Rolf Sletten (Board of Medical Examiners):** Opposes with written testimony. Noted this is not a simple bill, but suggested that the board should probably have more MDs or more lay people than podiatrists.

**Dr. Craig Lambert (Self/Board member):** Noted he is on both boards and is impressed with the current action on the BPMS and that the members take their jobs seriously. The Board of Medical Examiners is his standard and believes the BPMS is getting there. Also noted that the fiscal imperatives are real issues.

**Rep. Klein** asked how long he had been on the board. Dr. Lambert said he has since July.

**Dr. Brian Gale:** Opposed with written testimony.

**Joni Roehrich (representing Dr. Tello):** Opposes and Dr. Tello does not want the board to be dissolved.

**Dave Peske (ND Medical Assoc.):** Opposes. Board met and supports the testimony of the Board of Medical Examiners.

**Chair Keiser:** Closed hearing on HB 1500

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2/12/03

| Tape Number | Side A | Side B | Meter #  |
|-------------|--------|--------|----------|
| 1           | x      |        | 0.0-32.0 |
|             |        |        |          |
|             |        |        |          |

Committee Clerk Signature *Judith Hammer*

Minutes: **Chairman Kelsner** called for committee work on HB 1500.

**Rep. Boe** distributed amendments prepared after the original hearing date. The amendments will allow the Board of Podiatric Medicine to raise their fees to a cap of \$1000 and reduce the size of their board from 6 to 5 members. This reverses the intent of the original bill.

**Rep. Froseth:** Wasn't the original intent to merge this board with the Medical Examiners?

**Rep. Kasper:** There's so few podiatrists in the state, wouldn't having 3 members at large from the public and 2 podiatrists work? The doctors would give technical advice.

**Rep. Klein:** Lay people shouldn't be in control, they don't have professional expertise.

**Rep. Ruby:** They've reduced their debt, they're working hard to improve, maybe in a few years the Medical Examiners would accept them. They'll have their debt paid in 6 months.

**Rep. Klein** moved to adopt the amendments (.0201).

**Rep. Froseth** seconded the motion.

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*La Costa Richard*  
Operator's Signature

*10/16/03*  
Date

Page 2  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1500  
Hearing Date 2/12/03

**Rep. Johnson:** I resist the motion to adopt the amendments. I support them increasing their cap to \$100 to raise funds to make their Board solvent and get them out of debt. If we removed section 1 and resubmit it so that they have 6 people on the board.

**Rep. Klein:** Boards function better with an odd number, no decisions results in a tie.

**Rep. Severson:** This board needs expertise, not opinions of lay people, to make decisions. Let's give them the opportunity to work together as a board. Their attorney said they're making good progress.

**Chairman Keiser:** Also, the more members you have, the more difficult it is to get a quorum. And you run out of candidates sooner with the small pool to draw from.

**Rep. Nottestad:** I think the board should have 5 members. I vehemently oppose having lay people serve on these professional boards.

Results of the roll call vote for the amendments .0201 was: **10-4-0.**

**Rep. Klein** moved a Do Pass As Amended. **Rep. Froseth** seconded the motion.

Results of the roll call vote for a **Do Pass As Amended** were **10-4-0.**

The amendment changes the bill, there is now a podiatry board comprised of 5 members and fees can be increased to \$1000. It will not merge with the Board of Medical Examiners.

Dr. Tello, and other podiatrists attending the committee work session were considerably given the opportunity of expressing their viewpoints and opinions of this matter and legislation. They were advised to return to testify when the Senate considers HB 1500.

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*La Costa Richardson*  
Operator's Signature

*10/16/03*  
Date



LP

**FISCAL NOTE**  
Requested by Legislative Council  
02/17/2003

Amendment to: HB 1500

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

|                | 2001-2003 Biennium |             | 2003-2005 Biennium |             | 2005-2007 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    |             |                    | \$40,000    |                    |             |
| Expenditures   |                    |             |                    | \$30,000    |                    |             |
| Appropriations |                    |             |                    |             |                    |             |

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

| 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  | 2005-2007 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The reduction of the Board membership by one would result in an annual savings of approximately \$500 in travel expense for attendance at meetings. The authorized increase in annual license fees provides a vehicle for increasing revenues. However, the Board appears able to work itself out of debt during the 2003-2005 biennium without increasing the current license fee of \$500, since it also receives a \$750 monthly payment of disciplinary fees from one podiatrist, with a balloon payment coming due in this same biennium.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

See answer to question #2.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

See answer to question #2.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

N/A

|                      |                |                       |                                  |
|----------------------|----------------|-----------------------|----------------------------------|
| <b>Name:</b>         | Gary R. Thune  | <b>Agency:</b>        | N.D. Board of Podiatric Medicine |
| <b>Phone Number:</b> | (701) 223-2890 | <b>Date Prepared:</b> | 02/19/2003                       |

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*Ja Costa Richardson*  
Operator's Signature

10/16/03  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
02/03/2003

**REVISION**

Bill/Resolution No.: HB 1500

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

|                       | 2001-2003 Biennium |             | 2003-2005 Biennium |             | 2005-2007 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    | \$20,000    |                    |             |
| <b>Expenditures</b>   |                    |             |                    | \$30,000    |                    |             |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

| 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  | 2005-2007 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

I have no connection with the Board of Podiatry. It is my understanding that they collect \$11,000 per year in licensing fees and that one particular licensee pays \$750/month as reimbursement for the costs of prior disciplinary proceedings. This yields total revenues of about \$20,000. The Podiatry Board is spending all of its income and has a debt of roughly \$12,000 which this bill would assign to the Board of Medical Examiners.

In addition to absorbing the operating expenses and the debt, the Board of Medical Examiners would undoubtedly incur the cost of rewriting and promulgating the administrative rules, revamping the statutes, devising and printing new forms, training staff to understand the new licensing standards and procedures, and revamping the Board's website.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

See answer to question #2.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

See answer to question #2.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

|                              |  |
|------------------------------|--|
| <b>Name:</b> Rolf P. Sletten | <b>Agency:</b> ND State Board of Medical Examiners |
|------------------------------|--|

Phone Number: 328-6500

Date Prepared: 02/03/2003

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Yolanda Richardson  
Operator's Signature

10/16/03  
Date

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/23/2003

Bill/Resolution No.: HB 1500

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

|                | 2001-2003 Biennium |             | 2003-2005 Biennium |             | 2005-2007 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    | \$20,000    |                    |             |                    |             |
| Expenditures   |                    | \$30,000    |                    |             |                    |             |
| Appropriations |                    |             |                    |             |                    |             |

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

| 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  | 2005-2007 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

I have no connection with the Board of Podiatry. It is my understanding that they collect \$11,000 per year in licensing fees and that one particular licensee pays \$750/month as reimbursement for the costs of prior disciplinary proceedings. This yields total revenues of about \$20,000. The Podiatry Board is spending all of its income and has a debt of roughly \$12,000 which this bill would assign to the Board of Medical Examiners.

In addition to absorbing the operating expenses and the debt, the Board of Medical Examiners would undoubtedly incur the cost of rewriting and promulgating the administrative rules, revamping the statutes, devising and printing new forms, training staff to understand the new licensing standards and procedures, and revamping the Board's website.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

See answer to question #2.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

See answer to question #2.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

|                      |                 |                       |                                     |
|----------------------|-----------------|-----------------------|-------------------------------------|
| <b>Name:</b>         | Rolf P. Sletten | <b>Agency:</b>        | ND State Board of Medical Examiners |
| <b>Phone Number:</b> | 328-6500        | <b>Date Prepared:</b> | 01/31/2003                          |

30545.0201  
Title.0300

Prepared by the Legislative Council staff for  
Representative Boe  
February 3, 2003

VR  
2/12/03  
1063

HOUSE AMENDMENTS TO HOUSE BILL NO. 1500 IBL 2-13-03

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 43-05-03, 43-05-10, 43-05-14, 43-05-15, and 43-05-16.8 of the North Dakota Century Code, relating to the membership of the board of podiatric medicine and licensure fees; to provide an effective date; and to declare an emergency.

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

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

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

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

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

**SECTION 2. AMENDMENT.** Section 43-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-10. Application - Examination fee.** To obtain a license to practice podiatric medicine, a person shall submit an application and any other documentation required by the board to the board in the manner prescribed by the board. The applicant shall submit evidence that the applicant has the required qualifications and shall pay to the board a fee of not more than ~~five hundred~~ one thousand dollars.

**SECTION 3. AMENDMENT.** Section 43-05-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-14. When license issued without examination.** The board may issue a license without examination to a podiatrist of another state or Canadian province if:

Page No. 1

30545.0201

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Colista Richardson  
Operator's Signature

10/16/03  
Date

1. The other state or Canadian province grants like privileges to podiatrists of this state;
2. The other state or Canadian province maintains equal statutory requirements for practicing podiatric medicine;
3. The applicant pays a fee of not more than ~~five hundred~~ one thousand dollars as determined by the board;
4. The applicant has been engaged legally in the active practice of podiatric medicine for at least two years immediately preceding the date of application;
5. The applicant presents satisfactory evidence to the board indicating the current status of a license to practice podiatric medicine which has been issued by the proper agency in another state or Canadian province;
6. The applicant has not had a license suspended or revoked, or has not engaged in conduct warranting or which would have warranted disciplinary action against a licensee if the conduct was committed in this state or elsewhere, or has not been subjected to disciplinary action in another state or Canadian province. If an applicant does not satisfy the requirements of this subsection, the board shall refuse to issue a license unless the board determines that the public will be protected through issuance of a license with conditions or limitations considered appropriate by the board; and
7. The applicant submits with the application the following information for the five-year period before the date of filing the application:
  - a. The name and address of the applicant's professional liability insurance carrier in the other state or Canadian province; and
  - b. The number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

**SECTION 4. 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~~ one thousand 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 5. AMENDMENT.** Section 43-05-16.8 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-16.8. Loan for litigation expenses.** Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorney's fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. ~~Notwithstanding section 43-05-15, the~~ The board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid,

including any accrued interest. ~~The amount of the annual renewal license fee assessed under this section may not exceed one thousand dollars.~~ Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. 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 6. EFFECTIVE DATE.** This Act becomes effective June 13, 2003, and sections 2 through 5 of this Act apply to all applications and renewals beginning with the 2004 licensure year.

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

Renumber accordingly

12  
Date: 2/ /03  
Roll Call Vote #: |

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1500**

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken <sup>Motion</sup> Adopt Amendments (0201)

Motion Made By Klein Seconded By Froseth

| Representatives     | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser     | ✓   |    | Boe             | ✓   |    |
| Vice-Chair Severson | ✓   |    | Ekstrom         | ✓   |    |
| Dosch               |     | ✓  | Thorpe          |     | ✓  |
| Froseth             | ✓   |    | Zaiser          | ✓   |    |
| Johnson             |     | ✓  |                 |     |    |
| Kasper              |     | ✓  |                 |     |    |
| Klein               | ✓   |    |                 |     |    |
| Nottestad           | ✓   |    |                 |     |    |
| Ruby                | ✓   |    |                 |     |    |
| Tieman              | ✓   |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |

Total (Yes) 10 No 4

Absent 0

Floor Assignment \_\_\_\_\_

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

Salvatore Riccardi 10/6/03  
Operator's Signature Date



LR

12  
Date: 2/ /03  
Roll Call Vote #: |

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1500

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 30545.0201

Action Taken Do Pass As Amended

Motion Made By Klein Seconded By Froseth

| Representatives     | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser     | ✓   |    | Boe             | ✓   |    |
| Vice-Chair Severson | ✓   |    | Ekstrom         | ✓   |    |
| Dosch               |     | ✓  | Thorpe          |     | ✓  |
| Froseth             | ✓   |    | Zaiser          | ✓   |    |
| Johnson             |     | ✓  |                 |     |    |
| Kasper              |     | ✓  |                 |     |    |
| Klein               | ✓   |    |                 |     |    |
| Nottestad           | ✓   |    |                 |     |    |
| Ruby                | ✓   |    |                 |     |    |
| Tieman              | ✓   |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |

Total (Yes) 10 No 4

Absent 0

Floor Assignment Boe

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

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Salveta Rickford 10/16/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
February 13, 2003 8:32 a.m.

Module No: HR-28-2518  
Carrier: Boe  
Insert LC: 30545.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1500: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1500 was placed  
on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 43-05-03, 43-05-10, 43-05-14, 43-05-15, and 43-05-16.8 of the North Dakota Century Code, relating to the membership of the board of podiatric medicine and licensure fees; to provide an effective date; and to declare an emergency.

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

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

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

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

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

**SECTION 2. AMENDMENT.** Section 43-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-10. Application - Examination fee.** To obtain a license to practice podiatric medicine, a person shall submit an application and any other documentation required by the board to the board in the manner prescribed by the board. The applicant shall submit evidence that the applicant has the required qualifications and shall pay to the board a fee of not more than ~~five hundred~~ one thousand dollars.

**SECTION 3. AMENDMENT.** Section 43-05-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-14. When license issued without examination.** The board may issue a license without examination to a podiatrist of another state or Canadian province if:

1. The other state or Canadian province grants like privileges to podiatrists of this state;
2. The other state or Canadian province maintains equal statutory requirements for practicing podiatric medicine;
3. The applicant pays a fee of not more than ~~five hundred~~ one thousand dollars as determined by the board;
4. The applicant has been engaged legally in the active practice of podiatric medicine for at least two years immediately preceding the date of application;
5. The applicant presents satisfactory evidence to the board indicating the current status of a license to practice podiatric medicine which has been issued by the proper agency in another state or Canadian province;
6. The applicant has not had a license suspended or revoked, or has not engaged in conduct warranting or which would have warranted disciplinary action against a licensee if the conduct was committed in this state or elsewhere, or has not been subjected to disciplinary action in another state or Canadian province. If an applicant does not satisfy the requirements of this subsection, the board shall refuse to issue a license unless the board determines that the public will be protected through issuance of a license with conditions or limitations considered appropriate by the board; and
7. The applicant submits with the application the following information for the five-year period before the date of filing the application:
  - a. The name and address of the applicant's professional liability insurance carrier in the other state or Canadian province; and
  - b. The number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

**SECTION 4. 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~~ one thousand 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 5. AMENDMENT.** Section 43-05-16.8 of the North Dakota Century Code is amended and reenacted as follows:

REPORT OF STANDING COMMITTEE (410)  
February 13, 2003 8:32 a.m.

Module No: HR-28-2518  
Carrier: Boe  
Insert LC: 30545.0201 Title: .0300

**43-05-16.8. Loan for litigation expenses.** Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorney's fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. ~~Notwithstanding section 43-05-15, the~~ The board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid, including any accrued interest. ~~The amount of the annual renewal license fee assessed under this section may not exceed one thousand dollars.~~ Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. 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 6. EFFECTIVE DATE.** This Act becomes effective June 13, 2003, and sections 2 through 5 of this Act apply to all applications and renewals beginning with the 2004 licensure year.

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

Renumber accordingly

2003 SENATE HUMAN SERVICES

HB 1500

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Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500

Senate Human Services Committee

Conference Committee

Hearing Date March 3, 2003

| Tape Number  | Side A | Side B | Meter #    |
|--|--------|--------|------------|
| 2  | X      |        | 736 - 4189 |
|  |        | X      | 165 - 488  |
| Committee Clerk Signature <i>Donna Kremer, Clerk</i> |        |        |            |

Minutes:

SENATOR JUDY LEE opened the public hearing on HB 1500 relating to the membership of the board of podiatric medicine and licensure fees; and to provide an effective date.

REPRESENTATIVE DAVID MONSON introduced HB 1500. He said this bill has basically been hog housed. ... Stated the board is down to two choices - they can accept this bill in the amended form or in the original form. This amended bill is the best they can hope for. ...

(Written testimony) (Meter #779 - 1233)

SENATOR LEE: Asked about the issue being brought to SENATOR MONSON'S attention and why was it delayed?

REPRESENTATIVE DAVID MONSON: It was brought to his attention when he talked to one of the board members. ... (Meter # 1233 - 1344)

SENATOR FAIRFIELD: How would eliminating one doctor from the board serve to fix any of the problems?

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*Yolanda Richardson*  
Operator's Signature

*10/16/03*  
Date

Page 2  
Senate Human Services Committee  
Bill/Resolution Number HB 1500  
Hearing Date March 3, 2003

REPRESENTATIVE DAVID MONSON: Odd number would make it less. ... Continued

questions and responses regarding concern of governor's office, term limits of board appointed by governor, term limits and litigation money. (Meter # 1348 - 1799)

DR. CHERIAN MATHEW, of the Podiatry Board, testified against the bill. He said this bill has no reason. ... Complaints were brought to the board and then sent to the attorney general, but Dr. Mathew had no idea of what the complaints were. ... Debts were from attorney. ... New board not irresponsible. ... (Meter # 1838 - 2490)

SENATOR LEE: Encouraged board to hire an assistant attorney general. (Meter # 2491 - 2648)

DR. FRANCISCO TELLO, Podiatrist, testified in behalf of himself in opposition to the bill. He stated no podiatrists were contacted regarding the bill. ... No podiatrists are in support of the bill.

Language is redundant. ... 26 licensed podiatrists in North Dakota. ... Board does not wish to raise fees. (Meter # 2676 - 3355)

DR. BRIAN GALE, Podiatrist, testified in behalf of himself against the bill. No one affected by this bill is in favor of it. (Written testimony) (Meter # 3355 - 3578)

JONI RAHRICH, private citizen, testified in behalf of herself, in opposition. HB 1500 is bad legislation. ... "A tale twisting" bill. ... Rep. Monson was the only supporter of the bill. ... Did not pass accurately or fairly. ... Should never have come before you. ... (Meter # 3609 - 4052)

SENATOR LEE: Public Hearing closed. (Meter # 4215)

SENATOR LEE reopened committee discussion on HB 1500. (Tape 2, Side B, Meter # 165)

SENATOR ERBELE made a motion to DO NOT PASS.

SENATOR FAIRFIELD seconded the motion.

Page 3  
Senate Human Services Committee  
Bill/Resolution Number HB 1500  
Hearing Date March 3, 2003

Roll call was read. 6 yeas 0 nays.

SENATOR FISCHER will be the carrier. (Meter # 488)

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Salvatore Riccardi  
Operator's Signature

10/16/03  
Date



Date: 03-03-03  
Roll Call Vote #: (1)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1500

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

Motion Made By Sen. Erbele Seconded By Sen. Fairfield

| Senators                          | Yes | No | Senators | Yes | No |
|-----------------------------------|-----|----|----------|-----|----|
| Senator Judy Lee - Chairman       | ✓   |    |          |     |    |
| Senator Richard Brown - V. Chair. | ✓   |    |          |     |    |
| Senator Robert S. Erbele          | ✓   |    |          |     |    |
| Senator Tom Fischer               | ✓   |    |          |     |    |
| Senator April Fairfield           | ✓   |    |          |     |    |
| Senator Michael Polovitz          | ✓   |    |          |     |    |
|                                   |     |    |          |     |    |
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|                                   |     |    |          |     |    |

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Fischer

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

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Richard Richford 10/16/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
March 3, 2003 3:20 p.m.

Module No: SR-37-3788  
Carrier: Fischer  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HB 1500, as reengrossed: Human Services Committee (Sen. J. Lee, Chairman)  
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Reengrossed HB 1500 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-37-3788

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*Salvatore Riccardi*  
Operator's Signature

*10/16/03*  
Date

LR

2003 TESTIMONY

HB 1500

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Salista Richardson  
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10/16/03  
Date

R

## Testimony on HB 1500 Rep. David Monson

Good morning Mr. Chairman and members of the House IBL Committee. For the record, my name is David Monson, State Rep. for Dist. 10 in northeastern ND.

This is a very simple bill that replaces the board of podiatric medicine with the state board of medical examiners. You probably have a lot more knowledge of this board and their problems over the years than I have. Their history is long, about 70 years, but recently they have had numerous lawsuits which have caused them to be in deep debt. You may have heard that they were on the way to recovery and things were going much better for them. As late as last summer, I believe that was true. However, after talking with some board members, Mr. Thune (the attorney who has been representing them), and Mr. Peterson in the Attorney General's office who was handling their latest cases, it appears to me that they are mired in conflict once again. The cases they were close to settling have been pulled back from the AG's office and are sitting in the hands of the board once more with little or no action happening. The attorney who has been working with them is frustrated and cannot appear today, nor would he testify if he had been available. Mr. Peterson is frustrated since he felt he was close to resolving the issues and now wonders what will happen, if anything. The lay person on the board who feels it is her duty to look out for the best interests of the public is frustrated with the turmoil within the board, between the board and the attorney, and with the uncertainty of the 4 pending cases no longer being resolved by the AG's office. She is unable to testify today because she is an employee of the legislative council. In short, I feel there are three questions we need to ask and have answered.

1. Is a board of 6 really needed to regulate a group of less than 20 people?
2. Is a board of 6 able to objectively look at themselves and their peers and make good decisions for their profession and still protect the public?
3. Is a board with only about 20 licensees able to afford to support a board of this kind, especially with so many expensive litigations to address?

My idea is that the answer to the above questions is "no". The public and the industry is probably best served by doing away with this board.

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Richard  
Operator's Signature

10/16/03  
Date

Honorable Representatives,

My name is Dr. Brian Gale. I am a Podiatrist and I practice in Bismarck. Two years ago I gave testimony in support of term limits for Podiatry Board members. Until then there were some Podiatrists who had been on the Podiatry Board for 10-15 years or more continuously.

Since that time 4 of the 5 previous board members have been replaced. My opinion is that the current board members are ethical and they are working hard to turn the previous problems around.

There have been two previous votes to move the Podiatry Board into the Medical Board. **At both meetings everyone who testified was opposed and no one was in favor of this action.** The most recent vote was just taken in September of 2002 during the Interim Legislative Council Study regarding Occupational and Professional Boards.

At this September meeting there was complete support for the continuance of the Podiatry Board and testimony was given that the previous financial problems are improving.

The question I would like each of you to ask at the hearing on Monday morning for me is, "Why has HB 1500 been introduced? Based upon the above information the Interim Study revealed that the Podiatry Board is in much better shape that it was two years ago.

Is this a situation in which the person(s) introducing HB 1500 have new information since the September meeting that would indicate that the Podiatry Board is not improving?

Or is this a situation where the information from this interim study has not been disseminated to (or reviewed) by someone?

In either case the Podiatry Board should stay intact and my personal opinion is that HB 1500 might be wasting time and resources that could easily be used elsewhere (unless something has changed since September).

As some of you know I have learned a great deal about professional boards and in particular the functions of this board over the past ten years.

I have added the portion of the Commerce Committee Interim Study on Professional Boards to this for your convenience so you can read the minutes and see that all testimony concerning the Podiatry Board at that time was positive.

I strongly encourage any of you to contact me if you would like any further information on this topic. Thank you for your time and efforts you make to serve the State of North Dakota.

Respectfully, Brian Gale

2-3-2003

RE: HB1500

Against HB 1500

Mr. Chairman and Committee Members,

My name is Cherian Mathew. I have been practicing Podiatric Medicine and Surgery in Dickinson since 1978.

Gov. Olson appointed me to the Podiatric Medical Board in 1980 and Gov. Sinner appointed me twice to the same Board. During the summer of 2001 Gov. Hoven appointed me to serve on this Board.

There are six members on this Board. Five of them are new. The one remaining member from the previous Board will be going off this June. Four of the members are Doctors of Podiatric Medicine, one a Medical Doctor and one is a public member. We are fortunate to have Dr. Lambrecht to serve on this Board as the Medical Doctor because he serves on the Medical Board also. He brings with him some good insight and experience.

Two years ago this Board experienced some financial difficulties. We had financial obligations amounting to around \$50,000. Since that time we were able to reduce this debt to around \$15,000 and this was done without borrowing any money. We are very careful about our expenses and we should be able to take care of this debt by the end of this year.

There were some disciplinary matters left over from the previous Board and we are moving towards a resolution of those matters this evening. This means that the Board is functioning well and responsibly in carrying out its responsibilities. At this time I do not see any need for dissolving this Board.

If you have any questions I will be happy to answer them.

Cherian Mathew, D.P.M.  
President of the Board



## LEGISLATIVE COUNCIL STUDY

### **OCCUPATIONAL AND PROFESSIONAL BOARDS STUDY**

Chairman Andrist called on Ms. Jo Zschomler, Director, Division of Risk Management, Office of Management and Budget, for comments regarding participation by the smaller occupational and professional boards in the risk management fund. Ms. Zschomler provided written testimony, a copy of which is on file in the Legislative Council office.

Ms. Zschomler said each state agency, board, and commission is required to participate in the risk management fund by contributing its appropriate share of the funds' costs as determined by the director of the Office of Management and Budget. She said in the initial creation of the fund, contributions were based on the number of employees of each agency and the number of vehicles owned by the state. Beginning with the 2001-03 biennium, she said, the actuarial review factored each agency's fund loss history in determining the level of required contribution. She said the contribution rate for boards and commissions was set at \$750 per year plus \$115.60 for each full-time employee. She said contribution is waived for any board or commission that has an annual budget of less than \$10,000 and no full-time employee.

Ms. Zschomler said the balance in the fund as of August 31, 2002, was \$1,264,964. The 2002 actuarial review of the fund estimated a potential deficit balance on June 30, 2003, of \$1,693,559.

In response to a question from Senator Andrist, Ms. Zschomler said the anticipated deficit has partially been addressed through the provision of funds from the North Dakota Insurance Reserve Fund. She said there were problems associated with the federal government claiming a portion of the funding from the North Dakota Insurance Reserve Fund; however, negotiations have resulted in an agreement under which the federal government will not take any of these funds. She said she does not anticipate any changes in the contribution rates for small boards and commissions.

Chairman Andrist called on committee counsel to present a bill draft [30183.0100] regarding regulation of podiatrists by the State Board of Medical Examiners. Committee counsel said under the bill draft, the law creates the Board of Podiatric Medicine and regulating podiatrists would be repealed and licensure of podiatrists would be performed by the State Board of Medical Examiners. She said the State Board of Medical Examiners would adopt rules relating to licensure of podiatrists. Membership of the State Board of Medical

Examiners, she said, would change to include a podiatrist member who would have limited participation. Under the bill draft, she said, any outstanding receivables, obligations, and funds of the Board of Podiatric Medicine would be transferred to the State Board of Medical Examiners and the license fees paid by podiatrists would be used to retire any of the Board of Podiatric Medicine's outstanding balance of any obligations transferred to the State Board of Medical Examiners.

In response to a question from Senator Andrist, committee counsel said existing laws and rules relating to the licensure of podiatrists would cease being effective as of the effective date of the bill.

In response to a question from Representative Winrich, committee counsel said it would be possible to add some type of transition language relating to licensure of podiatrists to ensure there is no gap in licensure requirements.

Chairman Andrist called on Dr. Cherian Mathew, President, Board of Podiatric Medicine, for comments regarding the committee bill draft regarding licensure of podiatrists. Dr. Mathew said the Board of Podiatric Medicine recognizes there have been problems in the past and is actively addressing these problems. He said there has been a significant change in board membership and abolishing the Board of Podiatric Medicine is premature.

Dr. Mathew said the financial problems of the Board of Podiatric Medicine are being resolved and the disciplined podiatrist is responsible for repayment to the board.

In response to a question from Senator Andrist, Dr. Mathew said under the committee bill draft there would be inadequate board representation by podiatrists. Additionally, he said, he anticipates there would be scope of practice issues for podiatrists as well as transition problems resulting from abolishment of the Board of Podiatric Medicine.

In response to a question from Senator Wardner, Dr. Mathew said problems relating to the past disciplinary actions taken by the board have been addressed by the current board.

In response to a question from Representative Froseth, Dr. Mathew said although it is possible the financial liability of podiatrists may decrease under the State Board of Medical Examiners, the drawback would be lack of representation on the State Board of Medical Examiners. He said the current podiatrist licensure fee is \$500. He said he is hopeful this fee will decrease once the board meets its current financial obligations.



In response to a question from Representative Galvin, Dr. Mathew said one reason for maintaining separate boards for physicians and podiatrists is that a podiatrist undergoes training different from a physician.

Chairman Andrist called on Ms. Kelly Schmidt, layperson, Board of Podiatric Medicine, for comments regarding the committee bill draft. Ms. Schmidt said she believes the Board of Podiatric Medicine is moving in the right direction and asks that the committee allow the board to get back on its feet. She said she distinguishes physicians from podiatrists and this justifies keeping separate boards.

In response to a question from Representative Berg, Ms. Schmidt said she agrees the board took appropriate action in disciplining its member and the board has been responsible in paying debts it incurred. She said although 2001 legislation gave the Board of Podiatric Medicine the authority to borrow money to meet its debts, the board has not borrowed money. However, she said, she is not aware of an easy answer to the question of how to spread risk for disciplinary actions for the small boards.

In response to a question from Senator Wardner regarding the feasibility of the risk management fund charging a surcharge that would be kept as a separate fund to help small boards, Ms. Zschomler said with appropriate legislative changes she does not know of a reason her office would be prevented from taking this action.

Chairman Andrist said although it appears the committee is not interested in taking action at this time, Senator Wardner may wish to pursue this on his own.

Senator Wardner said he would pursue the idea of creating a separate fund in the risk management fund.

Chairman Andrist called on Mr. Gary Thune, legal counsel, Board of Podiatric Medicine, for comments regarding the committee's study of occupational and professional licensing boards of less than 100 licensees. Mr. Thune said if the Board of Podiatric Medicine is faced with a large debt in the future, a fund such as that discussed by Senator Wardner would be helpful as well as the 2001 Legislative Assembly enacted legislation that allows the board to suspend the license of a podiatrist until the podiatrist pays the board for disciplinary action costs and that allows the board to borrow money from the Bank of North Dakota.

Mr. Thune said the committee would be sending the wrong message to occupational and professional licensing boards if it abolished the Board of Podiatric Medicine. In effect, he said, the committee would be retaliating against the board for doing its job.

Senator Andrist said the committee is not retaliating against the Board of Podiatric Medicine for doing its job, but it is instead looking at the feasibility and desirability of consolidating small occupational and professional boards.

Chairman Andrist called on Dr. Brian Gale, podiatrist, Bismarck, for comments regarding the study of occupational and professional licensing boards that license fewer than 100 licensees. Dr. Gale said he is in support of the current Board of Podiatric Medicine. On the current board, he said, only one board member remains from the board that took disciplinary action against him.

Dr. Gale said small boards are inherently vulnerable to large disciplinary debts and to the problems associated with lack of turnover of board members. He said he supports combining administrative functions of occupational and professional boards in an attempt to lessen possible turf protection by occupational and professional boards.

Chairman Andrist called on Mr. John Olson, State Board of Medical Examiners, for comments regarding the committee's bill draft on licensure of podiatrists. Mr. Olson said he opposes the bill draft. He said there are curriculum, licensure, and disciplinary issues that would arise with consolidation of the Board of Podiatric Medicine and the State Board of Medical Examiners.

Mr. Olson said increasing the size of the State Board of Medical Examiners is expensive and he foresees problems with limiting the activities of the podiatry member to podiatry matters addressed by the State Board of Medical Examiners.

In response to a question from Representative Dosch, Dr. Mathew said the Board of Podiatric Medicine pays the risk management fund \$750 per year. He said because the Board of Podiatric Medicine does not have any employees, the budget of the board is essentially the cost of running the board.

In response to a question from Representative Dosch, Ms. Zschomler said small boards have full coverage under the risk management fund regardless of the amount of contribution. She said it was an administrative decision to exempt the smallest boards from paying into the fund.

Representative Dosch said if small boards do not have the necessary funds to pay into the risk management fund, perhaps the small boards should not exist.

Ms. Zschomler said the risk management fund pays for defenses of money damage claims and because small boards have less exposure to liability, they pay less to the fund. Ms. Schmidt said that although the Board of Podiatric Medicine has paid into the risk management fund, the risk management fund has not provided the board with any defense during the board's litigation.

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Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

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## North Dakota State Board of Medical Examiners

**ROLF P. SLETTEN**  
Executive Secretary and Treasurer

**LYNETTE McDONALD**  
Administrative Assistant

**TO:** HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE  
**FROM:** ROLF P. SLETTEN, EXECUTIVE SECRETARY & TREASURER  
**RE:** HOUSE BILL NO. 1500  
**DATE:** FEBRUARY 3, 2003

The Board of Medical Examiners strongly urges the Committee to vote "do not pass" on HB 1500. We do so for the following reasons:

1. Just two years ago the Legislature reorganized the Board of Podiatry by imposing term limits and by changing the makeup of the Board. I know that at that time arrangements were also being made to pay off the Board's debt. The Legislature shouldn't suddenly abandon that plan just two years after it was implemented. We say that with real conviction. One of our Board members is also a member of the Podiatry Board. Craig Lambrecht, M.D. is a member of the Board of Medical Examiners and is also, by coincidence, the M.D. member of the Podiatry Board. Dr. Lambrecht is a person whose opinion is truly worth listening to. He is in a unique position to observe the workings of that Board. He tells us that the Board of Podiatry can be made to work effectively. That being the case, the 2001 reorganization should not be disrupted or abandoned now.

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*Lolita Richard*  
Operator's Signature

*10/6/03*  
Date

2. The primary duty of the Board of Medical Examiners is to regulate physicians, i.e., M.D.'s, D.O.'s and Physician Assistants. We have been recognized many times by a national consumer group called Public Citizen as one of the 10 best medical boards in the country. No good can come from diluting the Board's focus by forcing us to regulate other professions with different educational standards, different licensing requirements, different licensing examinations and different disciplinary standards, none of which we are familiar with. I won't tell you that we couldn't possibly learn to do the work but it would mean we know less and less about more and more and it certainly wouldn't make for a better Board of Medical Examiners. We want to stay focused on the task we were established to perform.
3. Having the podiatrists regulated by the Board of Medical Examiners would be very confusing to the public. Few members of the public understand that podiatrists are not M.D.'s. Having them regulated by the medical board would blur the distinction even more. That's not good for anyone. Podiatry is a distinct discipline with a different educational curriculum, a unique degree, and different training. The Legislature should not do anything that leads people to believe that podiatrists are M.D.'s.
4. There is an issue of fairness here. The Board of Medical Examiners had absolutely nothing to do with creating debts or any other problems at the Board of Podiatry - no more so than did the well drillers or the Edible Bean Council.

5. Making the change would be very expensive. I wasn't able to write a very meaningful fiscal note and I didn't want to exaggerate the cost but if this bill is passed, the Board of Medical Examiners will pay for it, at least in staff time and in being distracted from the task of regulating physicians, for a very long time. We can be certain that the Administrative Rules would have to be rewritten, statutory changes would have to be proposed and then undoubtedly fought over, their forms and our website would have to be redone, new procedures would need to be devised, and our staff would need to be trained to understand new licensing standards, new tests and new procedures. It would be a huge investment of effort over a long period of time simply to regulate 22 people.

We have a very small office. It is literally full. There is no more space. If this bill means that we have to add a part-time person then we will need to move our office immediately. That's probably not the case but at the very least this bill would bring us a step closer to the day when we will need to find new office space.

6. There are other ways to do this. We feel strongly that at this point you should give the 2001 plan a chance to work, particularly in light of Dr. Lambrecht's observations. If at some point it becomes clear that the Podiatry Board just can't function as it is structured, then please, a.) consider reorganizing that Board with more public members or more M.D./D.O. members or b.) consolidate that Board with some of the other very small Boards, not the Board of Medical Examiners.

Thank you. Please don't require the Board of Medical Examiners to regulate podiatrists.

*Loiseta Richardson*  
Operator's Signature

*10/16/03*  
Date

2-10-03

Re: HB 1500

Mr. Chairman and Members of the Committee

I testified before you last Monday, February 3, 2003. Since that time the four pending complaints were settled and the debt is reduced. Presently we owe Mr. Thune's firm \$6,000. The board discussed this matter with Mr. Thune on February 3 and he told us that as long as we are making payments he has no problem with this debt. We have \$3000 in the bank account and this can be used towards this debt. There is a monthly income of \$750 and this will go towards paying off the debt. As you can see we are working very seriously in retiring this obligation and request that you do not go forward with this bill and the amendments. At the present time we are dealing with issues as they come; there is no serious problem with this board.

Christian Mathew, D.P.M. *Christian Mathew*  
 President, ND Board of Podiatric Medicine

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## Testimony on HB 1500 Rep. David Monson

Good morning Madam Chair and members of the Senate Human Services Committee. For the record, my name is David Monson, State Rep. for Dist. 10 in northeastern ND.

This started out as a very simple bill that replaced the board of podiatric medicine with the state board of medical examiners. You may have heard of this board and have some knowledge of their problems over the years. Their history is long, about 70 years, but recently they have had a number of lawsuits which have caused them to be in deep debt. They say they are now on the way to recovery and that things are going somewhat better for them. However, after talking with some board members, Mr. Thune (the attorney who has been representing them), and Mr. Peterson in the Attorney General's office who was handling their latest cases, it appears to me that they are still not a thriving financially sound board. They still have a lot of internal conflict and debt, although it is being paid off. One of the problems I see is that the cases they were close to settling were pulled back from the AG's office and once back in the hands of the board were more or less swept under the table and no action was taken. Mr. Peterson in the AG's office was frustrated since he felt he was close to resolving the issues and now it looks like nothing will happen. The lay person on the board who feels it is her duty to look out for the best interests of the public is frustrated with the turmoil within the board, between the board and their attorney, and with the pending cases no longer being resolved by the AG's office. She is unable to testify today because she is an employee of the legislative council. In short, I feel there are three questions we need to ask and have answered.

1. Is a board of 6 really needed to regulate a group of less than 30 people?
2. Is a board of 6 able to objectively look at themselves and their peers and make good decisions for their profession and still protect the public?
3. Is a board with less than 30 licensees able to afford to support a board of this kind, especially with so much debt and a history of so many expensive litigations to address?

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10/16/03  
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My idea is that the answer to the above questions is "no". The public and the industry are probably best served by doing away with this board. However, the House IBL Committee decided to give this board one more chance and amended the bill to do two things. First, the amended bill decreases the size of the board to five members. This makes an odd number on the board so votes are not going to end up in a tie vote. Second, the amended bill allows the board to increase their license fees to \$1,000. This was highly recommended by the House IBL Committee as a way to not only pay off their debt, but also to build a balance of at least \$50,000 in a short time to cover any future costs of litigation and to give the board some working capital. Of grave concern to the House IBL Committee was the fact that the state is ultimately responsible for the actions of this and every statutory board as well as the debt they may accrue. The risk to the state is unacceptable to most of the House members. Thus, if this board does not get dissolved and put under the control of the Board of Medical Examiners as the original bill suggested, the license fee increases as outlined in this amended bill are certainly needed.

This bill as amended had an emergency clause on it. However, the vote in the House was 59 to 29 and the emergency clause did not carry. You may wonder about the intent of the people voting "no" on the amended bill. In my discussions with my colleagues after the vote and by the floor discussions, the majority of those voting "no" wanted to go back to the original bill and do away with this board altogether. This amended bill is certainly the least that my colleagues in the House and I recommend. If we come back two years from now and find that this board has not taken advantage of the allowed increase in fees in this bill and is still mired in conflict and lawsuits, rest assured, someone will put in another bill similar to this one in its original form. This board is down to two choices as I see it. They can accept this bill in the amended form or in the original form. This amended bill is the best they can hope for from the House and we hope that you concur.

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Richard Costa  
Operator's Signature

10/16/03  
Date



March 3, 2003

Brian Gale, DPM  
Bismarck, ND

Madam Chair and Committee Members,

My name is Brian Gale, I am a Podiatrist and I practice in Bismarck. I strongly urge you not to pass HB 1500.

This Bill was not initiated by the Podiatry Board as a group or by any Podiatrists in the state. This Bill has brought attention to our Board and our profession unnecessarily at a time when the situation with the Board has improved significantly since the last legislative session.

The amendment to raise the licensing fees to \$1000 is not necessary since the Board already has the authority to do so. The Board has decided not to raise the licensing fee and therefore would not increase it even if this amendment were passed.

If the licensing fee were increased to \$1000 it would also discourage further Podiatrists from moving to North Dakota since it would be the highest licensing fee in the United States. At the current rate we will continue to add a few Podiatrists every year or two which will in turn help to improve the Board's financial status.

The other amendment is to decrease the number of Podiatrists on the Board from 4 down to 3. This will change the number of Board members from an even to an odd number however the layperson may choose not to vote on purely medical issues which would then take care of this problem.

The Board will have a difficult time functioning properly without 4 Podiatrists in regards to evaluating and processing complaints as well.

The circumstances behind the origin of HB 1500 are unfortunate. In fact it may be that the motivation was from someone who wanted the Podiatry Board to look bad.

In any event it should have never been sponsored and we should not be here today discussing it. The Bill should be killed since there is no one who is affected by this Bill who is in favor of it.

Thank you.

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*Yolanda Richardson*  
Operator's Signature

*10/16/03*  
Date

HB, 500

March 11, 2003

Enclosed are the minutes from the October 26, 2002, December 2, 2002 and February 3, 2003 meetings of the ND Board of Podiatric Medicine. These minutes were approved by the Board at their March 1, 2003 meeting. The March 1, 2003 minutes have yet to be compiled due to time constraints.

Should you have any questions please contact me at 663-6398.

Kelly Schmidt  
Secretary/Treasurer  
ND Board of Podiatric Medicine

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Kelista Richardson  
Operator's Signature

10/16/03  
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ND Board of Podiatric Medicine  
October 26, 2002 Meeting

President Dr. Cherian Mathew called the meeting to order.  
Board members in attendance: Dr. Cherian Mathew, Dr. Sam Criswell, Dr. Craig Lambrecht, Dr. Tyson Williams, and Mrs. Kelly Schmidt, Mr. Gary Thune, Board legal council.  
Also in attendance: Dr. Brian Gale, and his legal council Mr. Jim Coles, and Mr. Bill Peterson, ND Attorney Generals Office.

- Dr. Michael Stone was expected via conference call, due to measures beyond his control he was unable to be connected and did not join the meeting.

Motion was made by Schmidt to approve the minutes of the last meeting, second by Lambrecht, motion unanimously carried.

Dr. Mathew opened the meeting with a discussion to reexamine cases from Gale III. He expressed his view to have new Board members review each case before continuing in the current direction of a settlement.

Mrs. Schmidt expressed concern with regard to acting against the vote of the previous Board. Mr. Thune advised the Board of its options. Mr. Peterson advised the Board to go into Executive Session.

A motion was made by Williams, second by Criswell to enter into Executive Session under code 44-04-19.1 having received a unanimous vote, the motion carried.

**EXECUTIVE SESSION:**

Dr. Mathew called Executive Session to order at 8:40 am.  
Members present: Dr. Mathew, Dr. Lambrecht, Dr. Williams, Dr. Criswell, Mrs. Schmidt, Legal council for the Attorney

Dr. Mathew mentioned development of a website for the Board. After discussion a motion was made by Criswell, second by Williams to develop a website for the Board of Podiatric Medicine after a unanimous vote, motion carries. Mrs. Schmidt will look into this.

**Doctors Complaints...**

1. A complaint was received from Donald Axt in Feb. of 2002 against Dr. Francisco Tello. Mr. Thune mailed a request for a response to Dr. Tello on July 3, 2002 and received nothing. After discussion a motion was made by Williams to send Dr. Tello a letter of concern to Dr. Tello regarding his unprofessional conduct and a recommendation he send an apology to the patient with a copy to the Board. Second by Criswell, motion unanimously carries.
2. A complaint was received from Craig and Cindy Scholle of Fargo, ND against Dr. Hofsommer. Dr. Criswell shared Hofsommer's response and discussion was held. A motion was made by Williams to dismiss the complaint of standard of care, second by Schmidt, motion unanimously carries. A letter will be sent to the Scholles, cc: to Dr. Hofsommer.
3. A complaint was received from Dr. Bopp/Tammy Larde to Dr. Gale regarding the sharing of x-rays. Discussion was held regarding cost, medical records. Schmidt made a motion to seek an AG opinion of statute 23-12-14- 1(a) regarding the sharing of xray films as patient medical records. Second by Criswell. Motion carried with unanimous vote. Thune will file the request.
4. A complaint was received from Harvey Schilling regarding Dr. Brian Gale. Dr. Gale's response was dated 9/26/02. The complaint stated Mr. Schilling was billed for surgery and no surgery was conducted. Discussion was held regarding this billing issue and reference to scrapping codes used by the insurance industry, code # 17110-skin

La Costa Richardson  
Operator's Signature

10/16/03  
Date

lesion. Criswell made a motion to send a letter to Mr. Schilling explaining the insurance classification coding, second by Williams, unanimously carried.

A request to verify the consent release form was received by Dr. Gale and his attorney regarding the use of this consent and would it apply to hiring a medical expert. Mr. Coles recommended the Board develop a standard form to be used to include other doctor's records. Mr. Thune reported the form was corrected 2.5 years ago when Mr. Jim Norris was representing Dr. Gale and felt it was adequate. Mr. Thune advised the Board it maybe possible to develop 2 types of release forms, 1 for an informal hearing and the second for a formal hearing. In several cases a complaint ends at the first level and a patient need not have to share other doctor records.

Dr. Gale commented he hasn't had an opportunity to share medical records with an expert because the records from the other physicians have not been made available to him or an expert through the current consent

Mr. Thune reported he and Mr. Norris were comfortable with the release and that is was adequate to get an expert opinion.

Dr. Mathew shared that "during the complaint process he would like to hear from the doctor in question, what happened, before we do to an administrative hearing and get the experts involved." "Brian would like to know where he erred and we could not tell him, there should be a free flow of information sometime before we go to a formal hearing"

Thune..."The conflict in which you are saying is...we are trying to hold down the cost. The doctor knows the charges because the complaint has been sent to them. The medical records are received and the Board has made a decision based on that information. The doctor has the opportunity to respond to the complaint in writing." "If the doctor is going to have his say,

than I think the patient has got to have the opportunity to share their side."

Discussion was held regarding the more involved you get with details to decide whether to proceed formally or informally the more expense. The Board always has the right to request for information.

If verbal input is allowed than it becomes a formal hearing. We may want to look at he Medical Examiners procedures.

Mathew... "I have questions I would like to ask Dr. Gale....we need to do these things on a face to face basis like we did here today. Before we proceed very far at least the Dr. should be there to say this is what I did."

Discussion was held regarding the patient's right to rebuttal...

Review of administrative rules...

Mathew..."I'm not saying every single complaint will have go through this process, but there maybe instances where we need to proceed further."

Williams..."That's why there is an investigation, and I think we need to ask both sides the questions."

There is discussion again of disclosure and the investigation process.

Mathew..."There are things the doctor tells a patient that isn't indicated in the record. These are the things that need to be dealt with."

Discussion was held regarding the current and correct complaint procedure.

**NEW BUSINESS**

*Discussion was held regarding self-study and continuing education. Discussion was also shared with regard to the use of internet/interactive study. The last review of CME was in December of 1991. Bylaws 63-02-02*

*Dr. Gale requested a waiver on his CME credits as he prepared and passed the Board re-certification. Criswell made a motion to waive 12 hours of CME for taking the Board re-certification and passing it, and approve 8 hours of self-study for preparation. The motion was second by Mathew, and carried by unanimous vote.*

*Criswell made a motion to accept the re-certification of 2002 for the required 2003 re-certification, Second by Williams, vote was unanimous, motion carries.*

*Discussion was held regarding the a needed bond for the Sec/Tres.. Criswell motioned for Schmidt to check with the state bond fund for coverage. If not bonded, authorize her to purchase a bond. Second by Williams., vote was unanimous, motion carries.*

*Discussion was held regarding the "use" of the Risk Management Fund.*

*Housing keeping items we discussed. Schmidt will keep track of her hours of Sec/Tres. Duties. Re-licensing applications can be sent out as soon as possible.*

*Discussion was held regarding Inter-active CME sponsored by the Board. Dr. Mathew will attend the next State Association meeting to check on interest and ideas.*

*Dr. Stone forwarded written information regarding Good Feet, a foot appliance company in Fargo. He is concerned they*

maybe diagnosing foot ailments. Schmidt will be in Fargo in the next few weeks and will pay a visit to the store.

Hearing no further business before the board Criswell moved to adjourn, Williams second, with an unanimous vote the meeting was adjourned.

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10/16/03  
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North Dakota Board of Podiatric Medicine  
Dec. 2, 2002 Meeting

Dr. Cherian Mathew called to order at 6:35 pm. Board members in attendance via conference call included: Dr. Mathew, Dr. Stone, Dr. Lambrecht, Dr. Criswell, Dr. Williams and Mrs. Schmidt along with Mr. Thune, legal council. Also in attendance: Dr. Brian Gale and his legal council Mr. Jim Coles.

Dr. Lambrecht reviewed century code guidelines for Board members.

Mr. Thune made a recommendation to meet in Executive Session due to privacy issues and medical records. Mr. Thune advised the Board it would be possible for Dr. Gale and Mr. Coles to be part of the Exec. Session.

Dr. Stone questioned the procedure of the Gale III vote at the previous meeting. He noted the item was not included on the agenda and asked if this was out of order. Mr. Thune felt the Board met the notice requirement.

Dr. Mathew asked for a motion to proceed with the review of Gale III. A motion was made by Lambrecht to proceed, second by Criswell, after unanimous vote the motion carried.

Discussion was held regarding the executive/open Session. Williams moved, seconded by Stone to enter into executive session having a unanimous vote, motion carries.

Stone made a motion to exempt/exclude Dr. Gale and Mr. Coles from the executive session, second by Criswell. Motion carried with a vote of 4-2, Lambrecht/Mathew voting nay.

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The Board entered into Executive Session at 6:53 pm.

Open session reconvened at 9:25 pm. After discussion it was determined no action would be taken on Gale III pending a review of information from the previous review committee, which will be provided by Mr. Thune.

Hearing no further discussion or action, Criswell motioned to adjourn, second by Williams, motion carried.

ND Board of Podiatric Medicine  
Conference Call  
02-03-03

President, Dr. Cherian Mathew called the conference call meeting to order @ 9:18 pm. Attendance was taken with all Board members present: Dr. Mathew, Dr. Criswell, Dr. Lambrecht, Dr. Stone, Dr. Williams and Mrs. Schmidt, others in attendance Mr. Gary Thune, Legal Council to the Board and Dr. Brian Gale.

Dr. Mathew reviewed the process he would like to take from case to case.

Dr. Stone questioned breaking the patients rights to confidentiality with discussing this in open meeting forum.

Mr. Thune advised the Board move to an executive session should medical records be discussed.

Dr. Mathew added that Dr. Gale has gone through the retraining process since these complaints were filed.

**Dr. Criswell made a motion to reconsider the Geiger case, second by Dr. Lambrecht, a roll call vote was taken 4 yeas (Criswell, Lambrecht, Mathew, Williams) 2 nays (Stone, Schmidt) motion carries.**

**Dr. Lambrecht made a motion to reconsider the Allmer case, second by Dr. Criswell, a roll call vote was taken with 4 yeas (Criswell, Lambrecht, Mathew, Williams) and 2 nays, (Stone, Schmidt) motion carries.**

**Dr. Criswell made a motion to reconsider the Marter case, second by Dr. Williams, a roll call vote was taken with 4 yeas, (Criswell, Lambrecht, Mathew, Williams) 2 nays, (Stone, Schmidt) motion carries.**

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Operator's Signature

*10/16/03*  
Date

Dr. Criswell made a motion to reconsider the Mehlhoff case, second by Dr. Lambrecht, a roll call vote was taken with 4 yeas, Criswell, Lambrecht, Mathew, Williams, and 2 nays (Stone, Schmidt) motion carries.

Mr. Thune reviewed the settlement proposal with Board members. He reminded the Board the settlement of these cases was 90 % complete prior to this Board's review. He advised the board of the pending settlement,

1. Proceed without revocation
2. 3 yr. license probation
3. Psychological evaluation
4. \$1,000 AG expert cost
5. Medical records review by the Board.

Mr. Thune provided his legal opinion to proceed with the 3 out of 4 cases based on the expert opinion received by the Attorney Generals office. The expert voiced a weak case on Karen Marter, however the Mehloff, Allmer, and Geiger cases should proceed to formal hearing and returned to the AG's office.

Dr. Mathew stated Board members feeling Dr. Gale was coerced into a settlement caused the review. 4 of the new Board members didn't know about these complaints and Mr. Petersons (Assistant Attorney General) recommendation.

Mr. Thune reminded the Board records were made available to all Board members.

Dr. Mathew argued he did not receive the records; he wasn't on the board at the time of the original proceedings and the vote to move to formal charges in 2000.

**ALLMER CASE:**

A motion was made by Dr. Lambrecht to issue a letter of concern to Dr. Gale regarding the importance of a neuro exam, and documentation second by Dr. Criswell.

*Dr. Williams noted the expert felt this was a controversial issue.*

*Dr. Stone noted a letter of concern does not meet the requirements necessary to public safety as standard of care.*

*Discussion was held regarding the Boards obligations to the Public.*

*Dr. Williams noted, "Dr. Gale has paid his dues by going to retraining." And "time has lapsed".*

*Mr. Thune noted the settlement recommendation took into account Dr. Gales' retraining. Gale II held up Gale III*

*A roll call vote was taken, 4 yeah (Criswell, Lambrecht, Mathew, Williams) 2 nay (Schmidt, Stone) motion carries.*

**GEIGER CASE:**

Dr. Mathew noted the concern of too much medication.  
43-05-16 (g & k)

Dr. Lambrecht noted he saw no merit in this portion of the complaint.

Dr. Williams voiced a concern of recognizing a post-op complaint

Dr. Criswell noted he say no validity to either complaint, (g) or (k).

**Dr. Criswell motioned to dismiss the Geiger case, second by Dr. Lambrecht.**

Dr. Williams voiced his concern of post operative pain and asked for reassurance from the Board in regards to the pain issue.

A roll call vote was taken, 4 yeas (Criswell, Lambrecht, Mathew, Williams) 2 nay (Schmidt, Stone) motion carries.

MARTER CASE

Subsection of code discussed (k), (g), and (n). This case was listed by the expert as the weakest of the four cases.

Dr. Stone noted on this case the minimum standard of care; surgical judgment and failure to recognize complications were the course of action for this case.

Dr. Mathew noted a failure to document range of motion issues.

Dr. Criswell questioned the time frame and the changes in procedures to judge in the 2003 timeframe as unfair. He also noted documentation as an issue.

Dr. Mathew recommended a letter to included better record keeping practices.

Mrs. Schmidt reminded the board a letter of this type has been sent in the past.

Dr. Mathew noted, he too is sometimes guilty of being incomplete.

Dr. Williams noted the board is dealing with post-op complications, re: therapy Sometimes the therapists measure things differently; Dr. Gale was trying range of motion.

Dr. Stone argued, "Shouldn't a board certified surgeon recognize these complications"

Dr. Williams "I do, I agree with you, he should recognize that." This shouldn't be completely dismissed, (Dr. Williams voiced a concern with the procedure)

Dr. Stone noted the complications have to be dealt with.  
"There were other means to deal with the complications. There was no attempt to manipulate....it goes on and on until the patient leaves and is unhappy. This is the thread that weaves these all together."

Dr. Criswell asked if Dr. Gale was working at Olson's office at this time 7-4-92

Dr. Gale advised the Board this patient was offered injections and refused, also refused orthotics and further treatment.

Dr. Williams asked if this is reflected in the patient record. "I don't see that in the record"

Dr. Lambrecht noted the patient should be here to testify on their behalf.

Mr. Thune advised the Board to suggest that he received notification is absolutely unrealistic.

Mrs. Schmidt also voice opposition that it is unrealistic for the patient to participate when the only notice sent is at the Secretary of States office.

**A motion was made by Dr. Williams to issue a letter of concern regarding documentation and post-op complications. Second by Dr. Criswell. A roll call vote was taken 4 yeas (Criswell, Lambrecht, Mathew, Williams) 2 nays (Schmidt, Stone) Motion carries.**

#### MEHLOFF CASE

The formal hearing proceeded with section (k) of the code minimal standard of care and failure to supply medication peri-operative.

Dr. Williams noted he was concerned with documentation. Dr. Gale promised antibiotics, he did indicate to the patient she would receive antibiotics. He led the patient to believe one thing and did another. Something needs to be addressed with documentation. He also noted this wasn't the perfect patient. Patient left for 3 months, refused x-rays due to funds. Dr. Gale shows no documentation as to why he pulled the pin early.

**Dr. Williams made a motion to issue a letter of concern regarding better documentation and patient communication. Second by Dr. Lambrecht. A roll call vote was taken 4 yeah (Criswell, Lambrecht, Mathew, Williams) 2 nays (Schmidt, Stone) Motion carries.**

**Dr. Williams made a motion to direct Dr. Gale to take a risk management course within 12 months, provide the board with a certificate of completion tied to the Allmer, Mehloff and Marter cases. second by Dr. Criswell. A roll call vote was take 4 yeah (Criswell, Lambrecht, Mathew, Williams) 2 nay (Schmidt, Stone)**

Dr. Mathew noted the Board has the authority, by century code to inspect/review records in Dr. Gale's office.

Dr. Thune advised there is no formal finding to permit the review of records without a formal hearing. The probation in Gale II does not include monitoring of records.

Discussion was held regarding the ability to monitor medical records.

Mr. Thune noted the Board is not going to formal administrative hearing therefore, the Board has not authority to review records and find violations of the century code unless you go through the formal hearing process.

Dr. Mathew asked. "We can not have a review of the records!"

Mr. Thune. That is correct.



Dr. Lambrecht made a motion to mutually agree with Dr. Gale to review his records, second by Dr. Williams, a roll call vote was taken 5 yeah, (Criswell, Lambrecht, Mathew, Schmidt, Williams) 1 abstain (Stone) Motion carries.

Dr. Mathew informed the Board he and Dr. Lambrecht, testified on behalf of the Board regarding HB 1500. He noted Rep. Kelsers reprimand regarding fiscal responsibility. Rep. Keiser noted the Board shouldn't be carrying any debt and indicated an amendment would be drafted to raise the licensing fee to \$1000 until the debt is paid off. HB 1500 addressed the legal implications of the Board carrying debt and the liability of the state for that debt.

Mr. Thune noted he was surprised because his company has carried debt with the state continually he also indicated century code allows for only 500 annual renewal license fee once the loan is paid the fee should be reverted.

Hearing no further business to come before the Board, A motion was made by Lambrecht, second by Criswell to adjourn. Motion carried.