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*Yubereca J. Lee*

Date

10-16-03

2003 SENATE HUMAN SERVICES

SB 2142

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2142

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 8, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-2249
Committee Clerk Signature <i>Donna Kramer</i>			

Minutes:

SENATOR JUDY LEE, Chairman called the meeting to order.

KEN KARLS, Consumer Representative on the State Board of Occupational Therapy Practice, asked for favorable consideration of the bill. (Written testimony)

SENATOR LEE: Would you explain to me whether or not this means that a physician would still have to request the treatment, but it wouldn't have to be directly supervising or does this mean that the patient would go directly to the occupational therapist?

KEN KARLS: The way we interpret this amendment is, it would not remove the requirement for a referral, what it would rather do would to open the option for a referral. For example, a physician's assistant would be open to refer it or a nurse practitioner may be able to refer it. An optometrist may be able to refer. Right now, what we are talking about is a restriction simply to

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Senate Human Services Committee

Bill/Resolution Number SB 2142

Hearing Date January 8, 2003

MDs being able to refer. That is the way it would be interpreted right now. We're trying to broaden that referral process.

GREG JUND: Occupational Therapist representing North Dakota Occupational Therapy Association and presenting testimony by DIANNE NECHIPORENKO, President of the NDOTA. (Written testimony)

SENATOR LEE: I am going to ask everybody who is on the board, because I am aware of this from my own real job. How would you feel about North Dakota State Law not telling the board how many hours or how many years having been set for the continued education requirements are in order to meet certification?

What would you think about state law not being specific? About the number of years? In other words, this changing from the annual to the biannual session. As far as you're having two years to get your CEUs? You just said your board is doing it, what would you think about that?" I realize you can only speak for yourself, but I just think some of this is micro-managed and state law and that we shouldn't be putting in statute how many continuing education hours or at what intervals they should be required, but should rely on the boards to do that. So I am wondering what you personally think about that?

GREG JUND: I believe at that point it would have to be put in the rules and reg's. SENATOR

LEE: I know that. Do you have any feeling about it being in law instead of it being handled by your board?

GREG JUND: My biggest concern is that it is handled. I think it is very critical that any one in the medical profession has to have some type of a guide. In the past, it's been too easy for individuals to simply read a journal, have somebody assign that utilization just by reading

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journals with inadequate continuing education and I think that by having it mandated forces individuals to stay consistent with the changes in their profession.

SENATOR LEE: Can we rely on the input of the board and the association in any profession to help us determine. You know, we listen to you to say what you need to have for your profession. But why wouldn't it be just as well that the professionals who are on your occupational therapy board might establish that through rules rather than it might be by law. This is not a question you were prepared for.

GREG JUND: My personal opinion on that is yes, it could be handled by the board because I have strict confidence in our board. I think handling or dictating the amount of hours that are required could be easily handled in the administrative rules by the board.

DAVE PESKE, Director of Governmental Relations of North Dakota Medical Association, testified as a lobbyist in a neutral position. We looked at the issue at the request of a member physician who works hand-in-hand with occupational therapists in his clinic practice. He said we would like to eliminate the step where the physician has to sign the order to provide occupational therapy. In this instance, he is working with physicians' assistants in his clinic practice. He said PAs and NPs can prescribe medication and do other things under the authority of a physician. But in this case, they can't sign for the occupational therapy services that they know have been set up by protocol and they want to have happen. Subsequent to this physician's issue, we have had conversations with the Board of Occupational Therapy and the association's representatives about how they were going to approach this change. Our committee in the Medical Association looked at it and initially indicated that they would be opposed to an expansion of the scope of practice of OTs. But, we are waiting for this physician who brought it to us to contact us again

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and present his case. In the meantime, the bill deadline introduction came and what happened was what you see before you was just a repeal of that whole section. In looking at this section that is being repealed is listed, attorneys can interpret that in different ways. The attorney we have at our association looked at it and said this might be interpreted to mean that in 1983, when this law was created and, by the way in terms of background, '83 was the first year this law was enacted and first time OTs were licensed. This amendment was added in 1983. So, the interpretation might be that you're providing an expansion of OT practice. By saying in those three settings listed there, OTs may work in conjunction in a specific medical issue with a physician's signature. So, the concern that was being brought to us this year was that they can't accept referrals from OTs and other health professionals. That everything they do must be under the signature of a physician. And so there is some question about the interpretation of the section that we are repealing. Does it mean that if only the patient is in an acute care hospital or long-term care setting or a rehabilitation hospital, must there be a physician's signature? However, there are instances in clinic practices or optometric offices, et cetera, there is no need for a physician to sign the bill. That is the question that was raised to us and that is the question I raised with the OT Board two days ago. Wondering exactly what would be the effect of this repeal? So, I just here to tell you in the neutral position that we are not sure of the impact of it. We would like to consider asking for a formal Attorney General's opinion as to what would be left in the statute if this is repealed. We would like to ask the Board of Medical Examiners, because this is a specific medical conditions involved here. If they have any thoughts about the terminology and if this would impact in any way the practice of medicine by a group of occupational therapists. Again, by way of background, I don't think you have this code which

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defines the practice of Occupational Therapy. As you see it is a very lengthy and very detailed description in Item No. 4 defining what OT practice is. But, no where in there does it mention the words that it be repealed of such medical conditions or medical care. And, so for that reason we are not sure of the impact and just wanted to be on the record with you that we are in the neutral position at this time. It may well be that we would address this further. If you don't act on it, we may bring you additional information before you act on it or you may suggest this to the House. (Chapter 43-40 Definitions attached)

SENATOR LEE: That's an interesting question. So, it sounds to me as if we need to clarify this one way or the other regardless of what else they might do because there's confusion about whether or not they can practice in other settings without an MD.

DAVE PESKE: That's right and that is why we're contemplating a formal Attorney General's opinion that would give it some clarity so we could go forward from there.

SENATOR LEE: Do you any knowledge of legislative intent?

DAVE PESKE: I do go back and looked at it. A formal member of your committee was actually the sponsor at the time. The two biggest concerns then were that ODs were not licensed at that time, so it was creating yet another licensing board in state code and that was a concern.

Actually, the North Dakota Hospital Association opposed the bill on that basis. And, the other concern was third party reimbursement. By getting a license now puts them in a category where all their care would have to be paid for by third party carriers. The bill as originally proposed did not have this section 17 in it. So, at the Medical Association's recommendation, the sponsors agreed to add the language that they're contemplating removing today.

DAN ULMER, Blue Cross Blue Shield lobbyist testified in a neutral position. They found about

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this yesterday and heard there were some adjustments occurring. Really not sure what the effect of repealing 43-40-17 is, so we talked with some of our internal staff and had a discussion. Of course, we have a lot of other things hanging in the air, we would appreciate a little more time to get back to you. It is indeed a reimbursement issue for us. We have made all sorts of adjustments in terms of direct reimbursements for all the therapies. We are not really sure where this takes us. We want to look at exactly at how we are reimbursing everyone now in these particular lines and would like to get back to you. Basically, these folks are administering medical services of some sort and, therefore, some sort of medical control is necessary in particular in determining medical necessity and those kind of questions. It does become a cost issue. One question you also need to start asking yourself is are these mandated related. We don't have an answer. I would presume that the committees themselves are going have to make up their mind whether or not you're changing or adding a mandate.

SENATOR LEE: A new thing this session that we have to have cost benefit analysis on any thing that is perceived as an insurance mandate before proceeding. And, our committee had recommended that bills that would require these cost benefit analyses would have to be submitted early, like the Workers Comp bill for example and that didn't happen. So it's just going to be a scramble to get this done and the Insurance Department are just going to have a bunch of them dumped in their laps and we're going have to wait until all of this is finished.

DAN ULMER: We will try to give you some of our analysis of what the effect is. We already do some out patient reimbursement in this area, so it's not new. It's just a question of what this particular change will do to our policies and practices at this time, so we can give a better indication of what implications are.

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NANCY KOPP, representing North Dakota Optometric Association testified. Appeared in a neutral position. Indicated their association and other groups do not know the effects of the total repeal.

GREG JUND: On the question of an opinion of the office of the Attorney General, there was one done on February 7, 2001 regarding this issue. (Copy of Attorney General's opinion attached)

Public Hearing was closed on SB 2142.

Committee Discussion: (Meter #1184, Side B)

SENATOR LEE : Review about Occupational Therapists, SB 2142. Suggested bill be forward to the Insurance Department for a Cost Benefit Analysis because we need to know whether or not this is going to create an additional request for reimbursement for Occupational Therapists who would be functioning independently. See this as a potential issue.

SENATOR POLOVITZ: Moved that the SB 2142 be forwarded to the Insurance Department for a Cost Benefit Analysis.

SENATOR BROWN: Seconded the motion.

No discussion. All agreed.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2142

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 13, 2003

Tape Number	Side A	Side B	Meter #
1		X	1368 - 1740
Committee Clerk Signature <i>Donna Kramer</i>			

Minutes:

SENATOR JUDY LEE brought to the committee's attention about the SB 2142 bill heard last week regarding occupational therapy assistants. She said we had asked that we get input from the Board of Medical Examiners.

SENATOR LEE had a chance to visit with John Olson who was taking care of the Medical Examiner's responsibilities because Mr. Sletten was out of town. His interpretation also was that the only place that needed a physician's signature was in those sights of long-term care facility and some of those, and was not needed in other places. So, in repealing that paragraph does not cause any heartburn for anybody. And, it is not in the law which controls speech therapists, occupational therapists, or any of the others who might have parallel kinds of professional responsibilities.

SENATOR LEE suggested taking a look at SB 2142 to see if there would be any other questions or any conflicts with other medical professionals.

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Senate Human Services Committee

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Hearing Date January 13, 2003

ROD ST. AUBYN stated that a meeting was set up between BCBS and those with occupational therapy area, hopefully this afternoon, to talk about reimbursement.

SENATOR LEE said in visiting with the Insurance Department last week, with the Insurance Commissioner and some of his staff, also with Sandi Tabor from the Attorney General's office who has a concern about a another bill coming out that are part of the METH package, that we are going to interpret these bills very narrowly as far as requiring a Cost Benefit Analysis is concerned. If it doesn't say reimbursement, there won't be any. (Meter # 1603)

End of discussion.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2142

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 14, 2003

Tape Number	Side A	Side B	Meter #
1		X	5479 - 5923
Committee Clerk Signature <i>Donna Kramer</i>			

Minutes:

SENATOR JUDY LEE reopened the discussion on SB 2142 relating the licensure of occupational therapists and occupational therapy assistants; and to repeal section 43-40-17 of the North Dakota Century Code, relating to consultations and evaluations performed by occupational therapists. The public hearing had been January 8, 2003.

KEN KARLS, Consumer Representative on the State Board of Occupational Therapy Practice, testified to further clarify the intent of the Board's position on SB 2142. He stated the bill was introduced to allow for biennial renewals and to help make OT services more timely in their delivery to the consumer. (Written testimony copy attached)

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SENATOR LEE: I visited with DAVE PESKE of the North Dakota Medical Association and he said there weren't any huge issues but were still reviewing. If we wished to move the bill out of the committee, he was comfortable with that. (Meter #5644)

If there was something that needed to be done, he would be willing to address it in the House.

It's up to this committee if you wish to act on it now or did you want to hold off until you heard from them.

SENATOR FISCHER: Moved to DO PASS.

SENATOR BROWN: Seconded the motion.

ROLL CALL: 6 yes 0 no and 0 absent

SENATOR POLOVITZ: Carrier

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10-16-03  
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Date: 01-14-03  
Roll Call Vote #: 21

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2142

Senate Human Services Committee

☐ Check here for Conference Committee

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

Action Taken Withdraw the Request for a Cost  
Benefit Analysis  
Motion Made By Fisher Seconded By Brown

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	✓				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Polovitz

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

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Date: 01-14-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2142

Senate Human Services Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Fisher Seconded By Brown

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	✓				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Polovitz

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

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**REPORT OF STANDING COMMITTEE (410)**  
January 14, 2003 1:24 p.m.

Module No: SR-06-0535  
Carrier: Polovitz  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2142: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2142 was placed on the  
Eleventh order on the calendar.

(2) DEBK, (3) COMM

Page No. 1

SR-06-0535

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2003 HOUSE HUMAN SERVICES

SB 2142

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2142

House Human Services Committee

☐ Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
1	x		8.5 - 32.2
Committee Clerk Signature <i>Sharon R. [Signature]</i>			

Minutes:

Ken Karls, Consumer Representative on the State Board of Occupational Therapy Practice appeared in support with written testimony.

Rep. Amerman asked for an example.

Example: At present there have been some contacts made with occupational therapy board. At present, the law says that in certain settings only, that only the medical doctor can refer occupational therapy for occupational therapists to get paid. My understanding is that this amendment would do would be to allow for example an optometrist or even a nurse practitioner or physicians assistant to refer a person to occupational therapy care. This is especially important in rural areas where for example a nurse practitioner may be fulfilling a lot of medical needs of that rural community and that's our intent.

Rep. Kreidt: How many hours of continuing education do they have to acquire in 1 year and now going to a 2 yr., how are you going to set that up?

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Bill/Resolution Number SB 2142  
Hearing Date February 26, 2003

Answer: We presently require at least 10 hours of continuing education per year, this is complete expanded to 20 hours over a 2 yr period and the advantage to something like is for example, if they take a course of study that would probably cost them more than they would want to or able to spend on an annual basis and actually would provide them with continuing education than they would need in a one year period. It would allow them to get all those hours at one setting and have them apply for a 2 yr. period and take care of their continuing education according to that period.

Rep. Devlin: If you remove section 2, is there anyone who couldn't recommend that the occupational therapy be done?

Answer: We are trying to bring this in line with other professional boards in the State and this language does not exist for example in the section of the century code labeled physical therapy. It used to appear and it is my understanding that has been removed. There are still requirements in each medical center. For example, as to how care is administered and what type of care is administered and who will authorize that care or who will refer that care and those specific restrictions as per the individual site in which that care is being administered would supersede any care being given by someone who isn't a professional who isn't the type of person who might normally be intended to refer that care. There are safe guards, is what I'm trying to say.

Rep. Price: the big thing there wasn't that sort of relationship within the health care facility, whatever it may be, if there wouldn't be reimbursement.

Mr. Karls: That's a big issue.

Handed out written testimony of Nancy Kopp.

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Mary Kay Flemmer, ND Occupational Therapy Association appeared in support with written testimony.

Rep. Price: does the association have a position instead of repealing, we added the other practitioners to the list?

Answer: It did come up in discussion and one of the concerns was that we'd be coming back in 2 years. It would be a difficult thing to ensure that we have everybody listed and would probably come up with another issue where we would have to add name or change.

Rep. Weisz: If somebody makes an improper referral based on the whole list here, what's the practice on your prospective of the way you do it?

Answer: That does on occasion happen because in one medical professional, someone leaves notes where they've been referred to occupational services and that responsibility as a professional and with my license is to let that person know that there has been an inappropriate referral and guide them in or where there would be a more appropriate referral to or to just let them know that that's not the type of service that I provide. Also the ND State Board does monitor what the occupational therapists do in the State for treatment.

Dave Peske, ND Medical Association appeared in opposition stating this bill was enacted in 1983 when the Board was first created. The section that is being repealed was an amendment at that time to provide clarity to the law and I think that's where today we have some opposition and confusion about repealing this section would do. It was added because it clarifies that in 3 settings: the in-patient hospital setting, physical therapy setting and long term care setting. Orders from a physician would be necessary. Clarification to testimony that was provided to you: Medical doctors and doctors of osteopathy field are both licensed physicians so both are

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Bill/Resolution Number SB 2142  
Hearing Date February 26, 2003

available to make these referrals. Just another recognized type of physician in the licensed part.

In those 3 settings, the law says there must be a referral, in any other type of setting, the interpretation is that the physician does not need to refer a patient for care, so I think the confusion that you've already asked about is with the natural setting where the patient is, where the patient is being treated. So for that reason, removing this clarity is what we are opposed to at this time.

Rep. Price: question on assisted living facility. Answer: if assisted living facility is not one of those 3 settings mentioned in the statute, I'd would agree that there is no problem right now.

Rep. Price: Referral requires a MD is skilled care, acute care or rehab. Answer: That is how we interpret this law. Part of the clarity back in 1983 was for medical liability purposes and the issue was if you have a patient in a hospital or one of these settings, the patient is there because a physician is the person that still has the authority to admit the patient to that setting.

Rep. Price: Have you seen any problems with the referral in any other setting?

Answer: No, not aware of any referral issues.

Rep. Price to Mr. Karls: Has there been any problems with referral other than the 3 settings listed?

Answer: Feels you hit on the situation where this supposed clarification is actually causing confusion because there are instances throughout the state that are occurring where the existing language is being interpreted very conservatively in that anytime there is an occupational therapy referral done or anytime occupational therapy that is intended for a particular patient it won't get done until a referral actually takes place, whether it is in one of those 3 settings or not. And the question you raised about an optometrist for example, that optometrist would not have contacted

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Bill/Resolution Number SB 2142

Hearing Date February 26, 2003

the Occupational Therapy Board about this question, had he not thought that he could have taken care of this matter without that. I believe that this clarification thing only in 3 settings is unfortunately being interpreted as in anytime that occupational therapy is being required, it will require referral from a licensed physician. What we are trying to do is broaden that and the idea of trying to restrict this, we don't want to come back here every session and bring this law before you again, every session. If there is a need to do this, I would rather see a list of practitioners that you want to be allowed to refer to occupational therapy, be listed in our rules and regs, because that we can do as a board and consultation with BC/BS for example in consultation with the Medical Assoc., with the interested parties and do that. Then we don't have to come and take committee time, take the legislatures time doing the adding or removing practitioners.

Rep. Price: Is this just a situation of education of the medical community, because its very specific where its required and if they don't understand that its to be referring to the law.

Answer: That certainly is the case, if I was an occupational therapist, which I am not, I would not come to the doctor who is the primary care physician of a particular patient and tell them that "no I don't need a referral from you, I can take a referral from someone else who is not in this particular setting" I think that what we are intending to do here, is the same type of thing that is what's done with physical therapists. The occupational therapists are certainly as ethical and as concerned about professionalism of their particular profession that they would not abuse it anymore than a physical therapist for example have. And to my knowledge, there hasn't been a problem if I understood Mr. Peske correctly.

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Y. Hernandez  
Operator's Signature

10-16-03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2142

House Human Services Committee

☐ Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
2		x	1.2 - 4.1
Committee Clerk Signature <i>Sharon Lenrow</i>			

Minutes: Committee Work.

Rep. Price: This is the one they are asking to repeal the section that requires the medical doctor to make the referral, apparently physical therapists do not have to have that. They also want to go to a 2 yr. renewal.

Rep. Porter motioned a DO PASS, second by Rep. Potter

Rep. Devlin: a medical provider not being able to use \_\_\_\_\_ ?

Vote: 11 - 2-0

Rep. Kreidt to carry the bill.

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*Yubereza J. Hoo*  
Operator's Signature

*10-16-03*  
Date

March 4  
Date: ~~February~~, 2003  
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2142

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

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

Action Taken DP

Motion Made By Rep Porter Seconded By Rep Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓	✓	Rep. Bill Amerman	✓	
Rep. Robin Weisz		✓	Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep Kreidt

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

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**REPORT OF STANDING COMMITTEE (410)**  
March 4, 2003 4:41 p.m.

Module No: HR-38-3915  
Carrier: Kreidt  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2142: Human Services Committee (Rep. Price, Chairman)** recommends **DO PASS**  
(11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2142 was placed on the  
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-38-3915

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10-16-03  
Date

2003 TESTIMONY

SB 2142

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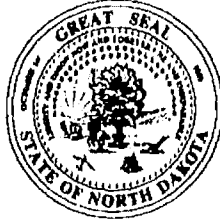
10-16-03  
Date

**NORTH DAKOTA STATE BOARD  
OF  
OCCUPATIONAL THERAPY PRACTICE**

PO Box 4005  
Bismarck, ND 58502-4005  
Telephone & Fax (701) 250-0847

ndotboard@aptnd.com

www.ndotboard.com



*Received  
January 14, 2003*

**SB 2142**

**January 14, 2003**

**Kenneth Karls, NDSBOTP**

Madam Chairman and members of the committee, my name is Ken Karls and I am the consumer representative on the State Board of Occupational Therapy Practice. I am submitting this additional testimony following a meeting with representatives of various interested groups including Blue Cross.

My testimony today is to further clarify the intent of the Board's position on SB 2142. The bill was introduced to allow for biennial renewals and to help make OT services more timely in their delivery to the consumer.

The intent of SB 2142 was not to establish or promote a new reimbursement mechanism for occupational therapy services.

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Operator's Signature

*10-16-03*  
Date

**NORTH DAKOTA STATE BOARD  
OF  
OCCUPATIONAL THERAPY PRACTICE**

PO Box 4005  
Bismarck, ND 58502-4005  
Telephone & Fax (701) 250-0847



**SB 2142**

**Testimony of Kenneth Karls**

Madam Chairman and members of the committee, my name is Ken Karls and I am the consumer representative on the State Board of Occupational Therapy Practice. I am appearing on behalf of the Board, and we are asking your favorable consideration of Senate Bill 2142.

SB 2142 was introduced for two reasons: to improve the educational options available to Occupational Therapy professionals, and to improve the delivery of medical care to North Dakota consumers.

Section 1 of the bill modifies the existing Century Code to reflect biennial, rather than annual license renewal. It also will expand the options for continuing education for OT professionals. For example, the intent of this amendment is to allow OT professionals to apply CEU's acquired over a two-year period to their licensure requirement. Hopefully, this option will encourage acquisition of continuing education, with the emphasis on gaining knowledge rather than meeting the CEU requirement. The acquisition of this education will most likely be more cost effective for the OT professional as well.

There will be no increase in fees for the OT professional, and we believe this amendment will result in an actual reduction of costs for the OT board because of the reduction in time and materials required to accomplish licensing. The Board also wanted to make our law consistent with that of other professional boards in North Dakota and surrounding states.

The second part of the bill is a repealer of Section 43-40-17 of the NDCC. Repeal of this section removes a restriction on health care administration that presently exists. It will also make our law consistent with that of other professional boards in North Dakota. We believe this amendment will enhance the quality, cost-effectiveness and timeliness of health care administered by OT professionals in North Dakota, especially in the more rural areas of the state.

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10-16-03  
Date

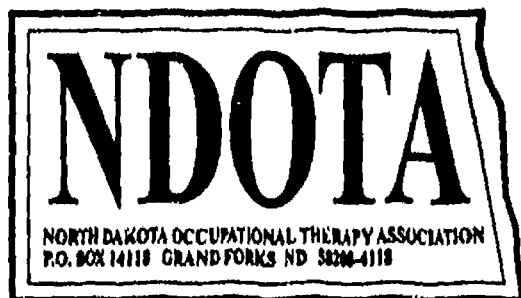
Repeal of this section will enhance the options for appropriate referral open to the consumer. It will allow medical care to be delivered in a timely manner due to elimination of delayed or redundant referrals, particularly in rural areas. And, that should result in more effective therapy in a field in which I am told, timely administration of care can affect overall success.

We appreciate the opportunity to appear before you this morning and ask your favorable consideration of our request. I will attempt to answer any questions you may have.

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10-16-03  
Date



**Testimony provided on Senate Bill 2142 by the North Dakota  
Occupational Therapy Association**

**January 8, 2003**

Madam Chair and Members of the Senate Human Services Committee:

My name is Greg Jund. I am a licensed Occupational Therapist and am here this morning representing the North Dakota Occupational Therapy Association and will be presenting testimony by Dianne Nechiporenko, President of the NDOTA.

Madam Chair, Members of the Senate Human Service Committee,

As president of the North Dakota Occupational Therapy Association (NDOTA), I have had the opportunity to discuss with our colleagues, as well as other health care providers and organizations, our current licensure law. As a result of these discussions and conversations, and after being approached by Optometrists, Physician Assistants, Nurse Practitioners, Doctors of Osteopathy and other licensed physicians, NDOTA wrote a letter to the State Board of Occupational Therapy Practice addressing the possibility of amending our licensure law in two areas: 1) renewal year; and 2) referrals.

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*Yubereca d. Lee*

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This first amendment (Subsection 1 of section 43-40-15) on line eight amends the current annual license renewal of Occupational Therapists and Occupational Therapy Assistants to biennial renewal. This change allows therapists to attend more intense courses within a two year period, as well as greater flexibility in acquiring mandated continuing education and the ability to carry over contact hours, allowing therapists on maternity or sick leave for example, to still meet state requirements. It would also be consistent for therapists holding multiple state licenses to track requirements between licenses and would create additional consistency with all but four of 52 states and districts. Finally, the amendments on line 11 are grammatical changes.

The second amendment repeals Section 43-40-17, which currently requires that:

The occupational therapist may enter a case for the purposes of providing consultation and indirect services and evaluating an individual for the need of services. Implementation of direct occupational therapy to individuals for specific medical conditions, in an acute care hospital, skilled care facility, or rehabilitation facility, shall be based on an order from a licensed physician.

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After being approached by other healthcare providers and in our discussions with colleagues, concerns about this section were raised.

Concerns raised, center on the following areas:

- 1 The inability to provide necessary OT services such as low vision evaluation and treatment because the referral has come from an optometrist verses an ophthalmologist;
- 2 PA's and Nurse Practitioners provide resident care in nursing homes and rural areas of North Dakota and cannot refer patients for OT;
- 3 PA's who follow patients after surgery cannot refer patients before discharge from hospitals causing further delay in obtaining OT services and treatment. For example, referrals have been sent to departments, only to be sent to the physician's office because the signature was not an MD but a DO, PA, CNP, OD, etc.
- 4 Patients who have OT treatment delayed may experience permanent loss of function in an upper extremity or their independent living skills that could have been prevented with a more timely referral.

To summarize, the current law may in fact be contributing to an imperfect health care system for the patients, particularly in rural settings, and increasing health care costs in the process by requiring patients to schedule additional clinic visits to obtain an OT Referral.

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01/07/2003

Our Practice Act provides the ethics by which OT services must be delivered. It also provides procedures for monitoring OT practitioners within the state and corrective and disciplinary actions to be taken by the state regulatory board if such violations occur.

We believe it is in the best interest of our patients, our profession, and our referral resources to amend the language within current law to allow for greater access to our profession. It will remain the responsibility of OT practitioners, health care facilities, and insurance providers to monitor service provision and efficacy of service. I feel no matter what Occupational Therapy services we are providing or where and for whom we are providing them, monitoring will be an ongoing challenge and responsibility shared by occupational therapy professionals with our peers and consumers serving on the North Dakota State Board of Occupational Therapy Practice.

Madam Chair and members of the Senate Human Services Committee, thank you for the opportunity to offer testimony before you this morning. On behalf of NDOTA, we urge a DO PASS recommendation on Senate Bill 2142.

Sincerely,

Dianne Nechiporenko, President  
North Dakota Occupational Therapy Association

Madam Chair, Members of the committee on behalf of Ms. Nechiporenko, and the North Dakota Occupational Therapy Association I would be pleased to answer any questions at this time.

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## CHAPTER 43-40 OCCUPATIONAL THERAPISTS

**43-40-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the board of occupational therapy practice.
2. "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
3. "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy, under this chapter, who works under the supervision of an occupational therapist.
4. "Occupational therapy practice" means the use of occupation and purposeful activity or intervention designed to achieve functional outcomes that promote health, prevent injury or disability, and which develop, improve, sustain, or restore the highest possible level of independence of any individual who has an injury, illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, physical disability or other disorder or condition, and occupational therapy education. Occupational therapy encompasses evaluation, treatment, consultation, research, and education. Occupational therapy practice includes evaluation by skilled observation, administration, and interpretation of standardized and nonstandardized tests and measurements. The occupational therapy practitioner designs and implements interventions directed toward developing, improving, sustaining, and restoring sensorimotor, neuromuscular, emotional, cognitive, or psychosocial performance components. Interventions include activities that contribute to optimal occupational performance including self-care; daily living skills; skills essential for productivity, functional communication and mobility; positioning; social integration; cognitive mechanisms; enhancing play and leisure skills; and the design, provision, and training in the use of assistive technology, devices, orthotics, or prosthetics or environmental adaptations to accommodate for loss of occupational performance. Therapy may be provided individually or in groups to prevent secondary conditions, promote community integration, and support the individual's health and well-being within the social and cultural contexts of the individual's natural environment.
5. "Occupational therapy aide" means an unlicensed person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant in accordance with rules adopted by the board.
6. "Occupational therapy student" is a person enrolled in an accredited occupational therapy education program.

**43-40-02. License required - Title - Abbreviation.** A person may not practice occupational therapy or hold out as an occupational therapist, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless that person is licensed under this chapter. Only individuals may be licensed under this chapter. An individual licensed under this chapter as an occupational therapist may use the title "occupational therapist" and the abbreviation "OT/L" or other designation approved by the board. An individual licensed under this chapter as an occupational therapy assistant may use the title "occupational therapy assistant" and the abbreviation "OTAL" or other designation approved by the board. No other individual may use these names or abbreviations.

**43-40-03. Persons and practices not affected by chapter.** This chapter does not prevent or restrict the practice, services, or activities of:

Page No. 303

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Date

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**OFFICE OF ATTORNEY GENERAL**  
STATE OF NORTH DAKOTA

Wayne Stenehjem  
ATTORNEY GENERAL

February 7, 2001

**CAPITOL TOWER**

State Capitol  
600 E. Boulevard Ave.  
Dept. 125  
Bismarck, ND 58505-0040  
701-328-2210  
800-366-6886 (TTY)  
FAX 701-328-2226

Brad Sibla  
Chairman  
Board of Occupational Therapy Practice  
P.O. Box 4005  
Bismarck, ND 58502-4005

Consumer Protection  
and Antitrust Division  
701-328-3404  
800-472-2600  
Toll Free in North Dakota  
FAX 701-328-3535

Dear Brad:

Gaming Division  
701-328-4846  
FAX 701-328-3535

Wanda Berg asked me to advise the Board whether an occupational therapist may accept a referral from an optometrist. N.D.C.C. § 43-40-17 provides:

Licensing Section  
701-328-2329  
701-328-3535

The occupational therapist may enter a case for the purposes of providing consultation and indirect services and evaluating an individual for the need of services. Implementation of direct occupational therapy to individuals for specific medical conditions, in an acute care hospital, skilled care facility, or rehabilitation facility, must be based on an order from a licensed physician.

**CAPITOL COMPLEX**  
State Office Building  
900 E. Boulevard Ave.  
Bismarck, ND 58505-0041  
FAX 701-328-4300

Civil Litigation  
701-328-3640

Natural Resources  
701-328-3040

In accordance with that law, an occupational therapist may enter a case with or without a referral to provide consultation, indirect services, and evaluation. It follows that an occupational therapist could accept a referral from an optometrist to provide consultation, indirect services, or evaluation.

Racing Commission  
701-328-4290

Bureau of Criminal  
Investigation  
P.O. Box 1054  
Bismarck, ND 58502-1054  
701-328-5500  
800-472-2185  
Toll Free in North Dakota  
FAX 701-328-5510

Under the law, however, the implementation of direct occupational therapy in specific circumstances requires an order from a licensed physician. A "licensed physician" does not include an optometrist. See N.D.C.C. § 43-17-01(2). "Direct occupational therapy" is not defined in law or rule. If "direct occupational therapy" has a commonly understood meaning in the profession, it could be applicable. Otherwise, "direct" must be understood in its ordinary sense. N.D.C.C. § 1-02-02.

Fire Marshal  
P.O. Box 1054  
Bismarck, ND 58502-1054  
701-328-5555  
X 701-328-5510

Fargo Office  
P.O. Box 2665  
Fargo, ND 58108-2665  
701-239-7126  
FAX 701-239-7129

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Brad Sibla  
February 7, 2001  
Page 2

Bear in mind that under the statute a referral from a physician for direct occupational therapy is only necessary in certain circumstances. It must be for "specific medical conditions" to require a referral. It is difficult, however, to foresee a situation when occupational therapy would not be used for a specific medical condition.

Under the law, a referral from a physician is only necessary to implement direct occupational therapy "in an acute care hospital, skilled care facility, or rehabilitation facility." None of these terms is specifically defined in the law. The Health Department for purposes of licensing has defined acute care," N.D. Admin. Code § 33-07-01.1-01(4)(6), "hospital," N.D. Admin. Code § 33-07-01.1-01(4)(g), "general acute hospital," N.D. Admin. Code § 33-07-01.1-01(4)(g)(1), and "rehabilitation hospital" N.D. Admin. Code § 33-07-01.1-01(4)(g)(3)(c)(1). I believe a "skilled care facility" is the same as a "skilled nursing care facility." "Skilled nursing care facility" is also not defined in the law, but is used often in the law and rules. The commonly understood meaning in the industry would apply. In any case, if the direct occupational therapy is not implemented in such a facility, there is no requirement of a referral from a physician. An occupational therapist could accept a referral from an optometrist if the direct occupational therapy is not implemented in one of the three types of facilities.

If you have any further questions concerning this issue please contact me.  
Thank you.

Sincerely,

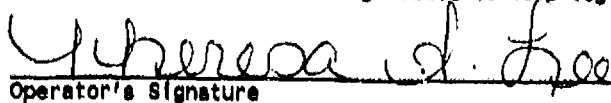


Bill Peterson  
Assistant Attorney General  
Office of Attorney General  
900 East Boulevard Avenue  
Bismarck, ND 58505-0041  
Telephone (701) 328-3640  
Facsimile (701) 328-4300

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**NORTH DAKOTA STATE BOARD  
OF  
OCCUPATIONAL THERAPY PRACTICE**

PO Box 4005  
Bismarck, ND 58502-4005  
Telephone & Fax (701) 250-0847



**SB 2142**

**Testimony of Kenneth Karls**

Madam Chairman and members of the committee, my name is Ken Karls and I am the consumer representative on the State Board of Occupational Therapy Practice. I am appearing on behalf of the Board, and we are asking your favorable consideration of Senate Bill 2142.

SB 2142 was introduced for two reasons: to improve the educational options available to Occupational Therapy professionals, and to improve the delivery of medical care to North Dakota consumers.

Section 1 of the bill modifies the existing Century Code to reflect biennial, rather than annual license renewal. It also will expand the options for continuing education for OT professionals. For example, the intent of this amendment is to allow OT professionals to apply CEU's acquired over a two-year period to their licensure requirement. Hopefully, this option will encourage acquisition of continuing education, with the emphasis on gaining knowledge rather than meeting the CEU requirement. The acquisition of this education will most likely be more cost effective for the OT professional as well.

There will be no increase in fees for the OT professional, and we believe this amendment will result in an actual reduction of costs for the OT board because of the reduction in time and materials required to accomplish licensing. The Board also wanted to make our law consistent with that of other professional boards in North Dakota and surrounding states.

The second part of the bill is a repealer of Section 43-40-17 of the NDCC. Repeal of this section removes a restriction on health care administration that presently exists. It will also make our law consistent with that of other professional boards in North Dakota. We believe this amendment will enhance the quality, cost-effectiveness and timeliness of health care

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Operator's Signature

*10-16-03*  
Date

administered by OT professionals in North Dakota, especially in the more rural areas of the state.

Repeal of this section will enhance the options for appropriate referral open to the consumer. It will allow medical care to be delivered in a timely manner due to elimination of delayed or redundant referrals, particularly in rural areas. And, that should result in more effective therapy in a field in which I am told, timely administration of care can affect overall success. There is no intent to establish or to promote a new reimbursement mechanism for occupational therapy services.

We appreciate the opportunity to appear before you this morning and ask your favorable consideration of our request. I will attempt to answer any questions you may have.

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10-16-03  
Date

SENATE BILL 2142

GOOD MORNING MADAM CHAIR PRICE AND MEMBERS  
OF THE HUMAN SERVICES COMMITTEE.

For the record, my name is Nancy Kopp. I appear before you this morning representing the North Dakota Optometric Association in support of Senate Bill 2142.

Our association has discussed, this past year, the issues of referrals and consultations for low vision patients with the ND State Occupational Therapy Association. Our areas of concern were patients' needs, access to care and cost containment.

SB 2142 would allow optometrists to directly refer and co-manage low vision patient occupational therapy in any patient care setting.

Be advised that occupational therapy referral and consultations are within the Practice Act of Optometry, but the Occupational Therapist's Practice Act restricted the level of licensed healthcare professionals they could receive referrals from.

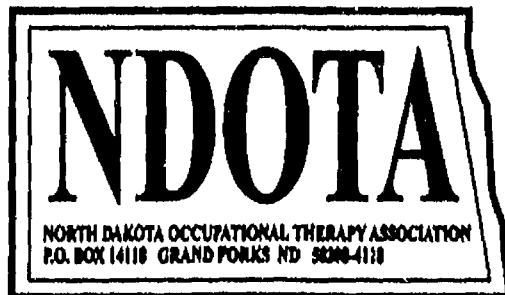
Passage of SB 2142 would provide a coordinated team approach all geared to providing the visually impaired patients continued independent living and does not enhance the practice act of any healthcare provider, increase costs to patients, or increase reimbursement for those involved in delivering the care.

SB 2142 is a patient access and patient care issue. I urge a do pass recommendation.

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Nancy Kopp  
Operator's Signature

10-16-03  
Date



**Testimony provided on Senate Bill 2142 by the North Dakota  
Occupational Therapy Association**

**February 26, 2003**

Chairperson Price and Members of the House Human Services Committee:

My name is Mary Kay Flemmer. I am a licensed Occupational Therapist and am here this morning representing the North Dakota Occupational Therapy Association and will be presenting testimony by Dianne Nechiporenko, President of the NDOTA.

Chairperson Price, Members of the House Human Services Committee,

As president of the North Dakota Occupational Therapy Association (NDOTA), I have had the opportunity to discuss with our colleagues, as well as other health care providers and organizations, our current licensure law. As a result of these discussions and conversations, and after being approached by Optometrists, Physician Assistants, Nurse Practitioners, Doctors of Osteopathy and other licensed physicians, NDOTA wrote a letter to the State Board of Occupational Therapy Practice addressing the possibility of amending our licensure law in two areas: 1) renewal year; and 2) referrals.

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This first amendment (Subsection 1 of section 43-40-15) on line eight amends the current annual license renewal for Occupational Therapists and Occupational Therapy Assistants to biennial renewal. This change allows therapists to attend more intense courses within a two year period, as well as greater flexibility in acquiring continuing education and the ability to carry over contact hours, allowing therapists on maternity or sick leave for example, to still meet state requirements. It would also be consistent for therapists holding multiple state licenses to track requirements between licenses and would create additional consistency with all but four of 52 states and districts. The second amendment on line 11 is a grammatical change.

The final amendment repeals Section 43-40-17, which currently requires that:

**The occupational therapist may enter a case for the purposes of providing consultation and indirect services and evaluating an individual for the need of services. Implementation of direct occupational therapy to individuals for specific medical conditions, in an acute care hospital, skilled care facility, or rehabilitation facility, shall be based on an order from a licensed physician.**

After being approached by other healthcare providers and in our discussions with colleagues, concerns about this section were raised.

Concerns raised, center on the following areas:

- 1 The inability to provide necessary and timely OT services such as low vision evaluation and treatment because the referral has come from an optometrist verses an ophthalmologist;

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- 2 PA's and Nurse Practitioners provide resident care in nursing homes and rural areas of North Dakota and cannot refer patients for OT services, causing delays for the patient who requires occupational therapy;
- 3 PA's who follow patients after surgery cannot refer patients before discharge from hospitals causing further delay in obtaining OT services and treatment. For example, referrals have been sent to departments, only to be sent to the physician's office because the signature was not an MD but a DO, PA, CNP, OD, etc.
- 4 Patients who have OT treatment delayed may experience permanent loss of function in an upper extremity or their independent living skills that could have been prevented with a more timely referral.

To summarize, the current law may in fact be contributing to an imperfect health care system for the patients, particularly in rural settings, by delaying necessary referrals and increasing health care costs in the process by requiring patients to schedule additional clinic visits to obtain an OT Referral.

Our Practice Act provides the ethics by which OT services must be delivered. It also provides procedures for monitoring OT practitioners within the state. Repeal of Section 43-40-17 will not increase nor decrease OT referrals or overall access to OT services, rather it will provide for more timely access to OT services for patients who may experience delays under the current law by having to schedule additional visits to obtain a referral.

We believe it is in the best interest of our patients, our profession, our referral resources and overall healthcare in ND to amend the language within current law to allow for a more timely access

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to OT services. It will remain the responsibility of OT practitioners and health care facilities to monitor service provision and efficacy of service. No matter what Occupational Therapy services we are providing or where and for whom we are providing them, monitoring will be an ongoing responsibility shared by occupational therapy professionals with our peers and consumers serving on the North Dakota State Board of Occupational Therapy Practice.

Chairperson Price and members of the House Human Services Committee, thank you for the opportunity to offer testimony before you this morning.

On behalf of NDOTA, we urge a DO PASS recommendation on Senate Bill 2142.

Sincerely,

Dianne Nechiporenko, President

North Dakota Occupational Therapy Association

Chairperson Price, Members of the committee on behalf of Ms. Nechiporenko, and the North Dakota Occupational Therapy Association, I thank you for your consideration of SB 2142 and will do my best to answer any questions at this time.

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