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2003 SENATE HUMAN SERVICES

SB 2373

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1		X	624 -2891
Committee Clerk Signature	Donna Kramer		

Minute

SENATOR LEE opened the public hearing for SB 2373 relating to communications of the State Board of Medical Examiners.

SENATOR KAREN KRESBACH, of District 40, introduced the bill. This bill was designed to ensure that patients are protected from a physician who requires discipline. While at the same time, patients are assured that they do not inappropriately lose the services of their physician. Keeping the formal complaint confidential from the news media. Amendments will be proposed. (Meter # 624 - 852)

BRUCE LEVI, of the North Dakota Medical Association, testified in support for the bill. He stated the SB 2373 would simply ensure that a physician who is a subject of a formal complaint receives notice of the formal complaint before it becomes public. Eleven members on the Medical Board. Amendment was explained. (Written testimony provided) (Meter # 875 - 1448)

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SENATOR LEE questions whether there had been a problem with media inquiries? (Meter #1462 - 1612)

SENATOR POLOVITZ asks for explanation of "proof of service"? (Meter # 1613 - 1831)

ROLF SLETTEN, Executive Secretary of the North Dakota State Board of Medical Examiners, commented on SB 2373 stating the bill is unnecessary. (Written testimony provided) (Meter # 2037 - 2424)

JACK MCDONALD, of the North Dakota Newspaper Association and the North Dakota Broadcasters Association, testified. He stated they were neutral of this bill, but were not sure of its precise impact. He stated that it was their understanding that these complaints are currently confidential until they are served on the respondent. This bill apparently makes that clear and really makes no significant changes in current practices. (Written testimony) (Meter # 2485 - 2734)

ROLF SLETTEN stated there was one scenario which does not come up very often. (Meter # 2771 - 2868)

SENATOR LEE closed the public hearing. (Meter # 2891)

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373

Senate Human Services Committee

❑ Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1		X	1687 - 2070
Committee Clerk Signature	Donna Kramer		

Minutes:

SENATOR JUDY LEE reopened discussion for SB 2373 tracking about information about investigation into a position by the Board of Medical Examiners. The person to whom the complaint is filed has to be told before it is given to anyone else. Mr. Levi said this was really important and Mr. Sletten said they were already doing it. There was an amendment brought in by Bruce Levi. (Meter # 1702 - 1855)

JACK MCDONALD: If you're going to pass the bill, pass the amendment. (Meter # 1891)

SENATOR ERBELE: Made a motion DO NOT PASS.

SENATOR BROWN: Seconded the motion.

Roll call was read. 6 yeas 0 nays.

SENATOR ERBELE will be the carrier. (Meter # 2070)

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Date: 02-10-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2373

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. 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. Erbele

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

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REPORT OF STANDING COMMITTEE (410)
February 11, 2003 8:27 a.m.

Module No: SR-26-2206
Carrier: Erbele
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2373: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2373 was placed on the Eleventh order on the calendar.

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10/22/03
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2003 TESTIMONY

SB 2373

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10/22/03
Date

February 5, 2003

SENATE HUMAN SERVICES COMMITTEE
SB 2373

SENATOR LEE AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We're probably neutral on this bill, but we're not sure of its precise impact.

Our understanding is that these complaints are currently confidential until they are served on the respondent. This bill apparently makes that clear and really makes no significant changes in current practices.

However, if it turns out this bill would allow the complaint to remain confidential for a significant period of time, while the physician continues to see and treat patients, then we would object strenuously to the bill as bad public policy. We believe the public has a right to know about the quality of its health care providers.

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

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10/22/03
Date

North Dakota State
Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE McDONALD
Administrative Assistant

TO: SENATE HUMAN SERVICES COMMITTEE

FROM: ROLF SLETTEN, EXECUTIVE SECRETARY

RE: SB 2373

DATE: FEBRUARY 4, 2003

The North Dakota State Board of Medical Examiners offers the following comments regarding SB 2373:

1. We think this bill is unnecessary. We already work very hard to make sure that no doctor learns by reading the newspaper that a disciplinary action has been brought against them. We don't want that anymore than anyone else does and we make sure it doesn't happen.

2. We strongly oppose the bill as it is currently written because we think the language is unclear and there may be an unintended consequence. As it is currently written it might be interpreted to mean that once the complaint has been served then all the records of the investigative panels, except their financial records, become public information. I know that's not the intention but it seems to me that's what it says.

3. We are neutral on the bill if it is amended as proposed, but we still think it is unnecessary. It will not change the way we do business in any way.

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Testimony in Support of SB 2373
North Dakota Medical Association
Senate Human Services Committee
February 5, 2003

Chair Lee and Members of the Senate Human Services Committee, I'm Bruce Levi of the North Dakota Medical Association. The Association urges your support for SB 2373.

This bill addresses the issue of fair notice. The ND Board of Medical Examiners uses investigative panels to conduct investigations of physicians. If, after investigation, the panel determines that a formal hearing should be held to determine whether to discipline a physician, it serves a formal complaint on that individual physician and that complaint is filed with the Board for disposition. SB 2373 would address a narrow issue by ensuring that the formal complaint is not disclosed publicly until the investigative panel receives proof of service of the complaint. In other words, SB 2373 would simply ensure that a physician who is a subject of a formal complaint receives notice of the formal complaint before it becomes public.

The Board of Medical Examiners has stated that it is not their practice any longer to publicly release the name of the physician until they have been served and that this legislation may not be necessary. On the other hand, if the Board were requested to disclose the formal complaint before service, there is nothing in our current law that would give the Board the authority not to disclose the information.

The bill would not change the current public disclosure allowed for the more severe cases involving the Board's involvement in considering temporary license suspensions.

In 2001, the Board and the Association agreed to changes in the Medical Practice Act that resolved issues about certain Board procedures and which addressed some of the due process concerns of physicians. Prior to that time, there had been some notable changes in the ND Board of Medical Examiners – particularly in 1999 when the Board's structure was changed, resulting in a significant reduction in the number of individuals involved in the investigation and disciplinary process. In 1999, the Commission on Medical Competency, which performed the investigation function, was abolished and a new framework was created in which the Board of

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Medical Examiners for any given case is divided into an investigative panel and a hearing panel. There are eleven members on the Board. Nine are physicians and two are public members. An investigative panel consists of five members. A majority constitutes a quorum and the investigative panel can take action with a majority of members present. So, technically, as few as two members could take action to serve and file a formal complaint. The point being that fair notice has taken on new importance in light of the Board's restructuring.

Fair notice is also more implicit in the investigative procedures for many other professions. For example, the general procedures in the disciplinary process for lawyers provides multiple opportunities for the lawyer to be in involved in the investigative process, including a requirement that the lawyer respond to the District Inquiry Committee and be provided the opportunity to appear before the District Inquiry Committee, and then be given notice of the District Inquiry Committee's decisions before they refer the matter to the Disciplinary Board of the Supreme Court [Rule 6.1 ND Rules for Lawyer Discipline].

North Dakota law also recognizes that even in criminal matters, there is room for consideration for confidentiality in some situations for criminal complaint and arrest warrants. In our judicial procedure for criminal cases, a law was passed in 1995 that allows for the confidentiality of information in a criminal complaint and warrant for arrest if necessary for the proper services of the arrest warrant [NDCC 29-05-32].

When we began reviewing this issue as an Association, we reviewed other proposals, including Minnesota's law which does not provide for public disclosure until after disciplinary action has been taken against the physician. We also provided a weaker proposal to the ND Newspapers Association for their consideration in January that would have not authorized disclosure until the Board's formal hearing or at the time a case is settled. The Newspapers Association indicated that it would oppose that proposal. Instead, we offer this more narrow expansion of confidentiality in SB 2373, simply ensuring that the physician receives notice of the formal complaint before it becomes public.

I urge the Committee to support SB 2373, and I'm available to answer questions.

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ND Medical Association
February 5, 2003

PROPOSED AMENDMENTS TO SB 2373

Page 1, line 11, replace ", including the" with ". The"

Page 1, line 12, after "43-17.1-05" insert "is confidential"

Renumber accordingly

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