

2013 SENATE HUMAN SERVICES

SB 2202

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

SB 2202

1/28/13

Recording Job Number: 17801

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to professional transparency for health care practitioners.

Minutes:

You may make reference to "attached testimony."

Chairman Lee opens hearing on SB 2202.

Courtney Koebele, Executive Director of the ND Medical Association, supports SB 2202. See attached testimony #1 and handout #1.

(0:06:57) Senator Anderson asks Ms. Koebele to clarify why some only have first names with last initial and picture for protection purposes.

Ms. Koebele states that they have been in touch with different healthcare providers and there are things like this can be used on this law. She would like the opportunity to work with different people to remove requirements that don't work with rural healthcare or with the mental health issues to revise the bill.

Senator Anderson follows with asking why something like this is necessary.

Ms. Koebele explains that there isn't healthcare advertising and this is an extra protection.

(0:11:34) Chairman Lee inquires about having an amendment that includes other healthcare professionals with doctorates that are not included.

Ms. Koebele states that some are included but the pharmacists aren't. They don't generally meet with people in a healthcare environment.

Chairman Lee follows by asking for the situations that have led to this bill being introduced in North Dakota.

Ms. Koebele states that she has spoken with many of her members who are physicians (who are all behind this bill) who have shared misunderstandings. It's a statement of consumer protection more than anything.

(0:13:50) Chairman Lee and Ms. Koebele discuss healthcare professionals in advertising and how it relates to this bill.

(0:14:30) Senator Dever asks if it is her intention that surgeons wearing scrubs in the operating room wear a nametag.

Ms. Koebele explains that it's a practicality issues and that Dr. Gaylord Kavlie, who will be testifying, can address that.

Senator Dever follows with a question about actors posing as doctors in advertisements in regards to posting a disclaimer.

Chairman Lee looks to **Senator Anderson** to respond and he proceeds to explain the rule regarding this.

Ms. Koebele informs the committee that they are willing to work with whomever necessary on the exact details of the bill because they really feel this is an important issue.

No further questions from the committee for Ms. Koebele.

Doctor Gaylord Kavlie, surgeon at Mid Dakota Clinic and Primecare in Bismarck, testifies in support of bill (see attached testimony #2). He also addresses Senator Dever's question about wearing a nametag in the OR and states that he does wear one.

(0:24:30) Chairman Lee asks Dr. Kavlie if there are any other states that have passed a law that would be similar to this.

Dr. Kavlie hasn't investigated this so he can't answer that question.

No further questions from the committee for Dr. Kavlie and no further testimony favoring the bill.

Cheryl Rising, FNP speaking on behalf of the North Dakota Nurse Practitioner Organization (NDNPA), is opposed of the bill. See attached testimony #10.

(0:28:44) Senator Dever asks for clarification about her testimony regarding section 4 on page 3 and Ms. Rising provides that for him.

No further questions from the committee for Ms. Rising.

Rita Sommers, Executive Director for the ND State Board Dental Examiners, is opposed of bill. She attached testimony #3.

(0:38:48) Senator Anderson references page 2, lines 20-21, and identifies incorrect acronyms. If they move forward this needs to be corrected. Ms. Sommers confirms that the language is incorrect.

No further questions from the committee for Ms. Sommers.

Joe Cichy, Executive Director of ND Dental Association, is opposed of the bill. See attached testimony #4.

No questions from the committee for Mr. Cichy.

Mary Nordsvan, legal counsel for the North Dakota Board of Optometry, is opposed of bill. See attached testimony #5.

No questions from the committee for Ms. Nordsvan.

Brian Beattie, a licensed Doctor of Optometry, is opposed of bill. See attached testimony #6.

No questions from the committee for Dr. Beattie.

John Olsen, representing the North Dakota Academy of Physicians Assistants, offers two suggestions on amendments.

No questions from the committee for Mr. Olsen.

Nancy Kopp, North Dakota Optometric Association (NDOA), is opposed of the bill. See attached testimony #7.

No questions from the committee and no further testimony.

Chairman Lee closes the hearing on SB 2202.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

SB 2202

1/28/13

Recording Job Number: 17857

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to professional transparency for health care practitioners.

Minutes:

You may make reference to "attached testimony."

Committee discussion on SB 2202:

Chairman Lee talks through some of the information that was submitted after the hearing and specifically mentions attachment #8 from The American Osteopathic Association, and attachment #9 from Senator Gary Lee.

The committee discusses the definitions in first section. Chairman Lee asks the law intern to investigate the language in each separate scope of practice, as well as change the word "certificate" to "license" on page 2, line 28.

Discussion continues on the issues that physicians have with the name "doctor" being used by other medical professionals. Senator Axness feels that the intent of this bill is for a larger established hospital.

Senator Anderson and Joe Cichy discuss the dentist acronyms that Senator Anderson thought were incorrect in the bill. Mr. Cichy will check on this for the committee.

Senator Dever suggests pulling all other scopes of practice out of the bill so it just applies to physicians. Senator Larsen agrees because there are some healthcare professionals that weren't even listed so there is a concern that those will need to be added.

Chairman Lee asks the committee if the posting of hours is really necessary and it is agreed that it is not needed.

Discussion continues on photo IDs and how the name appears (just first name or first name with last name initial, etc). Chairman Lee states that the name and profession seem to be more important than the photo and asks if anyone in the committee feels the need to amend the photo ID in some way to keep it in, or would they prefer to not include the nametag part. Senator Larsen thinks that the ID and tags should be up to the hospital and shouldn't be in the law. Senator Axness likes the part about having the practitioner's name

but feels that including the license the practitioner holds is also beneficial for consumers or patients to know what exactly the background is of the healthcare professional. He's not sure about including a photo but something identifying the qualifications is something that needs to be considered. Senator Larsen wonders if people will even know what the acronyms mean.

Senator Anderson feels it needs to be left to the individual practice acts and references and discusses the violations on page 4 with the committee.

Committee agrees to leaving in lines 18-19 on page 1 and taking out the subsections listing the specific practitioners.

Chairman Lee isn't trying to influence the committee but wouldn't feel bad with a Do Not Pass; however she is willing to amend it if that's what the committee wishes. Senator Larsen states that he does not like the bill as it sits already. Senator Anderson feels that if there is going to be some revision then the Medical Association needs to work on the language. Discussion continues on the need of the IDs.

Senator Larsen moves Do Not Pass.

Senator Anderson seconds.

Senator Axness states that he is in favor of an amendment and has a discussion with the committee about what the amendments would be.

Senator Dever reads an email to the committee that he received recommending a Do Not Pass.

Roll call vote: 4 -1-0, Do Not Pass.

Senator Larsen is the carrier.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2202

1/29/13

Recording Job Number: 17863

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to professional transparency for health care practitioners.

Minutes:

Attachment"

Committee discussion after Do Not Pass Vote on SB 2202:

Senator Axness states that there were groups working on amendments prior to the Do Not Pass and was wondering if the committee would be willing to hear those amendments.

Chairman Lee was under the impression that they already discussed what the amendments were going to cover but allows Courtney Koebele to share her recommendations with the committee.

Courtney Koebele, Executive Director of the Medical Association, speaks about her proposed amendments. She is still working on them and apologizes to the committee for not having them with her.

Chairman Lee expresses that she wasn't trying to sneak anything around without people having the opportunity to get heard but the committee discussed amendments at length prior to the vote.

Ms. Koebele, Senator Anderson, and Chairman Lee have a discussion about the practice acts. Ms. Koebele states she has an email draft of the states that do have truth in advertising and the states that are pursuing it this session (see attachment #11). She also expresses that she wants the chance to draft amendments and then have the committee re-vote.

Senator Axness moves to reconsider the action on SB 2202 but then retracts since he originally voted no.

Chairman Lee asks the clerk to hold off on submitting the vote so that Courtney can come back tomorrow and present the amendments. At that point, they will decide whether or not they are going to reconsider the vote. The committee agrees that they are okay with this. Committee discussion is closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2202

1/30/13

Recording Job Number: 18036

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to professional transparency for health care practitioners.

Minutes:

You may make reference to "attached testimony."

Committee discussion #2 on SB 2202:

Chairman Lee references two emails from Connie Kalanek (see attachments #12). She proceeds to open the discussion by explaining that the committee passed it out as a Do Not Pass at 4-1 but, at Senator Dever's recommendation, the committee agreed to see what the amendments were before reconsidering the vote.

The committee reviews and discusses all proposed amendments and further information that was submitted (see all remaining attachments after #12).

Chairman Lee asks the committee if there is a motion to reconsider the actions on the bill that was voted out Do Not Pass on 1/28/13. With no motion it is clear that the preference of the committee is to leave it as it was voted on Do Not Pass, 4-1, with Senator Larsen as the carrier.

Discussion is closed.

Date: 1/28/13
 Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2202

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Larsen Seconded By Sen. Anderson

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness		✓
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment Sen. Larsen

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

REPORT OF STANDING COMMITTEE

SB 2202: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2202 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2202



Senate Human Services Committee

Senate Bill 2202

January 28, 2013

Madam Chairman Lee and Committee Members, I'm Courtney Koebele and I am the executive director of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents and medical students. The North Dakota Medical Association is proud to support Senate Bill 2202.

Truth in Advertising seeks to address the need for all allied health providers to clearly state their level of training, education and licensing in marketing and other communications to the public. This consumer safety legislation will assist patients in making informed decisions when choosing a health care professional.

With the vast information provided by the internet along with a large volume of health care providers, it oftentimes becomes difficult for the patient to know the truth from the misleading. Uninformed choice leads to unintended consequences and potentially dangerous health outcomes.

When non-qualified providers falsely advertise that they are able to treat conditions having the appropriate education and training necessary, it puts patients' safety at increased and unnecessary risk. A better informed patient provides for a better informed choice and thus better outcomes.

We are confident all allied health providers are proud of their credentials and will willingly showcase exactly who they are and the service they are able to provide. Further, asking allied health professions to display their credentials and

their capabilities would allow North Dakotans to make informed choices about their health care including full disclosure in all advertising and marketing materials.

As a matter of consumer protection, we believe that this legislation will provide regulatory boards with an additional means of protecting the public.

Choosing a healthcare provider is one of the most important decisions that a person makes. This decision should be supported by full disclosure. Patients have the right to know exactly who is providing treatment. As a matter of the patients' safety and right to be informed, every health care provider will willingly display, with transparency, their credentials to provide the most sufficient care.

The bill has three parts. The first part of the bill deals with definitions of advertisement, deceptive or misleading, and health care practitioner. The next section of the bill deals with the requirements. Those include advertisements and postings regarding the licensure of the practitioner. The third and final section deals with violations and enforcement. Please note that the only penalty under this act is that a practitioner may be disciplined by their licensure board. There are no other penalties associated with this act.

There are going to be groups of practitioners stating that this law is not needed. That is because they are not the group of people that are confused and will be protected by this law. However, there is significant survey data showing that patients are confused about the education, training, qualifications of their healthcare providers (eg, who's a "doctor"). With more people coming into the health care system in 2014, and the proliferation of "doctors," Truth in advertising relating to health care advertising is needed more than ever. There is an increased use of doctoral degrees in healthcare. By passing this law, North Dakota is making a statement for consumers of healthcare.

SB 2202 will help reduce this confusion by ensuring that any advertisement for health care services that names a health care practitioner

will also identify the type of license held by the health care practitioner. S.B. 2202 also requires that the information must be based on their level of legal licensure and be free of deceptive or misleading information. Considering the avalanche of information available to patients in today's health care system, the provision of truthful information is simply a matter of common sense.

NDMA is not trying to restrict the practice of non-physicians. Efficient high quality health care requires all members of the health care team work closely together. Every member of the team plays an important role, but to ensure optimal care and patient safety, physicians and non-physicians must provide the services that their education has prepared them to provide. This bill does not increase or limit anyone's scope of practice. Instead, this bill increases the transparency of health care professionals' qualifications for patients, so that patients can clearly see and make informed decisions about who provides their care.

Thank you for the opportunity to present NDMA's position on this issue.



Truth in Advertising survey results

Education and training matters when it comes to who provides your health care, but do most patients know the qualifications of their health care provider? A 2008 survey found that while patients strongly support a physician-led health care team, many are confused about the level of education and training of their health care provider.¹ Follow-up surveys conducted in 2010² and 2012³ confirmed that patients want a physician to lead the health care team. The surveys also underscored that patient confusion remains high. Key findings include:

- ▶ Ninety-one percent of respondents said that a physician's years of medical education and training are vital to optimal patient care, especially in the event of a complication or medical emergency.¹
- ▶ Eighty-six percent of respondents said that patients with one or more chronic diseases benefit when a physician leads the primary health care team.²
- ▶ Eighty-four percent of respondents said that they prefer a physician to have primary responsibility for the diagnosis and management of their health care.¹

Truth in Advertising legislation can help provide the clarity and transparency necessary for patients to have the information they need to make informed decisions about their health care.

Patients are not sure who is—and who is not—a medical doctor

Is this person a medical doctor?	Yes (%)		No (%)		Not sure (%)	
	2008	2010	2008	2010	2008	2010
Orthopaedic surgeon/Orthopaedist	94	84	3	12	3	4
Obstetrician/Gynecologist	92	93	5	4	3	3
Primary care physician ¹	n/a	91	n/a	7	n/a	2
General or family practitioner	88	88	8	9	3	4
Dermatologist ⁴	n/a	84	n/a	12	n/a	4
Dentist	77	69	20	29	3	2
Anesthesiologist	76	78	16	19	8	3
Psychiatrist	74	75	20	21	6	4
Ophthalmologist	69	71	14	16	17	13
Podiatrist	67	68	22	21	11	11
Optometrist	54	54	36	38	10	8
Psychologist	49	41	44	53	8	6
Chiropractor	38	31	53	64	9	6
Doctor of nursing practice	38	35	37	46	25	19
Audiologist	33	30	40	47	27	23
Otolaryngologist/ENT ⁵	32	43	13	33	55	24
Nurse Practitioner	29	26	63	69	7	5
Physical Therapist	26	19	68	78	6	3
Midwife	11	7	82	86	7	7

Additional findings from the “Truth in Advertising” surveys

Patients strongly prefer physicians to lead the health care team

Should only a medical doctor be allowed to perform the following procedures or should other health care professionals be allowed to perform this specific activity?	Only a medical doctor (%)			Other health care professional (%)			Both equally/ either one (%)			Don't know (%)		
	2008	2010	2012	2008	2010	2012	2008	2010	2012	2008	2010	2012
Amputations of the foot?	93	93	92	5	5	5	n/a	n/a	2	2	2	2
Diagnose and treat heart conditions?	n/a	n/a	92	n/a	n/a	4	n/a	n/a	3	n/a	n/a	1
Surgical procedures on the eye that require the use of a scalpel?	92	94	90	6	4	5	n/a	n/a	2	2	2	3
Treat emergency or trauma medical conditions, which may be life threatening?	n/a	n/a	90	n/a	n/a	4	n/a	n/a	5	n/a	n/a	2
Facial surgery such as nose shaping and face lifts?	90	89	83	8	8	7	n/a	n/a	3	3	3	6
Write prescriptions for complex drugs, including those that carry a risk of abuse or dependence	82	75	83	16	23	10	n/a	n/a	5	2	3	2
Diagnose and treat chronic diseases like diabetes?	n/a	n/a	78	n/a	n/a	15	n/a	n/a	6	n/a	n/a	5
Write prescriptions for medication to treat mental health conditions such as schizophrenia and bi-polar disorder?	80	75	77	17	22	12	n/a	n/a	6	3	3	4
Administer and monitor anesthesia levels and patient condition before and during surgery?	71	70	77	27	23	15	n/a	n/a	6	3	7	2
Write prescriptions for common conditions like sinus infections?	n/a	n/a	34	n/a	n/a	44	n/a	n/a	20	n/a	n/a	2

Patients want their health care professional to clearly designate their education and training

Do you agree or disagree with the following?	Agree (%)			Disagree (%)			Don't know (%)		
	2008	2010	2012	2008	2010	2012	2008	2010	2012
Only licensed medical doctors should be able to use the title of “physician”	91	93	92	7	6	6	2	1	2
It is easy to identify who is a licensed medical doctor and who is not by reading what services they offer, their title and other licensing credentials in advertising or other marketing materials?	46	51	n/a	51	44	n/a	3	3	n/a
Would you support or oppose legislation in your state to require all health care advertising materials to clearly designate the level of education, skills and training of all health care professionals promoting their services?	Support (%)		Oppose (%)		Don't know (%)				
	2008	2010	2008	2010	2008	2010			
	93	87	6	10	1	3			

- Global Strategy Group conducted a telephone survey on behalf of the AMA Scope of Practice Partnership between August 13–18, 2008. Global Strategy Group surveyed 850 adults nationwide. The overall margin of error is +/- 3.4 percent at the 95 percent confidence level.
- Baselice & Associates conducted a telephone survey on behalf of the AMA Scope of Practice Partnership between November 4–8, 2010. Baselice & Associates surveyed 850 adults nationwide. The overall margin of error is +/- 3.4 percent at the 95 percent level.
- Baselice & Associates conducted a telephone survey on behalf of the AMA Scope of Practice Partnership between March 8–12, 2012. Baselice & Associates surveyed 801 adults nationwide. The overall margin of error is +/- 3.5 percent at the 95 percent level.
- The physician professions “primary care physician” and “dermatologist” were not referenced in the 2008 survey.
- The abbreviation for ear, nose and throat—“ENT”—was not referenced in the 2008 survey.

SB 2202

Thank you Senator Lee and members of the committee for the opportunity to speak to you. I am Gaylord Kavlie. I'm a surgeon from Mid Dakota Clinic in Bismarck. I am here in support of SB 2202

I watched Marcus Welby and Dr. Killdare on TV when I was a kid. Some of you may be old enough to remember them. They are probably part of the reason I'm a physician today. Medicine was so simple in the Marcus Welby and Dr. Killdare days – there were mainly doctors and nurses caring for patients. Many years later I'd graduated from college, then went to 4 years of medical school, then 5 yrs of surgery residency. During that education, I learned how my more complicated medicine had become. After 26 yrs of school, I went to work for a living. That was 28 years ago. During the 28 years I've been a surgeon, medicine has progressively become even more complicated. We are far from the "doctors and nurses only" days. It now is and must be a team that provides medical care.

There now are **SO** many members of the healthcare team.

I'm thankful for **nurses** who provide personal care.

I'm thankful for **pharmacists** who know more about medications than I can know. They now do extensive medication counseling and give immunizations. Many are now **Doctors of Pharmacy**.

I'm thankful for **physical therapists** who know more about the musculoskeletal system than I can know. They preserve and restore function for our patients. They now provide care independently and many are now **Doctors of Physical Therapy**.

I'm thankful for **occupational therapists** who teach patients to accommodate to accomplish activities of daily living.

In the OR I'm thankful for **nurses**, and **anesthetists**, and **surgical assistants**, and **surgical technicians**.

I'm thankful for **dieticians**, and **x-ray technicians**, and **speech therapists**, and many others members of the healthcare team providing care.

I'm thankful for **Nurse Practitioners**, and **Physician assistants** who provide excellent care. **Nurse Practitioners** are able to be independent from physicians while **Physician Assistants** work with a collaborative agreement with a physician. Some Nurse Practitioners are now **Doctors of Nurse Practitioner**.

↳ Sometimes overlapping

We are a team, each with different roles to play. The team is capable of providing a complexity of care that, in the days of Marcus Welby and Dr. Killdares, was science fiction

There was a time when the majority of patients knew who I was. That has also changed. Patients come from Beach, or Bowman, or Belfield, or Beulah and don't have the slightest idea who I am or, sometimes, what I am. When I walk into a hospital room or an exam room they don't know if I'm the nurse, or physical therapist, or someone coming to empty their garbage. Patients have a right to know, not just by introduction but by a nametag, that clearly identifies me and others in the healthcare team. If they have an appointment with me, Dr. Kavlie, they should be able to go online and not be concerned that the information about who I am (my title and credentials) might be inaccurate or inflated.

I've recently been on a different side of medicine. My 2-year-old granddaughter is receiving chemotx for leukemia in Savannah. (She, by the way, is doing very well, the prognosis is good, and it's a blessing that she's too young to know how lousy she feels much of the time.) During multiple trips to Savannah during the past 5 months, I've been with Rachel and the family in the hospital and clinic. It's been nice to be able to identify who is the nurse, and the lab tech, and resident physician, and the supervising physician. I've gone on line and "checked out" the people to whom the care of my granddaughter is entrusted.

When I go to an **Optometrist** or and **Ophthalmologist** I shouldn't wonder if he or she is a physician or not. I shouldn't wonder who is the optometrist and who is the **optometric technician** and who is the **optician**. If I see a **Plastic Surgeon** it should be obvious who is the physician, who is the **Esthetician**, and who is the **nurse**.

*Naturopathic Doctor
Doctor of Chiropractic*

*Respiratory Therapist
Social Worker
Care Coordinator*

I believe, for the sake of clarity and transparency as well as the comfort of those we care for, that the patients and families of those we care for should know who is caring for them. They deserve to know without confusion. And they should be able to trust the information that is provided for them. SB 2202 will ensure that clarity and transparency.

This is not Marcus Welby and Dr. Killdare's healthcare anymore and I encourage you to support SB 2202.

Testimony of the North Dakota State Board of Dental Examiners

Before the Health and Human Services Committee

Re: Senate Bill 2202

Monday, January 28, 2013

Presented by Rita Sommers, Executive Director of the NDSBDE

Good morning Madame Chairman and Members of the Committee. My name is Rita Sommers and I am the Executive Director for the North Dakota State Board of Dental Examiners (NDSBDE). I am here today to testify in opposition of Senate Bill 2202 which proposes to enact a new chapter of regulations for dentistry without proposing new concepts that are not included in existing statute.

The bill proposes that any "health care practitioners" or "practitioner" who engages in health care acts and are regulated by a board follow regulation as outlined in the proposed bill. The new chapter would include how advertising is regulated for the assurance of public safety. However, as demonstrated here, all but one of the numerous provisions in this bill presently exist in state statute and rules that regulate dentistry in North Dakota. For illustrative purposes I have highlighted in RED TEXT below excerpts from the present ND Century code used by the NDSBODE in the monitoring and regulation of both safety and efficacy of dental practice.

Current statute for dental practitioners 43-28-18 provides for disciplinary action for any licensee who has:

(10) Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a

dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.

(17). Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.

(27) Violated the code of ethics adopted by the board by rule.

ND Title 20: 20-02-01-01. Advertising. 1. Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false, deceptive, or misleading is prohibited.

2. All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.

3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's specialization provided that the dentist has successfully completed an educational program accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the commission on dental accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce.

4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.

5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.

6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

Regulation further provides how the dentist must advertise discontinuation of practice:

A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. "Active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation

of not less than two years to afford the licensee's prior patients access to those records not previously provided to the patient.

The NDSBDE has also incorporated the adoption of the ADA's Code of Conduct and Principles of Ethics into its rules of regulation. The Board may take disciplinary action against or deny licensing of anyone in violation of this code as indicated below. [see 43-20-05(15) and 43-28-18(27)].

SECTION 5 — Principle: Veracity ("truthfulness")

The dentist has a duty to communicate truthfully.

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity. The standard of "false or misleading in any material respect" is accepted in ethics and the law to distinguish between permissible and non-permissible advertising. The rationale for this standard is the protection of the public. Truthful, nondeceptive advertising of a dentist's qualifications, services or facilities can help patients make informed choices about practitioners and services. On the other hand, advertising which is false or misleading can harm patients by making it more difficult and costly for them to make informed choices.

Principle, Veracity, "truthfulness".

The dentist has a duty to communicate truthfully.

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

Representation of Care. Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

5.D.2 Marketing or Sale of Products or Procedures. Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

Disclosure: A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself. In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research.

Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

5.E. Professional Announcement. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.

5.F. Advertising. Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.³

5.F.1. Published Communications. If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.³

5.F.2. Examples of "False Or Misleading." The following examples are set forth to provide insight into the meaning of the term "false or misleading in a material respect."³ These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a

whole, is false or misleading in a material respect.

5.F.3. Unearned, Nonhealth Degrees. A dentist may use the title Doctor or Dentist, DDS, DMD or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic degree may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status. For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree.

The use of a nonhealth degree in an announcement to the public may be a representation which is misleading because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a practitioner.

Some organizations grant dentists fellowship status as a token of membership in the organization or some other form of voluntary association. The use of such fellowships in advertising to the general public may be misleading because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry.

Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and curriculum vitae. In all instances, state law should be consulted. In any review by the council of the use of designations in advertising to the public, the council will apply the standard of whether the use of such is false or misleading in a material respect.³

5.G. Name of Practice. Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no

longer actively associated with the practice may be continued for a period not to exceed one year.³

5.G.1. Dentist Leaving Practice. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5.H. Announcement of Specialization And Limitation of Practice. This section and Section 5.I are designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program. The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics. Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced dental specialties, provided at the time of the announcement such dentists have met in each recognized specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves

as specialists.

General Standards. The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate requirements for announcing specialization and limitation of practice:

The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.

Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or be diplomates of an American Dental Association recognized certifying board.

The scope of the individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is announcing.

The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practices announced by the dentist.

5.1.2. Credentials in General Dentistry. General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization and the announcement includes the disclaimer that the dentist is a general dentist. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

Regarding violations and enforcement provisions proposed in this bill, once again language contained in 2202 can be found in current statute governing dentistry. Although the language is not identical, content and intent are the same. For example:

“a. To knowingly aid, assist, procure, employ, or advise an unlicensed person to practice in a regulated health care profession contrary to the state's licensure laws.”

This language found in 43-28-18(14) “...directed others to perform acts or provide dental services for which they were not licensed or qualified or where prohibited by law or rule from performing or providing.”

b. To knowingly aid, assist, procure, employ, or advise a practitioner to engage in acts contrary to the practitioner's degree of licensure or scope of practice.

This language can be found in 43-28-18(5) “Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.”

And 43-28-18(22) “Failed to practice within the scope of that dentist's education or advanced training as recognized by the board, the American dental association, or other professional entity recognized by the board.”

c. For a practitioner to delegate to or contract with a person for the performance of health care services if the practitioner delegating or contracting for performance has reason to know the person does not have the required authority pursuant to the person's licensure or lack of licensure.

43-28-18(5), 43-28-18(22), and /or 43-28-18(26) which states that “any dentist or applicant who uses the services of a person or entity not licensed to practice dentistry in this state, or constructed, altered, repaired, or duplicated a denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, except as provide by rule adopted by the board.”

2. A health care practitioner who violates this chapter is guilty of unprofessional conduct, which may be grounds for disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

Throughout 43 28 and 43-20 governing the practice of dental hygiene, dentistry and dental assisting, the ND Board has language addressing unprofessional conduct and ethical behavior.

3. A violation of this section does not create a private right of action by a patient.

The ND Board governs the practice of dentistry, dental hygiene and dental assisting and does not govern any other entity, private citizen, or corporations.

4. Notwithstanding the imposition of any penalty, a state professional licensing board or entity or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against any person violating this chapter.

Chapter 43-28 contains sanctions and restrictions under Sections 43-28-06. Powers of the Board; 43-28-18.2, Disciplinary procedure; 43-28-18.3 Temporary suspension – Appeal; 43-28-25. Unlawful acts – Penalty.

The only aspect of SB 2202 not currently addressed by existing statute relates to a requirement for dental licensees to wear name badges or other signage. The NDSBDE has to date never received any inquiry related to, heard of any injury related to, or comment or complaint regarding name badges or signage for licensees nor has any rationale for the need to do so been presented. It currently sees no compelling reason to add such a requirement in statute or rules, and particularly an entire new chapter to do so.

The state dental board has a unique regulatory perspective as well as responsibility to make additions and modifications that reflect the ongoing activity of the Board with the goal of public protection and safety in mind. The North Dakota State Board of Dental Examiners views this bill as redundant and superfluous. The NDSBDE works to remain nimble toward regulation of evolving changes in the delivery and marketing of dental healthcare. It has concern that the addition of this bill is unwarranted, adding redundant regulation where none is needed. The NDSBDE recommends a “do not pass” vote for Senate Bill No. 2022.

Thank you for the opportunity to testify this morning and with that, I would be happy to answer any questions you may have.

SB 2202

Senate Human Service Committee

Chair: Senator Judy Lee

RE: Testimony in Opposition to SB 2202

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Joe Cichy (Lobbyist #92) and I am the Executive Director of the North Dakota Dental Association and appear here in opposition to SB 2202.

If there is a problem with identification of health care workers it seems to be a problem strictly in the medical arena and any attempted solution should be specifically directed there. This bill is unnecessary as it relates to dentistry.

There are statutes and rules in place regarding dentists and their advertising. They are contained in Chapter 43-28 of the North Dakota Century Code and any modifications should be included in that chapter so they are easily found by anyone who wishes to look for them.

This bill creates a new chapter with many redundancies as it relates to dentistry. Looking at page 3 of the bill it requires dentist to tell their patients when they communicate with them that they are doctors of dental surgery or doctors of dental medicine. Most dental practices have one dentist. Very few have more than 2 dentists in their office. When patients come in they know who their dentist is. This would just be another government regulation that would burden their practices in an attempt to solve a problem that doesn't exist.

The bill would require the entire staff to wear recent pictures, of sufficient size, and in a conspicuous manor, with no definition as what constitutes recent, sufficient, or conspicuous. This is way too vague and for dentistry totally unnecessary.

Again this bill is redundant in many respects and particularly with regard to violation of this section. Dentist's unlawful acts are contained in the North Dakota Century Code section 43-28-25 and that is where they should be included.

If this bill is needed for medical providers it should be directed at their respective practices and not include dentists.

Therefore, we request either an amendment removing dentists from the bill or a committee recommendation of do not pass.

SENATE BILL 2202
HUMAN SERVICE COMMITTEE

JANUARY 28, 2013

TESTIMONY OF THE NORTH DAKOTA BOARD OF OPTOMETRY
BY: MARY E. NORDSVEN, SPECIAL ASSISTANT ATTORNEY GENERAL
FOR THE BOARD OF OPTOMETRY

The North Dakota Board of Optometry is opposed to the Health Care Transparency Act. It is the Board's position that the legislation is not necessary.

The North Dakota Board of Optometry is a seven member Board appointed by the Governor. The duties of the Board are prescribed by North Dakota law and include the reasonable regulation of the profession of Optometry, the practice there of by person's licensed to practice Optometry and the protection of the health, welfare, and safety of citizens with respect to the field of Optometry. See Section 43-13-13(2)N.D.C.C. North Dakota Law specifically prohibits any person who is not the holder of a license to practice Optometry from engaging in the practice of Optometry. Section 43-13-28 N.D.C.C.

The Board of Optometry has adopted regulations to ensure that the public is not misled by individuals holding themselves out to be Optometrists who are not licensed Optometrists. The Board's regulations appear in Article 56 of the North Dakota Administrative Code.

The Board currently regulates advertisements of Optometrists to ensure the public is not misled. N.D. Ad. C. Section 56-02-03-02-8. In addition, the Board has adopted rules to sanction Optometrists who engage in activities that mislead or otherwise deceive the public by aiding or abetting the practice of Optometry by an unlicensed, incompetent, or impaired person or the failure to properly monitor an assistant. Section 56-02-06-04-24 N.D. Ad. C. The interests intended to be protected by the Health Care Transparency Act are already adequately and effectively protected by the Board of Optometry.

In the history of the Board of Optometry there has never been a complaint by a consumer or practicing Optometrist that someone was holding themselves out to be an Optometrist when they did not have a license to practice Optometry in the State of North Dakota. There has never been a disciplinary action against an Optometrist who assisted an unlicensed individual to practice Optometry.

In conclusion, it is the position of the Board that the Health Care Transparency Act, as it relates to the profession of Optometry, is unnecessary and redundant of other law. The Board urges the Committee Members to vote No on the proposed legislation.

SENATE BILL 2202
January 28, 2013
Human Services Committee - Senator Judy Lee, Chair

Good Morning Madam Chair and members of the Senate Human Services Committee.

For the record, my name is Dr. Brian Beattie, a licensed Doctor of Optometry. I practice at Eyes on Parkway here in Bismarck, with two other Doctors of Optometry.

I appear before you this morning in opposition to Senate Bill 2202, as the proposal before you, is unnecessary and redundant for optometrists.

As a doctoral level healthcare provider, I received my undergraduate degree and my Optometry degree from Pacific University in Oregon. I was licensed by the North Dakota State Board of Optometry in 1980 and took an oath to uphold the Code of Ethics, including misleading advertisements to the general public, as to the type of professional license I hold.

Our eye clinic consists only of licensed Doctors of Optometry and support staff, such as opticians, para optometrics, receptionists and office staff.

In our opposition to Senate Bill 2202, I would like to address the section of the bill that pertains to the Requirements – Exemptions, found on page 3, starting on line 12 of the bill.

- (1) Subsection 1, as has been stated by the State Board of Optometry, is regulated by Board Rule.

- (2) Subsection 2 is also already covered in 43-13-21 that requires optometrists to display their license and do so in their examination rooms.
- (3) Subsection 3 addresses wearing a name tag with a recent photo and the type of license held by that profession. One of my locations has one doctor and 2 staff. We would be required to add photos and a job title, such as receptionist, optician, or Doctor of Optometry, to our name tags. I am not sure what deception or confusion will be eliminated, by the use of an easily forged name tag.
- (4) In the definitions of advertisement, the bill seeks to regulate any "oral" communication or statement that names a healthcare provider in relation to his or her practice. I read that to mean, if I'm asked a question by someone in my waiting area, or returning a phone call to a patient, I must state that I am Dr. Brian Beattie, a Doctor of Optometry.

The requirements of Senate Bill 2202 may not appear to be significant, but in reality could be very burdensome, but more importantly, are very unnecessary.

For these reasons, I ask for your favorable consideration of a DO NOT PASS recommendation for SB 2202.

I would be happy to answer any questions you may have of me.

Dr. Brian Beattie
2331 Tyler Pkwy, Suite 2
Bismarck, ND 58501

SENATE BILL 2202

HUMAN SERVICES COMMITTEE

SENATOR JUDY LEE, CHAIR

JANUARY 28, 2013

Good morning Madam Chair and members of the Human Services Committee.

For the record, my name is Nancy Kopp. I represent the North Dakota Optometric Association (NDOA).

I appear before you this morning, in opposition to SB 2202.

The NDOA represents 88% of all practicing optometrists in North Dakota. Of the 140 NDOA members, 14 are employed by an institution or hospital. The remaining 126 are either in private practice, or are employed by an ophthalmology practice.

Because of the many type of health care practioners and other support staff who work side-by-side in health care facilities, such as a hospital or nursing home, it is customary that they comply with the Joint Commission for Hospital on Accreditation of Health Care Organization (JCAHO) regulation on identification badges for all staff, including physicians. In doing so, these efforts eliminate any confusion patients may have, as to qualifications of the services provided. Outside of those regulations, we're not sure what confusion the general public may have, as to identification in the private practice of other health care providers.

In an effort not to duplicate the information provided you by the North Dakota State Board of Optometry and the testimony from private practice optometry, we think that these facts serve as evidence that this legislation truly is unnessary and redundant, in respect to the practice of optometry in North Dakota.

As I cannot speak for the other health care professions named in the bill, the Optometric Practice Act was established in North Dakota in 1903 and has served its role in protecting the public from deceptive or misleading advertising.

For these reasons, I respectfully request, at a minimum, you consider an amendment, which I can and will submit, for your consideration, to eliminate lines 22-24 of Senate Bill 2202, to exempt optometrists and Doctors of Optometry from the Professional Transparency for Health Care Practices Act.

This concludes my testimony. I encourage you to consider the proposed amendment, as well as a DO NOT Pass recommendation.

I would be happy to answer any questions you may have.

56-02-03-02. CODE OF ETHICS. Unethical conduct is conduct contrary to the ethics of the optometric profession as hereinafter set forth. The following code of ethics is adopted as a standard by the board of optometry: It shall be the ideal, the resolve, and the duty of all holders of certificates of registration to practice optometry in North Dakota to:

1. Keep the visual welfare of the patient uppermost at all times.
2. Keep inviolate all confidences committed to the optometrist in the optometrist's professional relationship with the patient.
3. Support organized optometry in its efforts to advance and promote the highest ideals of professional service.
4. Refrain from any exaggeration of a patient's condition.
5. Keep informed as to developments in the profession and to contribute the optometrist's share to the general knowledge and advancement of the profession by all means within the optometrist's power.
6. Refrain from all criticism reflecting upon the skill of a colleague.
7. Refuse to be employed by a person other than a licensed optometrist, a physician licensed under North Dakota Century Code chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.
8. Refrain from employing fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry.
 - a. No person licensed to practice as an optometrist may:
 - (1) Seek to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, deceitful, misleading, or deceptive.
 - (2) On the person's own behalf or on behalf of a partner, associate, association, corporation, organization, group, individual, or any other optometrist affiliated with the person, use or participate, directly or indirectly, in a false, fraudulent, deceitful, misleading, or deceptive statement or claim.
 - b. No person licensed to practice as an optometrist may, directly or indirectly, make any false, fraudulent, deceitful, misleading, or deceptive statements to any person or the public which:
 - (1) Create false, fraudulent, misleading, deceptive, or unjustified expectations of favorable results.
 - (2) Make comparisons with other optometrists which are false, fraudulent, deceitful, misleading, or deceptive.
 - (3) Contain representations that would be likely to cause a reasonable person to misunderstand or be deceived.
 - c. Any public statement or advertisement concerning ophthalmic services or materials, including, but not limited to lenses, frames, spectacles, contact lenses,

or parts thereof, must include the following explanation, warnings or disclaimers. #7

- (1) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.
- (2) Any price advertisement of prescription spectacles or contact lenses is required to contain the following information or be subject to the following conditions:
 - (a) A statement of whether or not the cost of an examination by an eye doctor is included in the price.
 - (b) If any advertised goods are to be available to the public at the advertised price, the advertisement must state the time limitation on the offer.
 - (c) The total quantity available under any advertisement shall be the amount reasonably anticipated to meet the anticipated market demand therefor unless "rainchecks" are given and filled within a reasonable time. If limited quantities are available, the advertisement must so state and give the number available whenever reasonably possible.
 - (d) Any statement of advertisement which offers a discount on the price of ophthalmic materials or services (collectively "items") must specify the regular price of the materials or services if the total discounted items included in such statement or advertisement are five or less. For any such materials or services so advertised the regular price must be conspicuously posted at the location where such materials and services are available for purchase and made available by telephone or other reasonable inquiry. If the total discounted items exceed five and the regular price is not so specified, then the statement or advertisement must include the statement that the "regular price is available upon request".
 - (e) Any statement or advertisement which involves professional services shall be deemed to include the usual and customary services. If such services are not included, then it must be disclosed what services are included in the price quoted and specifically whether the price includes professional examination and prescription and whether additional charges may be made for related or subsequent services required in individual cases.
 - (f) When contact lenses are advertised, a statement must be included giving the brand name, whether the price or discounted price includes an eye examination and all required accessories and, if not, what the examination, fitting, and follow-up care is, consists of, and what accessories are included in the advertised price.

PROPOSED AMENDMENTS TO SENATE BILL 2202

Page 2, remove lines 22 through 24.

Renumber accordingly.

Respectfully submitted by the North Dakota Optometric Association.

Recommend a DO NOT PASS as amended.

Nancy Kopp – 701-391-2771.



AMERICAN OSTEOPATHIC ASSOCIATION

142 E. Ontario St., Chicago, IL 60611-2864 ph (312) 202-8000 | (800) 621-1773 | www.osteopathic.org

January 28, 2013

The Honorable Judy Lee
Chair, Senate Human Services Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

Dear Chairwoman Lee:

The American Osteopathic Association (AOA) is writing to strongly encourage you to support SB 2202. This bill would require health care professionals to wear an identification card that clearly identifies the professional's name and credentials during direct patient care interactions. In addition, the bill would ensure all advertisements for health care services that name a health care practitioner to identify the professional's license, and would prohibit these advertisements from including deceptive or misleading information. Finally, supervising physicians who hold collaborative practice agreements with non-physician health care practitioners would be required to post in the non-physician's office a schedule of the physician's regular hours for when the physician is scheduled to be in the office. The AOA believes that these truth in advertising requirements will help to reduce patient confusion and protect patient safety by preventing fraud and deceptive practices.

The AOA proudly represents its professional family of more than 100,000 osteopathic physicians (DOs) and osteopathic medical students; promotes public health; encourages scientific research; serves as the primary certifying body for DOs; is the accrediting agency for osteopathic medical schools; and has federal authority to accredit hospitals and other health care facilities.

Patients are confused about the differences between various types of health care practitioners. Ambiguous practitioner terminology and misleading advertisements only exacerbate patient confusion. As a result, patients often think that they are seeing a physician when they are not. A recent national survey found that only 51% of patients believe that it is easy to identify who is a licensed physician and who is not.¹

Patients have an even more difficult time identifying the qualifications of specific professions. For example, 54% of respondents thought that an optometrist was a physician, 41% identified a psychologist as a physician and 35% thought a doctor of nursing practice was a physician.² Moreover, 87% of survey respondents indicated that they would support legislation to require health care advertising materials to clearly designate the level of education, skill and training of all health care practitioners.

¹ Baseline & Associates conducted a telephone survey among 801 adults nationwide between March 8 and 12, 2012.

² Id.

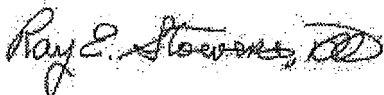
#8

The Honorable Judy Lee
January 28, 2013
Page 2

These statistics demonstrate that patients need assistance in identifying the credentials of their health care practitioners, and that they overwhelmingly support truth in advertising laws. Senate Bill 2202 provides this through a simple, common sense solution. The identification card requirement provides patients with the information they need about their health care providers. In addition, the truth in advertising component of SB 2202 will give patients the protection they desire by requiring health care providers' advertisements to include their credentials and by forbidding the use of inaccurate or misleading information. Patients seeing non-physician clinicians will also be able to easily determine when a physician will or will not be on site, and use that information to make more educated health care decisions.

North Dakota's citizens deserve clear and accurate information to make informed decisions about who is providing their care. **We urge you to protect patient safety and promote transparency by supporting SB 2202 in committee.** Should you need any additional information, please feel free to contact Nicholas Schilligo, MS, AOA Director of State Government Affairs, at nschilligo@osteopathic.org or (800) 621-1773, ext. 8185.

Sincerely,



Ray E. Stowers, DO, FACOFP *dist.*
President, AOA

CC: Norman E. Vinn, DO, AOA President-elect
Mark A. Baker, DO, Chair, AOA Department of Governmental Affairs
Joseph A. Giaimo, DO, Chair, AOA Bureau of State Government Affairs
John B. Crosby, JD, AOA Executive Director
Sydney Olson, AOA Associate Executive Director, Advocacy and Government Relations
Linda Mascheri, Director, AOA Department of State, Affiliate and International Affairs
Nicholas A. Schilligo, MS, Director, AOA Division of State Government Affairs
Amy Bolivar, Manager, Executive Projects and Communications

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Monday, January 28, 2013 2:37 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: FW: SB 2202 - Health Care Transparency Act

Please make copies for our books.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

-----Original Message-----

From: Lee, Gary A.
Sent: Monday, January 28, 2013 12:47 PM
To: Lee, Judy E.; Anderson, Jr., Howard C.; Dever, Dick D.; Larsen, Oley L.; Axness, Tyler
Cc: Koebele, Courtney
Subject: FW: SB 2202 - Health Care Transparency Act

Senators,

Apologize for not getting back in time for the hearing on SB 2202, but there are some good points to the bill & I expect you will give it due consideration. I have included below some of my thoughts on SB 2202.

Regards,

Gary A. Lee
Senator
District 22

SB 2202 - Health Care Transparency Act
Hearing-1/28/13, 10:00 am Human Services - Red River Room

Good Morning Madame Chair & Members of the Committee! I am Gary Lee Senator from District 22. I'm here to introduce SB 2202 .

I have worked in health care a long time. I am amazed at what has transpired in Technology, Clinical Care and educational requirements over the past 40+ years. A lot of good things have been accomplished. Including, a multitude of different career choices that are now available. But the industry still seems to pride itself in big, hard to pronounce words, acronyms for everything and name badges having several initials behind ones name. It probably demonstrates pride in educational achievement &/or professional accomplishment.

But for many patients, that string of letters behind a name or how we might present our credentials really isn't helpful in identifying what I do, who I am or why I maybe the one that is visiting with them; without extra explanation or

conversation. For example; If someone comes to the podium to testify & says I'm Doctor so & so, and doesn't offer anything else, I'm left to wonder; are they a medical doctor or do they have a doctorate in something else.

While many Organizations do a fine job, in providing recognizable, consistent names, titles, & professional credentials. They also publish clear distinguishing information about who is providing service, while others may look to a more unique approach.

The ND Medical Association asked the bill to be brought forward seeking to have a discussion on consistent messaging, when publishing & advertising a professional credential, education or license. I have confidence, Madame Chair this Committee will allow that discussion about SB 2202.



North Dakota
Nurse Practitioner Association

Chairman J. Lee and committee members,

I am Cheryl Rising, FNP and am here speaking on behalf of the North Dakota Nurse Practitioner Organization (NDNPA). The NDNPA is in opposition to Senate Bill 2202. Health care organizations already have specific policies and procedures that address name tags and how they are to be worn. The Board of Nursing and other respective regulatory boards in ND have rules on use of professional titles. Representatives from various organizations have stated it will be difficult to monitor the requirements in this bill.

South Dakota was planning to bring forth a bill similar to this and decided to not proceed.

NPs do not require a written collaborative agreement. Therefore page 3 section 4 does not affect our group. This section doesn't make any significant contribution to quality of care. This section we recommend is made more specific to the professionals that it does affect or be deleted.

Section 1 page 3 who defines what is deceptive or misleading in the second sentence.

Section 3 page 3 line 19 through 23 are of concern. Some health care providers only list their first name to protect the provider. Health care organizations already have determined what best meets their patients and organizational needs, including size and appearance of nametags. NDNPA recommends this section be deleted.

The violation section is already addressed by our regulatory boards.

The NDNPA ask that you vote no on this bill.

Cheryl Rising, FNP
NDNPA Legislative Representative
701-527-2583
cdrising@earthlink.net

Courtney Koebele

From: Courtney Koebele
Sent: Tuesday, January 29, 2013 8:36 AM
To: Lee, Judy E. (jlee@nd.gov)
Lee, Gary A. (galee@nd.gov)
Subject: SB 22202

Hi Sen. Lee – you asked which states have transparency/truth in advertising laws:
AZ, CA, CT, IL, LA, OR, OK, MD, MS, PA, TN, UT

States that are considering this year are: Florida, Nebraska, New Jersey, Vermont, Michigan and Ohio.

As I indicated in the hearing yesterday, I will bring the proposed amendments in this morning.

Thank you.

Courtney

Courtney Koebele | Executive Director | North Dakota Medical Association
PO Box 1198 | Bismarck, North Dakota 58502-1198
☎: 701.223.9475 | 📠: 701.223.9476 | ✉: ckoebele@ndmed.com | 🌐: www.ndmed.org

Courtney Koebel

Attachment # 11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2202

Page 2, line 28, replace "certificate" with "license"

Page 3, remove lines 24 through 27.

Page 3, after line 29, insert "6. A health care practitioner is not subject to subsection 3 if a safety or health risk to the health care practitioner or a patient would be created as a result of the practitioner wearing the identification card, badge, or similar device."

Renumber accordingly

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Monday, January 28, 2013 9:29 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: Fwd: SB 2202 Professional Transparency
Attachments: image001.gif

Copies to books, please

Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.gov

Begin forwarded message:

From: Connie Kalanek <CKalanek@ndbon.org>
Date: January 28, 2013, 4:37:07 PM CST
To: "jlee@nd.gov" <jlee@nd.gov>
Cc: "Traynor, Julie (julie.traynor@lrsc.edu)" <julie.traynor@lrsc.edu>
Subject: SB 2202 Professional Transparency



Hi Senator Lee, I attended the hearing today on 2202. Certainly, the Board of Nursing has similar concerns as other who testified in opposition to this legislation. I will continue to monitor the bill and if needed call a special meeting of my board for directors. Sounds like you are having an interesting session, once again. Best regards, Connie

Happy New Year!
Constance B. Kalanek PhD,RN,FRE
ND Board of Nursing
919 South 7th Street, Suite 504
Bismarck, ND 58504
701-328-9781
701-328-9785 Fax
ckalanek@ndbon.org
www.ndbon.org

#12

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Tuesday, January 29, 2013 6:05 PM
To: NDLA, S HMS - Herrick, Kari
Subject: FW: SB 2202 Professional Transparency

Please make copies either in color or highlight the section that is highlighted here.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Connie Kalanek [<mailto:CKalanek@ndbon.org>]
Sent: Tuesday, January 29, 2013 8:59 AM
To: Lee, Judy E.
Cc: Traynor, Julie (julie.traynor@lrsc.edu)
Subject: RE: SB 2202 Professional Transparency

Sen Lee, NDCC 43-12.1 Violations-Penalties speaks to your question. In fact, I signed a Probable Cause Affidavit for Burleigh County last week related to an individual who was licensed by endorsement from the state of Minnesota. A warrant for her arrest has been issued. The individual had submitted a fraudulent transcript when licensed by exam in Minnesota but when endorsed into North Dakota we discovered it. She had been working in a two facilities in Fargo, so expect to hear from Cass County also.

The citation is below:

43-12.1-15. Violation - Penalties.

It is a class B misdemeanor for a person to willfully:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record that might enable an individual to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, a licensed practical nurse, or an unlicensed assistive person through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record that was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, a licensed practical nurse, or an unlicensed assistive person as defined by this chapter unless licensed to do so.
5. Conduct any education program preparing an individual for nursing licensure or registration unless the program has been approved by the board.
6. Employ a person to practice nursing or perform nursing interventions unless the person is licensed or registered by the board.

Let me know if you have further questions. Connie
Happy New Year!

#12

Constance B. Kalanek PhD,RN,FRE
ND Board of Nursing
919 South 7th Street, Suite 504
Bismarck, ND 58504
701-328-9781
701-328-9785 Fax
ckalanek@ndbon.org
www.ndbon.org

From: Lee, Judy E. [<mailto:jlee@nd.gov>]
Sent: Monday, January 28, 2013 9:29 PM
To: Connie Kalanek
Subject: Re: SB 2202 Professional Transparency

I would appreciate your comments on how the Board deals with violations & whether you can censure people who falsely claim to be nurses, or would you send it to the states attorney.

Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.gov

On Jan 28, 2013, at 4:37 PM, "Connie Kalanek" <CKalanek@ndbon.org> wrote:

<image001.gif>

Hi Senator Lee, I attended the hearing today on 2202. Certainly, the Board of Nursing has similar concerns as other who testified in opposition to this legislation. I will continue to monitor the bill and if needed call a special meeting of my board for directors. Sounds like you are having an interesting session, once again. Best regards, Connie

Happy New Year!
Constance B. Kalanek PhD,RN,FRE
ND Board of Nursing
919 South 7th Street, Suite 504
Bismarck, ND 58504
701-328-9781
701-328-9785 Fax
ckalanek@ndbon.org
www.ndbon.org

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Monday, January 28, 2013 9:27 PM
To: NDLA, S HMS - Herrick, Kari
Subject: Fwd: SB 2202

Ci

Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.govopies to books, please

Begin forwarded message:

From: Douglas Frohlich <drfrohlich@proeyecarecenters.com>
Date: January 28, 2013, 4:37:27 PM CST
To: "jlee@nd.gov" <jlee@nd.gov>
Subject: SB 2202

Dear Senator,

I am writing to ask you to vote for a do not pass recommendation or to exempt optometrists from the Senate Bill 2202. The requirements that are in the bill are mostly redundant to what is already required and in some cases are just not necessary. Thank you for your consideration!

Sincerely,

Douglas L. Frohlich, O.D.
Professional Eyecare Centers, P.A.
210 10th Ave SE
Jamestown, ND 58401
701-252-5000
Fax 701-952-5005
drfrohlich@proeyecarecenters.com

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Saturday, January 26, 2013 10:40 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: FW: SB 2202

Please make copies for our books.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Fadel Nammour [<mailto:fadelnammour@yahoo.com>]
Sent: Saturday, January 26, 2013 3:56 PM
To: Lee, Judy E.
Subject: SB 2202

Dear Senator Lee,

As you already know, our Health Care Transparency Bill (SB 2202) is set to be heard before the Senate Human Services Committee at 10:00 am on Monday morning.

Unfortunately I will not be able to be there during the hearing and wanted to share with you some of the reasons for this bill.

It's definitely not the intent to infringe upon any specialties practices or licensures. It's still the patient's prerogative to choose their healthcare providers as long as they can make an informed consent based on true qualifications and advertisement.

As delivery care models have been changing over the last decade, nationwide surveys have shown an increasing confusion for Americans regarding the many types of health care providers - including physicians, technicians, nurses, advance practice nurses and so forth.

All of these providers play an important and distinct role in the healthcare delivery system; therefore these roles should not be confused.

These surveys also showed that 9 out of 10 Americans believed healthcare providers should be required to display their level of training and legal licensure.

More often than none patients mistakenly believe that they are seeing medical doctors during their visits. I can tell you from my own experience that the majority of my patients, referred by advance practice nurses, refer to their primary providers as doctors when they are not.

As a patient, I would like to know who I will be seeing for my ailment and their level of training and licensing. I don't believe you can start a trusting relationship based on misleading qualifications.

The confusion among Americans and misleading advertisement will undermine the reliability of our healthcare system and can put patient's health at risk and may cause patients to have undue expectations regarding their treatment and outcomes.

As part of the healthcare system change, we need to empower our patients. What a better way to properly inform patients, so they can make healthcare decisions.

This bill will reduce confusion, safeguard the public, and empower our patients to make confident healthcare decisions without second guessing their providers' credentials.

We can definitely work on the wording and details of the bill. I hope will have the opportunity to discuss it in person and I would like to hear your opinion and of course ask for your support if you believe it's important for patients to clearly and unambiguously know who is treating them.

Thank you very much for your consideration.

Adel Nammour

Sent from my iPhone

NDLA, Intern 02 - Myles, Bethany

From: Lee, Judy E.
Sent: Wednesday, January 30, 2013 1:49 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: FW: SB 2202

Copies, please

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Paul Dunderland [<mailto:idoctvc@utma.com>]
Sent: Wednesday, January 30, 2013 7:50 AM
To: Lee, Judy E.
Subject: SB 2202

Senator Lee: I respectfully ask that you vote to DO NOT PASS the professional transparency bill due to the following reasons: 1) The State Board of Optometry already requires the display / posting of my license; 2) The oral communication requirement is excessive & unnecessary (the majority of my patients know me and often call me by first name); 3) the photo name tags also are unnecessary due to the familiarity that most of my patients have with myself developed over early 30 years of practice.

Alternatively, you could consider exempting optometrists from this bill.

Thank you very much for your consideration.

Sincerely,

Paul Dunderland, O.D.

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Monday, January 28, 2013 9:22 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: Fwd: Senate Bill 2202

Please put opines in books.

Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.gov

Begin forwarded message:

From: Steve Looyesen <eyedoc@looyesenicare.com>
Date: January 28, 2013, 5:09:21 PM CST
To: <jlee@nd.gov>, <ddever@nd.gov>, <olarsen@nd.gov>, <hcanderson@nd.gov>, <taxness@nd.gov>
Subject: Senate Bill 2202

Dear Senators,

Thank you for your service to our Great State.

I am a Private Practice Optometrist in Jamestown and I have concerns about SB 2202.

I am writing to express my opposition to this bill on the grounds that it is overreaching, unnecessary and redundant! Much of what is in the bill, we are required by law to do already.

Thank you for your careful consideration!

Sincerely,

Steve Looyesen, OD
701-252-3937

January 28, 2013

The Honorable Judy Lee
Chair, Senate Human Services Committee
State Capitol, Red River Room
600 East Boulevard
Bismarck, ND 58505-0360

Dear Senator Lee,

On behalf of the more than 12,600 U.S. members of the American Academy of Dermatology Association (AADA), I am writing to share with you our strong support for SB 2202. This legislation is an important step toward ensuring transparency of health care provider qualifications. America's patients deserve to know what procedures their providers are qualified and licensed to perform.

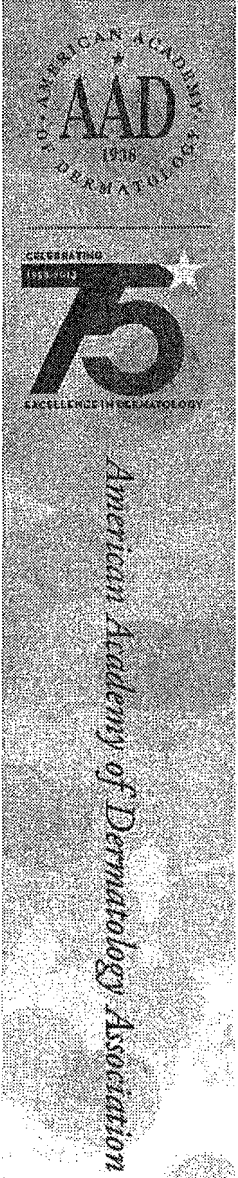
The AADA believes those who regulate and deliver medical care have an obligation to inform the public of the qualifications and limitations of the persons providing their care prior to treatment. All providers should identify or disclose their degree or field of study, board-certification (if any) and licensure to each patient.

As dermatologists, our utmost concerns are quality patient care and patient safety. Quality patient care includes evaluating a patient's needs and current condition, selecting an appropriate course of treatment, and providing adequate information and follow-up care. It is not only essential to provide the highest quality care, but it is just as important that patients understand and are comfortable with who is providing those services.

A recent survey conducted by the American Medical Association's Scope of Practice Partnership, on which AADA serves as a steering committee member, confirms increasing patient confusion regarding the many types of health care providers - including physicians, nurses, physician assistants, technicians and other varied providers. The survey revealed:

- **54 percent** of patients incorrectly believe an optometrist is a medical doctor;
- **35 percent** of patients believe a nurse with a "doctor of nursing practice" degree is a medical doctor;
- **44 percent** of patients believe it is difficult to identify who is a licensed medical doctor and who is not by reading what services they offer, their title and other licensing credentials in advertising or other marketing materials.

As you know, there is a wide spectrum of training and expertise among caregivers. In a clinical setting, it is often impossible for patients to know



The logo at the top of the banner features the letters "AAD" in a large, serif font, with "1916" below it and "AMERICAN ACADEMY OF DERMATOLOGY" in a circular arrangement around the top. Below the logo, the text "CELEBRATING 100 YEARS OF EXCELLENCE IN DERMATOLOGY" is written in a smaller font. The main vertical text of the banner reads "American Academy of Dermatology Association".

1445 New York Ave., NW,
Suite 800
Washington, DC 20005-2134

Main: 202.442.3555
Fax: 202.842.4355
Website: www.aad.org

Daniel M. Siegel, MD, FAAD
President

Dirk M. Elston, MD, FAAD
President-Elect

Zou B. Draclos, MD, FAAD
Vice President

Lisa A. Garner, MD, FAAD
Vice President-Elect

Suzanne Oldrich, MD, FAAD
Secretary-Treasurer

Barbara Mathes, MD, FAAD
Assistant Secretary-Treasurer

Eileen M. Murray, MMS, CFRE, CAE
Acting Executive Director

whether the person providing their care is a physician, nurse, physician assistant, pharmacist, dentist, or dental hygienist, for example.

This creates a great deal of confusion for individuals receiving health care and our patients have the right to know the credentials and the level of training of that person making the important medical diagnosis, pushing medications into an intravenous line, using a scalpel, or pointing a laser at their face, torso, arms, or legs. Many patients may not feel comfortable asking for a provider's credentials prior to receiving care. The SOPP survey reinforces that patients want more transparency regarding the credentials and qualifications of their health care providers:

- **93 percent** of patients believe only medical doctors should be permitted to use the title "physician;"
- **87 percent** of patients support state legislation to require all health care advertising materials to clearly designate the level of education, skills and training of all health care professionals promoting their services.

SB 2202 would require that all advertisements for health care services identify the type of professional license held by the health care practitioner. In addition, all health care practitioners must wear a name tag that clearly identifies the type of license held during all patient encounters.

The AADA strongly supports the team-based model of health care delivery, led by the physician, and recognizes the vital role all providers play in the health care delivery system. However, ambiguous provider nomenclature, related advertisements and marketing, and the myriad of individuals one encounters in each point of service exacerbate patient uncertainty. Further, patient autonomy and decision-making are jeopardized by uncertainty and misunderstanding in the health care patient-provider relationship.

SB 2202 helps set the record straight and provides patients with the necessary information about who is providing their healthcare.

We applaud your leadership on this crucial issue, and look forward to working with you to ensure the passage of SB 2202. For further information, please contact Lisa Albany, Assistant Director of State Policy for the AADA, at lalbany@aad.org or (202) 712-2615.

Sincerely,



Daniel M. Siegel, MD, FAAD
President
American Academy of Dermatology Association