2015 SENATE HUMAN SERVICES

SB 2128

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2128
2/17/2015
23967

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donald Mueller

Explanation or reason for introduction of bill/resolution:

A BILL relating to the definition of podiatric medicine.

Minutes:

Attach #1: Testimony by Timothy Uglem, DPM
Attach #2: Anatomic Diagram
Attach #3: Letter from Aaste Campbell
Attach #4: Written Testimony by Brian Gale, DPM
Attach #5: Written Comments by Dr. Matthew Carpenter
Attach #6: Written Comments by Dr. Ian Fyfe
Attach #7: Testimony by Eric Hart, DPM
Attach #8: Testimony by Stacy Moldenhauer
Attach #9: Testimony by Dr. Raymond Gruby
Attach #10: Testimony by Chad Carlson
Attach #11: Testimony by Duane Houdek

Timothy Uglem, DPM, introduced SB 2128 to the Senate Human Services Committee and testified IN FAVOR of SB 2128 (attach #1) (time ends 15:10). Mr. Uglem also provided the following attachments:

- Anatomic Diagrams (attach #2)
- Aaste Campbell, Sanford, Letter (attach #3)
- Brian Gale, DPM, Written Testimony (attach #4)
- Matthew Carpenter, MD, Written Testimony (attach #5)
- Ian Fyfe, MD, Written Testimony (attach #6)

Mr. Uglem also indicated that there is a proposed amendment that the Podiatrists are not in favor of. Mr. Uglem restated that their goal is to have clarity to what we do and not change what they do. The proposed amendment will change what they do and would restrict their practice.

Senator Warner stated that he understands there are clear boundaries on how far up you can go. Are there similar boundaries with osteopathic surgeons? Is the universe of their scope of practice totally encompassing your universe or are there boundaries between the two?

Mr. Uglem answered that osteopathic have an unlimited licenses, so they can work on feet and ankles as well.

Senator Warner asked relative to prescription drugs, do you have formularies or are there restrictions on what you can prescribe. Do you have access to scheduled drugs?

Mr. Uglem yes. Schedule 2.

Senator Howard Anderson, Jr. clarified there are no restrictions on podiatrists prescribing drugs. They can do schedule 2, 3, 4, and 5.

Eric Hart, DPM, testified IN FAVOR of SB 2128. (attach #7) (18:05-29:45)

Senator Warner indicated that his father suffered from gout, and other family members had diabetes and neuropathy of the feet. Are those things you can treat because they manifest in the feet, or since they originate in other parts of the body, are you not allowed to treat these?

Dr. Hart answered they do treat those, the manifestation of those in the feet. Podiatry works together with other providers, especially primary care physicians who are going to manage the long term effects of things like diabetes, high uric acid which causes gout, work with neurologists who may have additional treatments for neuropathy pain, and we treat as part of the team. When treating outside of the scope, we refer to those appropriate physicians. Sometimes there is overlap but that doesn't mean it is contentious.

Stacy Moldenhauer, on behalf of the ND Board of Podiatric Medicine, testified IN FAVOR of SB 2128. (attach #8) (31:58-37:20). In addition to her testimony, Ms. Moldenhauer stated additional concerns in regards to the proposed amendments. The podiatrists concerns are in regard to soft tissue below the tibial tuberosity wound care. That is different than the bill before you, which allows the soft tissue structures below the tibial tuberosity. Podiatrists do more than just wound care. To limit it to wound care would restrict the practice that they do today. The amendment does not also address the tendons below the tibial tuberosity. In addition, it also limits the disorders below the mediphysical scar, and that would limit the Podiatrist from working with ankle fractures.

Senator Warner asked if ulcerations constitute a wound or is a wound restricted to mechanical injuries.

Ms. Moldenhauer responded that ulcers are wound care.

OPPOSITION TO SB 2128

Courtenay Koebele, Executive Director North Dakota Medical Association and represent the North Dakota Orthopedic Society, testified OPPOSED to SB 2128. She introduced next speakers and suggested some slight modifications.

Dr. Raymond Gruby, retired orthopedic surgeon, testified in OPPOSITION to SB 2128 (attach #9) (40:45-43:26). His testimony included a proposed amendment language.

Chairman Judy Lee questioned what year was the original statute put into place.

Dr. Gruby indicated about 1991.

Chairman Judy Lee you may have different perspective on DENF after hearing the testimony. There is no intention of taking away the credentialing of any medical facility. This is not the only scope of practice issue we are dealing with. Everyone's professional levels change and the requirements evolve over time. Would you agree with this? We have heard repeatedly that it does not change scope of practice but just be more specific.

Dr. Gruby explained that relating to medicine and how fast that particular part in our environment is moving - absolutely is. In background, he did look through podiatry literature. There is an identity crisis. It is why all 50 states are looking at this. Dr. Gruby does not deny that training of all surgeons is improving. We are happy to collaborate but surprised that orthopedic association has not been involved in this bill.

Chairman Judy Lee asked why would they? Orthopedic Surgeons gets to do whatever their scope of practice says, so why should Podiatrists consult with orthopedic surgeons if they are trying to make their scope of practice more clear.

Dr. Gruby agrees that clarity is absolutely essential. The training of an orthopedic surgeon is 4 years medical school, 1 year rotating internship, 4 year of residency, then fellowship. This training is a very intensive period of time. The more one does in that particular field the better he or she will perform. When looking at the credential body and the progress of the American state of surgery in the past 50 years, it is spectacular. We share with the podiatric colleagues that we want the best for our patients. The credentialing should be fairly rigorous; it should come with a significant education that is nationally board certified with standards recognized throughout the nation.

Chairman Judy Lee but they are not asking to be orthopedic surgeons. They are trying to be podiatrists. There is a narrower scope of practice for someone who has less comprehensive course of training than orthopedic surgeons do. We are trying to identify the appropriate and high standards for this profession within this scope. Chairman Judy Lee also stated that we have some testimony from orthopedic surgeons who are comfortable with this change, so we don't have unanimity with the orthopedic surgeons against this bill.

Dr. Gruby restated that the atmosphere of collaboration is the best way for this bill to move forward.

Chairman Judy Lee do you think this bill would interfere with the collaboration that happens today?

Dr. Gruby believes the discussion occurred before the committee met this morning, and with discussion with our colleagues, we can find language that is suitable with both sides.

Chad Carlson, Board Certified Fellowship Trained Orthopedic Surgeon, testified OPPOSED to SB 2128 (attach #10) (52:00-56:45). Mr. Carlson's testimony included proposed language to be included in an amendment.

Julie Johnson, a Board Certified Orthopedic Surgeon, testified OPPOSED to SB 2128 (no written testimony). Her biggest concern is public safety and training levels and who is governing the training levels. The orthopedic community has position statements that they have no issues with properly trained podiatry doing foot and ankle reconstruction, but how are the different training levels governed, that may be by hospital committee. When talking about increasing the clarification of anatomy, what are not clearly defined is the boney landmarks of the ankle. We would like to see it even more specific in the definition of what they can treat.

Chairman Judy Lee questioned don't think that you dispute the idea of having a more specific definition, but you would like a different definition. You support concept, correct.

Dr. Johnson affirmed correct. You have to bring in their specific training that they need to meet in order to do higher levels of reconstruction and fracture work. If treating certain conditions, such as a failed ankle infection, the final step would be below the knee amputation - who does this if you don't have privileges.

Chairman Judy Lee indicated that with the credentialing issue, Sanford indicated they are comfortable with this.

Dr. Johnson stated that is one hospital, but there is overall concern of public safety. That was one hospital.

V. Chairman Oley Larsen asked can you give an example where above the ankle soft tissue injury where podiatrist is working on and then they collaborate and let someone else take charge.

Dr. Johnson answered the soft tissue with reconstruction, many foot and ankle can't go above the knee.

V. Chairman Oley Larsen understands that the podiatrist can't go above the knee. Now they are defining the line where they can go. V. Chairman Oley Larsen provided scenario of getting hit in the ankle with an arrow.

Dr. Johnson if you have ankle fracture and certain traumatic situations result in compartment syndrome, the muscles of the leg, you can be compromised and you have to release the compartments above the line, you need the orthopedic. If below the line, the podiatric medicine can handle this.

V. Chairman Oley Larsen when reading the new clarification that has been brought forward, they can do below the line. If it goes above the knee, then they know they have to refer to orthopedic.

Dr. Johnson thinks the ankle landmarks are not well defined.

NEUTRAL TESTIMONY FOR SB 2128

Duane Houdek, North Dakota State Board of Medical Examiners, testified NEUTRAL to SB 2128 (attach #11). (end 1:07:50)

Closed Public Hearing

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2128
2/17/2015
23991

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donald Mueller

Explanation or reason for introduction of bill/resolution:

A BILL relating to the definition of podiatric medicine.

Minutes:

Attach #1: Proposed Amendment

The Senate Human Services Committee was provided a copy of a proposed amendment that was agreed upon between the Podiatrists and the Orthopedic Surgeons (attach #1). **Chairman Judy Lee** distributed the proposed amendment.

Senator Howard Anderson, Jr. moved to ADOPT AMENDMENT as provided in attachment #1. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll call Vote to Amend
6 Yes, 0 No, 0 Absent. Motion passes.

Senator Howard Anderson, Jr. moved the Senate Human Services Committee recommend a DO PASS SB 2128 AS AMENDED. The motion was seconded by **V. Chairman Oley Larsen**. No Discussion.

Roll Call Vote to DO PASS AS AMENDED
6 Yes, 0 No, 0 Absent. Motion passes

Senator Warner will carry SB 2128 to the floor.

15.8088.01001
Title.02000

Adopted by the Human Services Committee

February 17, 2015

TD 2/17/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2128

Page 1, line 13, after "ankle" insert ", not including extra articular osseous injuries above the distal metaphyseal scar"

Renumber accordingly

Date: 02/17 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2128

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8088.01001 Title .02000

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Anderson Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 02/17 2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2128

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8088.01001 Title.02000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Anderson Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Warner

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

REPORT OF STANDING COMMITTEE

SB 2128: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2128 was placed on the Sixth order on the calendar.

Page 1, line 13, after "ankle" insert ", not including extra articular osseous injuries above the distal metaphyseal scar"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2128

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2128
3/10/2015
24605

☐ Subcommittee
☐ Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Definition of podiatric medicine.

Minutes: Attachments 1, 1A, 2, 3, 4, 5, 6, 7

Chairman Keiser: Opens the hearing on SB 2128.

Timothy Uglem~DPM President of the North Dakota Board of Podiatric Medicine: (Attachment 1 & 1A). Recorder turn on late but testimony is in the handout.

9:04

Representative Becker: The practicing as an assistant in surgery, what are some examples you would find this common place?

Uglem: Gives examples of cases.

Representative Becker: What extent do you have training on cardiac and pulmonary?

Uglem: During school, they take internal medicine classes, internal medicine rotation and during our residency, internal medicine.

Representative Ruby: You mentioned that tibial tuberosity is clearly identified without an x-ray, is the distal metaphyseal scar just as easy to identify?

Uglem: No, but you can see it on an x-ray.

Representative Ruby: What is extra articular osseus?

Uglem: Extra articular means outside the ankle joint and osseus means bone structures.

Eric Hart~DPM-Podiatrist in Bismarck: (Attachment 2).

Stacy Moldenhauer~Attorney for the North Dakota Board of Podiatric Medicine: (Attachment 3).

24:10

Courtney Koebele~North Dakota Medical Association North Dakota Orthopedic Society: We have no objection to this bill.

Chairman Keiser: Anyone else here to testify in support of SB 2128, opposition, neutral?

Duane Houdek~North Dakota BOMEX: (Attachment 4) We support the bill.

Additional testimony for the record: Attachments 5, 6, 7.

Chairman Keiser: Closes the hearing, what are the wishes of the committee?

Vice Chairman Sukut: Moves a Do Pass.

Representative Ruby: Seconded.

Roll call was taken on SB 2128 for a Do Pass with 14 yes, 0 no, 1 absent and Representative Boschee will carry the bill.

Date: Mar 10, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2128

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐

Motion Made By Rep Sukut Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Represenative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	AB		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Boschee

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

REPORT OF STANDING COMMITTEE

SB 2128, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2128 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2128

Attach #1
SB2128
02/17/15
J#23967

Senate Human Services Committee

SB 2128

February 17, 2015

Testimony of Timothy Uglem, DPM, President
North Dakota Board of Podiatric Medicine

Chairwoman Lee and members of the Senate Human Services Committee, my name is Timothy Uglem, DPM. I am the president of the North Dakota Board of Podiatric Medicine. On behalf of the board, which is composed of four podiatrists, one physician, and one public member from throughout the state, I speak in support of SB 2128.

I am a practicing podiatrist at Sanford Health in Fargo. I have been licensed in North Dakota since 2001. I was appointed to the Board in November of 2010. I grew up in Northwood, ND and attended Concordia College in Moorhead Minnesota. I then entered podiatry school in Chicago at Scholl College of Podiatric Medicine. Prior to practicing in Fargo, I was with Orthopedic Medicine and Surgery in Edina, Minnesota for just under four years.

The Board, through SB 2128, is seeking to amend the definition of 'podiatric medicine' to provide much needed clarification to our scope of practice in the state of North Dakota. The current definition is vague and does not provide clear parameters for the podiatrists and medical community as a whole who practice in North Dakota.

In order to fully understand what we are trying to accomplish with this bill a little background information on podiatrists is necessary. Podiatrists are doctors

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in the sense that we are doctors of podiatric medicine, hence the DPM designation. We are not medical doctors or doctors of osteopathic medicine. We receive different training that is specific to the lower leg, foot and ankle. We are issued a state license to practice podiatry. Our license is restricted in that we are only authorized to treat patients within the boundaries of a defined scope of practice. This is different from medical doctors and doctors of osteopathy who are issued licenses with a general or unlimited scope of practice. Our type of license status is similar to the state licenses issued to nurses, physician assistants, chiropractors, physical therapists, and the like who also have limits on their scope to practice in North Dakota. Podiatrists are licensed under our own regulatory board, the North Dakota Board of Podiatric Medicine, not the North Dakota Board of Medical Examiners. In the medical community, we are considered 'allied health'.

The bill that is before you today is seeking to provide a better, more precise definition of the scope of practice for podiatrists in North Dakota. I would like to make very clear that this bill in no way changes or expands the current standard of care or scope of practice that podiatrists are using today to treat patients on a daily basis. It is merely before you today to clarify the current scope of practice as the current definition of podiatric medicine is very vague.

Having been a member of the Board since 2010, it became clear to me that the definition of our scope was very vague and out dated. For one thing, it was difficult to provide new licensees with the information they needed in order to properly stay within the scope of podiatry in North Dakota. When pointing them to the statute, it raised so many specific questions, that the personal interviews

were turning into a large discussion on the specifics of what is okay in North Dakota and what is not. It is critical for those beginning a practice in North Dakota to know their scope of practice. The definition of podiatric medicine varies greatly from state to state. Therefore, what is acceptable elsewhere is not necessarily acceptable practice here. So, it was at my urging that the Board take on the issue of providing a better definition of our scope. The Board was unanimously in favor of providing more clarity to the scope of practice. Thus, we consulted our national organization the American College of Foot and Ankle Surgeons (ACFAS) for guidance. It is the vision of the college to have a national standard for scope of practice. Although this is not yet the case, it does provide a general overview of what is nationally acceptable in the field of podiatric medicine. You will see if you look at the American College of Foot and Ankle Surgeons definition, North Dakota will be in the middle of the road in its definition, so to speak, if this bill is passed. You may refer to the web site under scope of practice to see the committee's recommendations. www.acfas.com

In addition to looking at the national definition when developing the language you see before you today, we also looked at specific definitions in many states including, MN, SD, MT, OH, GA – just to name a few. We also had discussions as to what the current treatment we, as podiatrists were giving patients on a daily basis and the surgeries we were authorized and credentialed at our hospitals to perform. It was and has been apparent that we all, meaning the whole medical community, have been operating under one understanding as to what the appropriate scope of practice is for podiatrists. We then reduced our findings to writing and adopted what we felt clearly defined the current scope of

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practice of podiatric medicine in the State of North Dakota. The board then provided the proposed language which is now contained in this bill to all of the podiatrists currently licensed in the state and asked for their comments, suggestions, and any objections. Not one podiatrist objected and a few provided comments indicating that this bill was long overdue. Based on this, we felt we had a consensus that this definition was not only more than necessary but was acceptable to the entire podiatric community.

Now I would like to take a couple of moments to touch on each proposed section of Senate Bill 2128.

a. If you look at the current statute you will see that it refers only to the foot and ankle. However, Senate Bill 2128 includes treatment of soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle. I would venture to say that all of our podiatrists' practices include the treatment of the soft tissue structures that are directly involved in the function of the foot and/or ankle. This has traditionally been a 'gray' area in which our treatment is implied since we are, in essence, treating the foot and ankle deformity. Further, podiatrists receive specialized training not only on the foot and ankle, but also on the soft tissues below the knee as well. Therefore, this treatment is well within our training and we receive referrals from physicians and orthopedic surgeons regularly for this type of care. Once again our goal is to not change the way we practice podiatric medicine but to better define the way we currently practice. Without the ability to treat soft tissues above the ankle, we cannot properly treat our

patients. For example, a flat foot deformity may be treated with lengthening of the Achilles tendon (which does extend above the ankle) among other procedures in the foot. Thus, this is the reason that we included the language regarding treatment of soft tissues structures below the tibial tuberosity in this definition.

i. There is no question that there is a consensus throughout the country that podiatrist cannot perform any procedures on the knee. In fact, our practice actually stops just below the knee. Thus, in looking at how we would define the end point of our practice, we looked at other states and reflected on our own practices and determined that the most defined anatomical landmark would be the tibial tuberosity. This stems not only from the ACFAS but also from other states such as Minnesota that use the tibial tuberosity as a definite end point. The tibial tuberosity is a good anatomical landmark to use as a definite end point because there is no question where this structure is as it can be easily identified without an x-ray. Putting a clear landmark in the definition provides a clear, concise and undebatable end point to our scope of practice. Once again we are referring to podiatrists treating soft tissue structures below the tibial tuberosity. The language in this bill clearly shows that treatment of bony structures would stop at the ankle. Not only are we looking to assist the medical community and our podiatrists in understanding the exact scope of our practice, but as a regulatory

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board we need a clear, concise and definite description of our scope in order to resolve scope of practice issues that may arise. This anatomical landmark, the tibial tuberosity, is easily defined and easily enforced. Stacy Moldenhauer, the Board's attorney will speak more about the legal ramifications of not changing the current scope of practice and the benefits of having a clearly defined scope of practice.

b. Section B relates to the amputation of the foot or parts thereof. Again, this was not previously specifically defined but has been implied in our practice as it obviously relates to the 'diagnosis and treatment of conditions affecting the human foot'. Any podiatrist with surgical privileges is currently performing full and partial amputations of the foot and toes. This is also the accepted practice by several other states and the ACFAS committee. Since we are routinely performing amputations we feel it is beneficial to specifically include these procedures in our scope of practice.
c. Section C refers to prescribing medication. Nationally we all have DEA numbers and can prescribe medication. The prescribing of medication is actually in the current definition of podiatric medicine. Thus, to make sure this definition is fully complete, it was also appropriate for this to be specifically delineated in the scope of podiatric medicine.
d. Section D deals with history and physical exams which have been performed and accepted in the state of North Dakota since I have been in practice. It is up to each hospital's credentialing committee to

determine if a podiatrist meets the qualifications to perform a history and physical exam.

e. Section E allows podiatrists to take part in other procedures outside of the scope of practice of podiatry medicine, however, as an assistant only. Another physician will be in charge of that procedure, but we would be assisting on that procedure. There are certain procedures wherein a podiatrist would actually be the best individual to assist in the procedure.

f. The last section of this bill relates to residents. Within the last year, Sanford in Fargo has been granted approval to implement a residency program for podiatrists. This is the first podiatric residency program ever in the State of North Dakota. I am very excited for this opportunity for North Dakota. I am the residency director, and as such I can tell you that is it imperative that residents be included in this definition. As residents, their scope is different than a practicing podiatrist and this should be clearly set forth as it is in this bill. Our podiatric residents have ten months of non-podiatric training, which is under the direct supervision of an attending physician. Thus, this language is necessary because it needs to clearly state that they are practicing outside of the defined scope of podiatry for educational purposes. This will improve their medical knowledge upon graduation and is a requirement for all certified podiatric residency programs.

Podiatry has matured as a profession since I have been in practice. In North Dakota I take our reputation and quality of care very seriously. The goal of this

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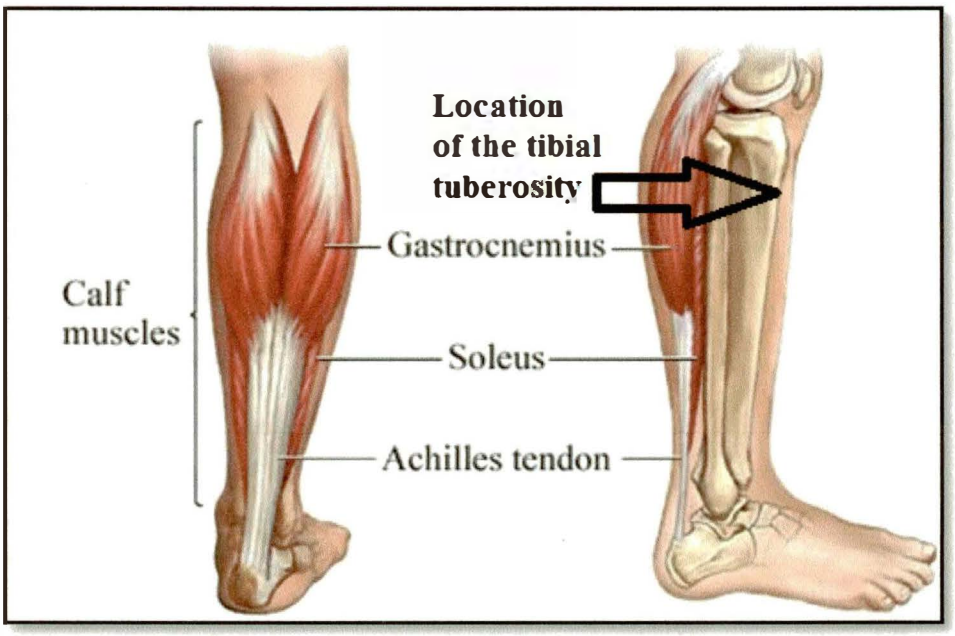
legislation is to not only clarify our scope of practice for the podiatrists, but also for the other health care professionals, the public at large, and to strengthen our board to function as a leader in its profession.

I, personally, and as a representative of the Board of Podiatric Medicine, respectfully request a 'do pass' recommendation from this committee. Thank you and I would be happy to answer any questions you may have.

Attach# 2
SB2128
02/17/15
J#23967

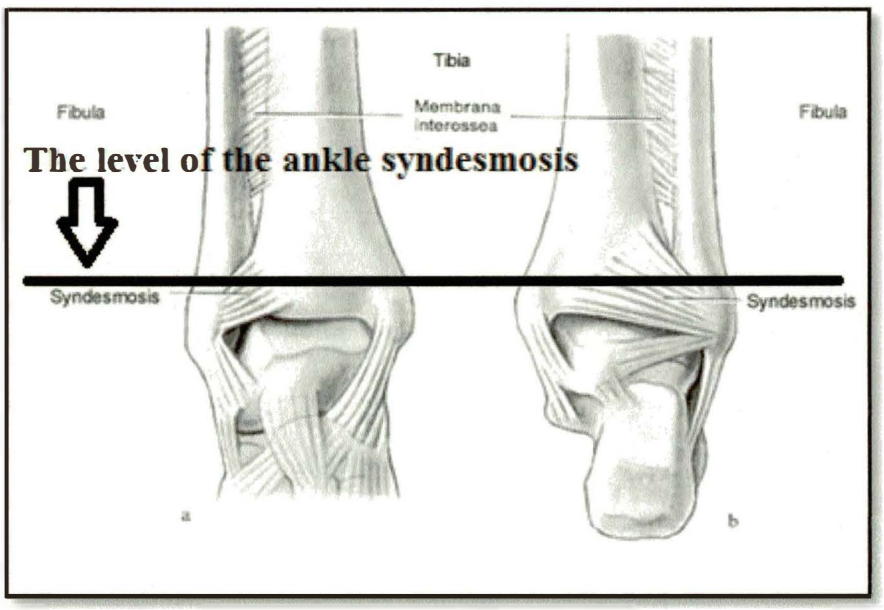
Anatomic Diagrams RE SB 2128:

"Distal" means beyond or more distant than a given structure.



Soft tissues structures that are distal to the tibial tuberosity include the tendons that control the foot and ankle (including the Achilles and gastrocnemius tendons) which are currently within the scope of practice in North Dakota and these surgical privileges are provided for appropriately credentialed podiatrists at most North Dakota hospitals (including St. Alexius Medical Center, Sanford Hospitals, and Trinity Health).

(image source https://classconnection.s3.amazonaws.com /788/flashcards/402788/jpg/soleus1332181350870.jpg)



Soft tissues distal to the ankle syndesmosis significantly exclude the major foot and ankle tendons as well as ankle venous stasis ulcers which are currently within North Dakota scope of practice.

(image source: https://bramelsecondopinion.files.wordpress.com/2012/05/high20ankle20anatomy.jpg)

Sanford
801 Broadway N
PO Box 2010
Fargo, ND 58122
(701) 234-2000
sanfordhealth.org

SANFORD HEALTH

Attach #3
SB2128
02/17/15

February 16, 2015

To Whom It May Concern:

My name is Aaste Campbell; I am the Director of the Office of the Professional Practice at Sanford in Fargo, which includes oversight of the credentialing & privileging process. I have reviewed the Senate Bill No. 2128 that is being proposed to amend & reenact subsection 5 of section 43-05-01 of the ND Century Code. After reviewing these changes, I do not foresee any change in the privileges of Podiatrists at Sanford.

Sincerely,

Aaste Campbell
Director, Office of Physician Practice
Sanford Health
aaste.campbell@sanfordhealth.org
701.234.5840 (p)
701.234.6979 (f)

Our Mission:
Dedicated to the work of
health and healing

Attach #4
SB 2128
02/17/15
J# 23967

Senate Human Services Committee

SB 2128

February 17, 2015

Testimony of Brian Gale, DPM

Chairwoman Lee and members of the Senate Human Services Committee, my name is Brian Gale, DPM. I apologize for not being present for my testimony today.

I am a Podiatrist who practices in Bismarck as an independent solo practitioner here. I completed four years of Podiatric Medical School followed by four years of surgical residency in Philadelphia, PA at facilities affiliated with Temple University.

I have been practicing in Bismarck since 1992. My license number is 29. I was very fortunate to receive the type of training I had because in the 1980's there were no minimal requirements as there are now for surgical residency training. At that time, it was either be accepted into one of the few advanced residency programs or it was the usual "on the job" training if you were lucky enough to find someone in practice to work with after you had completed your training.

I completed my residency in 1989, worked in Northern California for three years and was Board Certified by the American Board of Foot and Ankle Surgeons in 1992. Since then I have been recertified every ten years. I was certified in "Foot Surgery" as well as "Reconstructive Foot and Ankle Surgery". I was one of only six Podiatrists who were certified in the reconstructive foot and ankle surgery the

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first year that this certification became available.

The training for podiatrists is much more consistent now. The minimal requirement is at least three years of residency training. As a result a much larger percentage of podiatrists are trained in advanced foot and ankle surgery. Most of the procedures and treatment we perform, other than surgery can be learned by reading, talking to other practitioners and going to conferences. So this three year requirement is what separates us as true "Foot and Ankle Experts."

This leads me to the reason I am writing this testimony. The scope of practice we are discussing today is an issue that has been discussed many times across the United States. The American Podiatric Medical Association as well as the American College of Foot and Ankle Surgeons have worked extensively to help develop a definition for all states that is consistent and uniform. However, each state does maintain its own specific scope of practice under a nationally accepted definition. These variations are why it is necessary for each state to clearly define exactly what is acceptable practice for podiatrists within North Dakota's borders. The scope of practice is only one part of the limitation of a physician's practice. As all of you can understand, the fact that an MD or DO does not have a limited scope of practice doesn't mean that they can perform brain or heart surgery or even treat medical problems such as Diabetes or Hypertension. The specific training each of us has allows us to specialize in various areas of medicine and surgery. Each of the specialists' refer patients when necessary. We all know what our limitations are in regard to our specific training and each of us individually has an ethical obligation in addition to a legal obligation to stay within those standards.

Hospitals allow physicians to have "privileges" based upon their training. Allowing the scope of podiatric medicine to be more defined helps the hospitals make sure they are not granting privileges outside of the accepted scope of practice for a podiatrist but still within the specific podiatrist's abilities based on education, training, residencies, certifications and/or continuing education. Further, having a more clearly defined scope of practice also helps podiatrists both new to North Dakota and those that have been practicing here for some time, to know the acceptable parameters of the practice of podiatry in this state. When we, as podiatrists, have a clear understanding of what is expected and allowed of us, we are better apt to remain within those boundaries for the benefit of our profession and the citizens of North Dakota.

In closing, I would respectfully request a 'do pass' recommendation from this committee. Thank you and I would be happy to try to answer any questions you may have by either emailing me at bgale9@bis.midco.net or by calling my office at 701-255-3338.

Attach#6
SB2128
02/17/15
J#23967

Senate Human Services Committee

SB 2128

February 17, 2015

Written Comments - Matthew Carpenter, MD

Orthopedic Surgeon, Bismarck ND

I have been informed of the intention of SB 2128 to clarify the scope of practice for podiatry. I think the wording for the scope of a podiatrist is fine. Bones of ankle and foot and soft tissues past the tibial tubercle sounds appropriate to me.

Attach #6
SB2128
02/17/15
J#23967

Senate Human Services Committee

SB 2128

February 17, 2015

Written Comments - Ian Fyfe, MD

Orthopedic Surgeon

As an orthopaedic surgeon working in the state of North Dakota, I have been asked to give an opinion on what I think would be a reasonable scope of practice for podiatrists practicing in this state. As a general principle I believe all physicians and surgeons should practice within a scope that they feel comfortable based on their training, work experience or ongoing maintenance of certification guidelines. I believe that all podiatrists should be able to deal with any bone, joint or soft tissue pathology from the ankle joint to the distal aspects of the toes. Because much of the musculature which controls the foot and ankle originates from the calf, I also believe they should be able to deal with any soft tissue pathology distal to the tibial tubercle.

Thank you for your consideration in this matter.

Attach#7
SB 2128
02/17/15
J# 23967

Senate Human Services Committee

SB 2128

February 17, 2015

Testimony of Eric Hart, DPM

Chairwoman Lee and members of the Senate Human Services Committee, my name is Eric Hart, DPM. I am a podiatrist here in Bismarck, North Dakota. My comments are my own opinion and do not represent my employer Sanford Health or the state board of podiatric medicine. About a year ago, I began serving on the board of podiatric medicine. In that capacity, I am charged with helping to protect the public at large. We, as board members, are routinely reminded that our charge is not to protect the profession of podiatry. Since my appointment, the board has had concerns about the verbiage of our state's scope of podiatry practice. It is not as clearly defined as that of most other states. In the time I have been on the board, this has brought about at least one instance of dissent from a licensed podiatrist who had been reprimanded by the board. Having a more clearly defined scope of practice for podiatric medicine will help protect the public, protect the mission of the state board of podiatry, and will clearly guide our state's licensed podiatrists.

What it is: The aim of SB 2128 is to clarify and to map out what is acceptable for podiatric practice in North Dakota and not to expand the scope of podiatry. The aim of utilizing the verbiage of "soft tissues distal to the tibial tuberosity" is intended to maintain and not expand the current medical and surgical treatment of soft tissue structures that are deemed inextricably linked to

the function of the foot and ankle such as the Achilles and gastrocnemius tendon. These are structures that are routinely referred to me by primary care physicians and by orthopedic colleagues. This delineation of soft tissue structures also includes the continued treatment of venous stasis ulcers of the ankle. While this is not a "highly desired" pathology to treat, it is a common form of chronic wound to the ankle and generally is located at or just above the ankle syndesmosis. For many years, podiatrists have trained to treat chronic wounds of the foot and ankle. These soft tissue structures and their pathologies are treated by podiatrists in North Dakota and are part of the podiatric didactic and surgical training in each of the schools and residency programs across our country. Simply defining this in clear and concise terms will help give a road map to current and future licensed podiatrists in the state and make the state podiatry board's job much easier in "policing" any individual that would attempt to practice outside of his or her legal scope. The verbiage of SB 2128 is in line with most other state's scope of practice for podiatry and reflects the basic level of training for podiatrists nationwide for the last several decades. To use the verbiage of soft tissues distal to the ankle syndesmosis would be a step back and a significant loss of scope for podiatry.

What it isn't: There has been concern by a few of our orthopedic colleagues that SB 2128 is an attempt to expand the scope of podiatry to include osseous (bone) structures of the leg. I can assure that there is no intent with SB 2128 to do this and that the wording of "soft tissues distal to the tibial tuberosity" does not constitute osseous (bone) structures distal to the tibial tuberosity. Podiatrists do treat and are trained to treat ankle fractures, but it is not within our scope in this state or most to treat such fractures of the leg. While most of us

podiatrists, have treated these pathologies, in residency during our orthopedic rotations (we do train alongside orthopedic surgeons during our residency training) it is not part of our scope of practice and SB 2128 isn't an attempt to make it so. SB 2128 as currently written does not include any osseous structures proximal to the ankle and would not defend a podiatrist treating those pathologies.

My personal experience with this began nearly 25 years ago when I had reconstructive surgery of both of my feet for pediatric flat foot deformity by a podiatrist. This included surgery to lengthen the Achilles tendon, which was proximal to the level of the ankle syndesmosis. This was and has been within the scope of podiatry. While I hope that SB 2128 can help to better define our profession in North Dakota and bring it in line with the rest of the country, I also do not want this to be a point of regression for the practice. Podiatrists attend four years of post-graduate podiatric medical school and then a three year podiatric medicine and surgery residency. This is comparable in time commitment and rigor to that of many physicians. I greatly respect my orthopedic colleagues, refer to them on a regular basis, and receive referrals from them. I feel that when podiatrists are well trained and practice within our scope of practice we can provide very safe and effective treatment of the foot and ankle. This is a mutual mission of all medical professionals and I am a product of excellent podiatric care.

We have an opportunity to clarify our podiatry scope and help raise a bar of professionalism with SB 2128. I currently hold surgical privileges (meaning institutional permission) at both Sanford Hospital in Bismarck and St. Alexius Medical Center to perform surgery on the Achilles tendon and the gastrocnemius

7.4

tendon—soft tissue structures that are distal to the tibial tuberosity. I have provided an excellent level of care for my patients. My surgical privileges for osseous (bony) structures likewise include the ankle, but would not change in any form with the wording of SB 2128.

I would respectfully request a 'do pass' recommendation from this committee. Thank you and I would be happy to try to answer any questions you may have.

Attach #8
02/17/15
SB2128
J# 23967

Senate Human Services Committee

SB 2128

February 17, 2015

Testimony of Stacy Moldenhauer, Attorney for
North Dakota Board of Podiatric Medicine

Chairwoman Lee and members of the Senate Human Services Committee, my name is Stacy Moldenhauer, and I am here on behalf of the North Dakota Board of Podiatric Medicine. By statute, the Board is responsible for regulating the practice of podiatric medicine in the State of North Dakota. On behalf of the board, which is composed of four podiatrists, one physician and one public member from throughout the state, I speak in support of SB 2128.

As the Committee can see, Senate Bill 2128 is requesting subsection 5 of section 43-05-01 be amended to clarify the definition of podiatric medicine. As the current attorney for the Board of Podiatric Medicine, I respectfully request that you pass this bill because it provides much needed clarity regarding the scope of practice for current podiatrists and new podiatrists coming to the State of North Dakota. In developing the proposed language regarding the scope of practice, the Board looked at several different state statutes and also reviewed the American College of Foot and Ankle Surgeons Scope of Practice for Podiatrists. Ultimately, the language in Senate Bill 2128 is modeled very closely after the American College of Foot and Ankle Surgeons. If the committee looks at the current definition of podiatric medicine one can see how vague this current definition is and the reason why changing this definition is necessary. For

example, the Board recently had a case where a podiatrist closed up an ulcer on a patient's knee and the podiatrist tried to argue that was within the scope of practice of podiatric medicine in the State of North Dakota because the podiatrist was about to perform surgery on the patient's ankle and he felt that if he did not close up the ulcer on the knee it might provide an additional risk of infection for the patient which ultimately could have affected his ankle surgery. However, everyone including the podiatrist in question agreed that podiatric medicine does not allow a podiatrist to work on a patient's knee at all no matter what the circumstances are. It is situations like this that truly show why more clarity is needed in the definition of podiatric medicine.

Further, as the attorney for the Board of Podiatric Medicine it is legally very important for the scope of practice to be clearly defined not only for the podiatrists but also for the Board when they are reviewing potential violations of the scope of practice. Without clear parameters being defined the Board is left with a very vague statute to try and enforce. This poses great concern for the Board when prosecuting a podiatrist for violating the scope of practice as it does not provide the administrative law judge with clear rules to enforce and leaves the Board potentially open to losing a case based simply on the fact that the current statute has many grey areas. The proposed language in Senate Bill 2128 would eliminate those grey areas and provide everyone with a clear understanding of what defines the scope of podiatric medicine in the State of North Dakota.

In addition, a clear definition is necessary because each state has a very different scope of practice for podiatrists. For example, some states like Alaska,

Mississippi and Minnesota's scope of practice allow podiatrists to work on the foot, ankle and hand. While other states like New York, Connecticut and Louisiana's scope of practice only allow podiatrists to work on a person's foot but not their ankle nor their hands. Further, then you have the states like North Dakota, Montana, Iowa and numerous other states where their scope of practice allows podiatrists to work on the foot and the ankle but not on the hands. These examples emphasize why a clear definition of what encompasses a podiatrist's scope of practice in North Dakota is necessary because of the varying differences in scopes from state to state throughout the United States.

Finally, it is also important to point out that the proposed language in Senate Bill 2128 does not expand the scope of practice for podiatrist in the State of North Dakota it just clearly delineates what they are able to do within their profession. All podiatrists in the State of North Dakota are currently able to do all of the things delineated in Senate Bill 2128 per the terms of the current definition of podiatric medicine. Thus, this is not an expansion of their scope but rather is a clarification of their scope of practice. Enacting this legislation would provide some much needed clarity for not only the Board of Podiatric Medicine when performing its duty of regulating the profession of podiatric medicine but it would also provide some clear parameters for podiatrists currently practicing and new podiatrists coming to the State of North Dakota. Therefore, I urge you to give this bill a Do Pass Recommendation. With that, I will close by saying thank you for your time and attention and I would be happy to try and answer any question you may have.

Thank you.

Attach #9
SB2128
02/17/15
J#23967

Senate Human Services Committee
SB 2128
February 17, 2015

Chairperson Lee and Committee Members, I am Dr, Raymond Gruby from Bismarck and an orthopaedic surgeon now retired.

I oppose SB 2128 as it is written. I support the following amendment to SB 2128:

a. The medical and surgical treatment and diagnosis of ailments of the human foot and ankle, soft tissue wound care below the tibial tuberosity, and osseous disorders below the metaphyseal scar that govern the functions of the foot and ankle. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary;

There seems to be confusion among North Dakota podiatrists at this time regarding their scope of practice, so to restate the statute more clearly is timely and the amendment does so.

The current statute is familiar to me since I, as a surgical expert, collaborated in its formation. The intent was quite clear to all physicians and podiatrists at that time that the ankle joint was the clearly identifiable proximal structure within the scope of podiatry practice.

Regarding paragraphs d., e. and f. dealing with performance of history and physical examinations, assistant surgeon status and other medical care, it is quite unclear why a state statute should take away an individual hospital's credentialing function since that credentialing entity would have the greatest knowledge of the individuals training level and competence.

I would be happy to answer any questions. Thank you.

Attach #10
SB2128
02/17/15
SH#23967

Senate Health and Human Services Committee Bill 2128 February 17, 2015

Chair Lee, and members of the Committee, I am Chad Carlson, a board certified fellowship trained orthopedic surgeon in Bismarck, ND. I urge you to vote no on Bill 2128 as written. I am here today to speak on behalf of The Bone and Joint Center, and for Tim Bopp, the president of the North Dakota Orthopedic Society.

We are a group of Board Certified orthopedic surgeons and all have concerns with senate bill 2128. In particular, we have concerns with the bills definition and expansion of the scope of practice of Podiatry. We have significant concerns particular to the bill as it relates to amendment Section 1 Amendment 5A, the medical and surgical treatment and diagnosis of ailments of the human foot, ankle, and related soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary.

We have significant trepidation regarding the difference in Podiatric training and Orthopedic Surgery training as it relates to conditions above the foot. Our, greatest concern is that passing of bill 2128 would allow an under trained individual to treat injuries or ailments outside of their trained scope of practice placing the public at risk of injury. In many states advanced training is required for the treatment of ankle and hindfoot procedures. Legislation of the proposed change in the current definition and scope of practice for all Podiatrists is worrisome as Podiatry school and residency training are not as rigorous as allopathic and osteopathic training. A number of states have dealt with this issue over that past few years and have in some cases have exclusionary wording in their state law including pilon and ankle replacement.

Unfortunately, when the current amendment to this bill was drafted, no orthopedic surgeons were involved in the writing of the bill and therefore we feel the definition is much broader than what is appropriate for the level of training involved in Podiatry. We would recommend revising the bill to more appropriately delineate the scope of practice of Podiatry which we would recommend be more commensurate with their training. We recommend amendment 5A read "The medical and surgical treatment and diagnosis of ailments of the human foot and ankle, soft tissue wound care below the tibial tuberosity, and bony injuries below the metaphyseal scar that govern the functions of the foot and ankle. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary."

We also have concerns on Amendments 5d-f. We do not feel legislation is necessary for something hospitals and credentialing committees are already doing. We are not aware North Dakota law in other specialties dictating these provisions. We also would recommend excluding total ankle and pilon fracture care.

Personally, I have been an instructor for Kent State Podiatry School and have been involved in overseeing and training Podiatric residents. My brother is currently enrolled in Podiatry residency in Florida. I am on the peer review committee at CHI St. Alexius, and have worked with our credentialing committee. I'm a peer reviewed author and written chapters in Foot and Ankle textbooks. I feel I am aware of the training Podiatrists receive and do not feel the current law as written is acceptable.

Sincerely,

Chad Carlson, MD

Attach #11
SB 2128
02/17/15
J# 23967

SENATE HUMAN SERVICES COMMITTEE

SENATE BILL NO. 2128

February 17, 2015

Testimony of Duane Houdek

North Dakota State Board of Medical Examiners

Madam Chair, members of the committee. My name is Duane Houdek. I represent the North Dakota State Board of Medical Examiners.

Although I didn't rise in support of this bill, in the sense that the medical board initiated this piece of legislation, we have fully reviewed it, offered some changes which were incorporated into the bill before it was introduced and have no objection to the support of this bill.

Thank you. I would be glad to try to answer any questions you may have.

Attach #1
SB2128
PM. Work.
02/17/15

NDLA, Intern 01 - Adisa, Femi

From: Axness, Tyler
Sent: Tuesday, February 17, 2015 3:20 PM
To: NDLA, Intern 01 - Adisa, Femi
Subject: Fwd: Senate Bill 2128

Begin forwarded message:

From: Stacy Moldenhauer <SMoldenhauer@smithbakke.com>
Date: February 17, 2015 at 1:21:47 PM CST
To: "jlee@nd.gov" <jlee@nd.gov>, "olarsen@nd.gov" <olarsen@nd.gov>, "hcanderson@nd.gov" <hcanderson@nd.gov>, "taxness@nd.gov" <taxness@nd.gov>, "ddever@nd.gov" <ddever@nd.gov>, "jwarner@nd.gov" <jwarner@nd.gov>
Cc: "NDBPME (ndbpme@yahoo.com)" <ndbpme@yahoo.com>, "Duane Houdek (DHoudek@ndbomex.org)" <DHoudek@ndbomex.org>, "Courtney Koebele (courtney@ndmed.com)" <courtney@ndmed.com>
Subject: Senate Bill 2128

Senator Lee and members of the Senate Human Services Committee,
I am writing to let you know that the Podiatrists and the Orthopedic Surgeons that testified today regarding Senate Bill 2128 were able to meet after the hearing and agree upon an amendment to SB 2128 which satisfies everyone's' concerns and now all are in favor of passing SB 2128. The amendment is only to section a of SB 2128 and that entire section will read as follows. I will put the amendment in red font so it is clear to the committee what was added.

a. The medical and surgical treatment and diagnosis of ailments of the human foot, ankle, and other related soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle, not including extra articular osseous injuries above the distal metaphyseal scar.

Everything else in the proposed SB 2128 would remain as it was proposed in the SB 2128.

Thank you for your time and attention this morning. If you have any further questions please just let me know.

Stacy M. Moldenhauer
Attorney at Law
Smith Bakke Porsborg Schweigert & Armstrong
PO Box 460
Bismarck ND 58502-0460
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House Industry, Business and Labor Committee

SB 2128

March 10, 2015

Testimony of Timothy Uglem, DPM, President
North Dakota Board of Podiatric Medicine

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Timothy Uglem, DPM. I am the president of the North Dakota Board of Podiatric Medicine. On behalf of the board, which is composed of four podiatrists, one physician, and one public member from throughout the state, I speak in support of SB 2128.

I am a practicing podiatrist at Sanford Health in Fargo. I have been licensed in North Dakota since 2001. I was appointed to the Board in November of 2010. I grew up in Northwood, ND and attended Concordia College in Moorhead Minnesota. I then entered podiatry school in Chicago at Scholl College of Podiatric Medicine. Prior to practicing in Fargo, I was with Orthopedic Medicine and Surgery in Edina, Minnesota for just under four years.

The Board, through SB 2128, is seeking to amend the definition of 'podiatric medicine' to provide much needed clarification to our scope of practice in the state of North Dakota. The current definition is vague and does not provide clear parameters for the podiatrists and medical community as a whole who practice in North Dakota.

In order to fully understand what we are trying to accomplish with this bill a little background information on podiatrists is necessary. Podiatrists are doctors

in the sense that we are doctors of podiatric medicine, hence the DPM designation. We are not medical doctors or doctors of osteopathic medicine. We receive different training that is specific to the lower leg, foot and ankle. We are issued a state license to practice podiatry. Our license is restricted in that we are only authorized to treat patients within the boundaries of a defined scope of practice. This is different from medical doctors and doctors of osteopathy who are issued licenses with a general or unlimited scope of practice. Our type of license status is similar to the state licenses issued to nurses, physician assistants, chiropractors, physical therapists, and the like who also have limits on their scope to practice in North Dakota. Podiatrists are licensed under our own regulatory board, the North Dakota Board of Podiatric Medicine, not the North Dakota Board of Medical Examiners. In the medical community, we are considered 'allied health'.

The bill that is before you today is seeking to provide a better, more precise definition of the scope of practice for podiatrists in North Dakota. I would like to make very clear that this bill in no way changes or expands the current standard of care or scope of practice that podiatrists are using today to treat patients on a daily basis. It is merely before you today to clarify the current scope of practice as the current definition of podiatric medicine is very vague.

Having been a member of the Board since 2010, it became clear to me that the definition of our scope was very vague and out dated. For one thing, it was difficult to provide new licensees with the information they needed in order to properly stay within the scope of podiatry in North Dakota. When pointing them to the statute, it raised so many specific questions, that the personal interviews

were turning into a large discussion on the specifics of what is okay in North Dakota and what is not. It is critical for those beginning a practice in North Dakota to know their scope of practice. The definition of podiatric medicine varies greatly from state to state. Therefore, what is acceptable elsewhere is not necessarily acceptable practice here. So, it was at my urging that the Board take on the issue of providing a better definition of our scope. The Board was unanimously in favor of providing more clarity to the scope of practice. Thus, we consulted our national organization the American College of Foot and Ankle Surgeons (ACFAS) for guidance. It is the vision of the college to have a national standard for scope of practice. Although this is not yet the case, it does provide a general overview of what is nationally acceptable in the field of podiatric medicine. You will see if you look at the American College of Foot and Ankle Surgeons definition, North Dakota will be in the middle of the road in its definition, so to speak, if this bill is passed. You may refer to the web site under scope of practice to see the committee's recommendations. www.acfas.com

In addition to looking at the national definition when developing the language you see before you today, we also looked at specific definitions in many states including, MN, SD, MT, OH, GA – just to name a few. We also had discussions as to what the current treatment we, as podiatrists were giving patients on a daily basis and the surgeries we were authorized and credentialed at our hospitals to perform. It was and has been apparent that we all, meaning the whole medical community, have been operating under one understanding as to what the appropriate scope of practice is for podiatrists. We then reduced our findings to writing and adopted what we felt clearly defined the current scope of

practice of podiatric medicine in the State of North Dakota. The board then provided the proposed language which is now contained in this bill to all of the podiatrists currently licensed in the state and asked for their comments, suggestions, and any objections. Not one podiatrist objected and a few provided comments indicating that this bill was long overdue. Based on this, we felt we had a consensus that this definition was not only more than necessary but was acceptable to the entire podiatric community.

Now I would like to take a couple of moments to touch on each proposed section of Senate Bill 2128.

a. If you look at the current statute you will see that it refers only to the foot and ankle. However, Senate Bill 2128 includes treatment of soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle. I would venture to say that all of our podiatrists' practices include the treatment of the soft tissue structures that are directly involved in the function of the foot and/or ankle. This has traditionally been a 'gray' area in which our treatment is implied since we are, in essence, treating the foot and ankle deformity. Further, podiatrists receive specialized training not only on the foot and ankle, but also on the soft tissues below the knee as well. Therefore, this treatment is well within our training and we receive referrals from physicians and orthopedic surgeons regularly for this type of care. Once again our goal is to not change the way we practice podiatric medicine but to better define the way we currently practice. Without the ability to treat soft tissues above the ankle, we cannot properly treat our

patients. For example, a flat foot deformity may be treated with lengthening of the Achilles tendon (which does extend above the ankle) among other procedures in the foot. Thus, this is the reason that we included the language regarding treatment of soft tissues structures below the tibial tuberosity in this definition.

i. There is no question that there is a consensus throughout the country that a podiatrist cannot perform any procedures on the knee. In fact, our practice actually stops just below the knee. Thus, in looking at how we would define the end point of our practice, we looked at other states and reflected on our own practices and determined that the most defined anatomical landmark would be the tibial tuberosity. This stems not only from the ACFAS but also from other states such as Minnesota that use the tibial tuberosity as a definite end point. The tibial tuberosity is a good anatomical landmark to use as a definite end point because there is no question where this structure is as it can be easily identified without an x-ray. Putting a clear landmark in the definition provides a clear, concise and undebatable end point to our scope of practice. Once again we are referring to podiatrists treating soft tissue structures below the tibial tuberosity. The language in this bill clearly shows that treatment of bony structures would stop at the ankle. Not only are we looking to assist the medical community and our podiatrists in understanding the exact scope of our practice, but as a regulatory

board we need a clear, concise and definite description of our scope in order to resolve scope of practice issues that may arise. This anatomical landmark, the tibial tuberosity, is easily defined and easily enforced. Stacy Moldenhauer, the Board's attorney will speak more about the legal ramifications of not changing the current scope of practice and the benefits of having a clearly defined scope of practice.

ii. I would like to take a moment to speak to the amendment that was placed on the bill in the Senate Human Services Committee. A few orthopedic surgeons testified in opposition to this bill. After the hearing, further discussions were had where we were able to determine the specific nature of the orthopedic physicians' concerns. Both of our professions understand the scope practice of podiatry, but reducing that understanding to writing was more difficult. However, both parties agreed that some additional exclusionary language in section A would further clarify the definition, but not change the definition as written in the original bill and as understood. The specific language that was added was 'not including extra articular osseous injuries above the distal metaphyseal scar'. This simply further clarified that podiatrists may only treat bony structures of the foot and ankle and soft tissue structures up to the tibial tuberosity.

b. Section B relates to the amputation of the foot or parts thereof. Again, this was not previously specifically defined but has been implied in our

practice as it obviously relates to the 'diagnosis and treatment of conditions affecting the human foot'. Any podiatrist with surgical privileges is currently performing full and partial amputations of the foot and toes. This is also the accepted practice by several other states and the ACFAS committee. Since we are routinely performing amputations we feel it is beneficial to specifically include these procedures in our scope of practice.

c. Section C refers to prescribing medication. Nationally we all have DEA numbers and can prescribe medication. The prescribing of medication is actually in the current definition of podiatric medicine. Thus, to make sure this definition is fully complete, it was also appropriate for this to be specifically delineated in the scope of podiatric medicine.

d. Section D deals with history and physical exams which have been performed and accepted in the state of North Dakota since I have been in practice. It is up to each hospital's credentialing committee to determine if a podiatrist meets the qualifications to perform a history and physical exam.

e. Section E allows podiatrists to take part in other procedures outside of the scope of practice of podiatry medicine, however, as an assistant only. Another physician will be in charge of that procedure, but we would be assisting on that procedure. There are certain procedures wherein a podiatrist would actually be the best individual to assist in the procedure.

f. The last section of this bill relates to residents. Within the last year,

Sanford in Fargo has been granted approval to implement a residency program for podiatrists. This is the first podiatric residency program ever in the State of North Dakota. I am very excited for this opportunity for North Dakota. I am the residency director, and as such I can tell you that is it imperative that residents be included in this definition. As residents, their scope is different than a practicing podiatrist and this should be clearly set forth as it is in this bill. Our podiatric residents have ten months of non-podiatric training, which is under the direct supervision of an attending physician. Thus, this language is necessary because it needs to clearly state that they are practicing outside of the defined scope of podiatry for educational purposes. This will improve their medical knowledge upon graduation and is a requirement for all certified podiatric residency programs.

Podiatry has matured as a profession since I have been in practice. In North Dakota I take our reputation and quality of care very seriously. The goal of this legislation is to not only clarify our scope of practice for the podiatrists, but also for the other health care professionals, the public at large, and to strengthen our board to function as a leader in its profession.

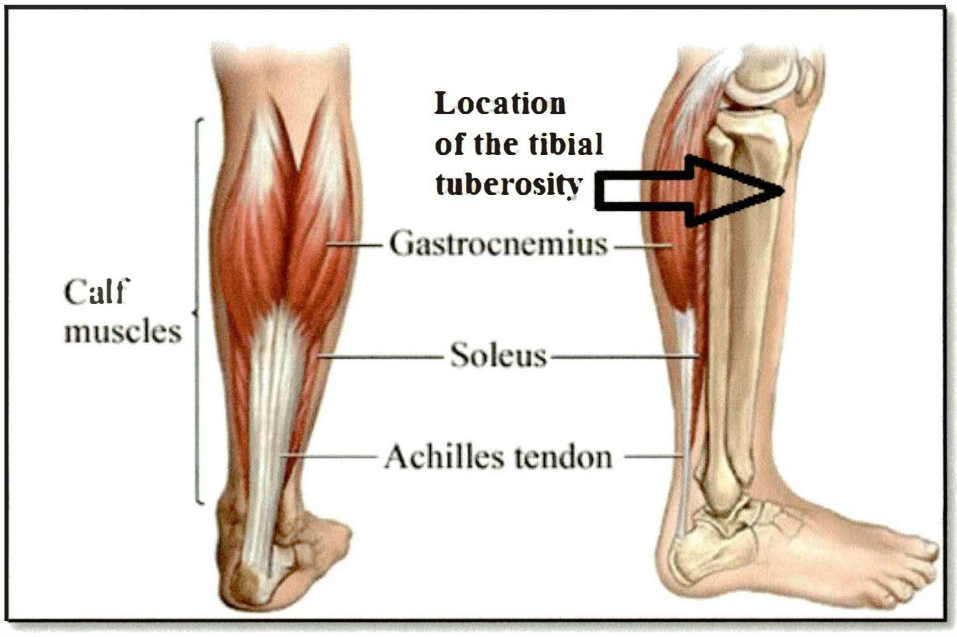
I, personally, and as a representative of the Board of Podiatric Medicine, respectfully request a 'do pass' recommendation from this committee. Thank you and I would be happy to answer any questions you may have.

1A

Mar 16, 2015

Anatomic Diagram RE SB 2128:

"Distal" means beyond or more distant than a given structure.



Soft tissues structures that are distal to the tibial tuberosity include the tendons that control the foot and ankle (including the Achilles and gastrocnemius tendons) which are currently within the scope of practice in North Dakota and these surgical privileges are provided for appropriately credentialed podiatrists at most North Dakota hospitals (including St. Alexius Medical Center, Sanford Hospitals, and Trinity Health).

(image source https://classconnection.s3.amazonaws.com /788/flashcards/402788/jpg/soleus1332181350870.jpg)

House Industry, Business and Labor Committee

SB 2128

March 10, 2015

Testimony of Eric Hart, DPM

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Eric Hart, DPM. I am a podiatrist here in Bismarck, North Dakota. My comments are my own opinion and do not represent my employer Sanford Health or the state board of podiatric medicine. About a year ago, I began serving on the board of podiatric medicine. In that capacity, I am charged with helping to protect the public at large. We, as board members, are routinely reminded that our charge is not to protect the profession of podiatry. Since my appointment, the board has had concerns about the verbiage of our state's scope of podiatry practice. It is not as clearly defined as that of most other states. In the time I have been on the board, this has brought about at least one instance of dissent from a licensed podiatrist who had been reprimanded by the board. Having a more clearly defined scope of practice for podiatric medicine will help protect the public, protect the mission of the state board of podiatry, and will clearly guide our state's licensed podiatrists.

What it is: The aim of SB 2128 is to clarify and to map out what is acceptable for podiatric practice in North Dakota and not to expand the scope of podiatry. The aim of utilizing the verbiage of "soft tissues distal to the tibial tuberosity, not including extra articular osseous injuries above the distal metaphyseal scar" is intended to maintain and not expand the current medical

and surgical treatment of soft tissue structures that are deemed inextricably linked to the function of the foot and ankle such as the Achilles and gastrocnemius tendon. These are structures that are routinely referred to me by primary care physicians and by orthopedic colleagues. This delineation of soft tissue structures also includes the continued treatment of venous stasis ulcers of the ankle. While this is not a "highly desired" pathology to treat, it is a common form of chronic wound to the ankle and generally is located at or just above the ankle syndesmosis. For many years, podiatrists have trained to treat chronic wounds of the foot and ankle. These soft tissue structures and their pathologies are treated by podiatrists in North Dakota and are part of the podiatric didactic and surgical training in each of the schools and residency programs across our country. Simply defining this in clear and concise terms will help give a road map to current and future licensed podiatrists in the state and make the state podiatry board's job much easier in "policing" any individual that would attempt to practice outside of his or her legal scope. The verbiage of SB 2128 is in line with most other state's scope of practice for podiatry and reflects the basic level of training for podiatrists nationwide for the last several decades.

What it isn't: It is not an attempt to expand the scope of podiatry to include osseous (bone) structures of the leg. There had been some concern by a few orthopedic surgeons that this was the case, however, I can assure that there is no intent with SB 2128 to do this. In fact, in order to alleviate this concern, the bill was amended to add some additional exclusionary language in section A. Specifically, the language 'not including extra articular osseous injuries above the distal metaphyseal scar' was added to the original bill to clarify that the wording

of "soft tissues distal to the tibial tuberosity" does not constitute osseous (bone) structures distal to the tibial tuberosity. Podiatrists do treat and are trained to treat ankle fractures, but it is not within our scope in this state or most to treat such fractures of the leg.

My personal experience with this began nearly 25 years ago when I had reconstructive surgery of both of my feet for pediatric flat foot deformity by a podiatrist. This included surgery to lengthen the Achilles tendon, which was proximal to the level of the ankle syndesmosis. This was and has been within the scope of podiatry. While I hope that SB 2128 can help to better define our profession in North Dakota and bring it in line with the rest of the country, I also do not want this to be a point of regression for the practice. Podiatrists attend four years of post-graduate podiatric medical school and then a three year podiatric medicine and surgery residency. This is comparable in time commitment and rigor to that of many physicians. I greatly respect my orthopedic colleagues, refer to them on a regular basis, and receive referrals from them. I feel that when podiatrists are well trained and practice within our scope of practice we can provide very safe and effective treatment of the foot and ankle. This is a mutual mission of all medical professionals and I am a product of excellent podiatric care.

We have an opportunity to clarify our podiatry scope and help raise the bar of professionalism with SB 2128. I currently hold surgical privileges (meaning institutional permission) at both Sanford Hospital in Bismarck and St. Alexius Medical Center to perform surgery on the Achilles tendon and the gastrocnemius tendon—soft tissue structures that are distal to the tibial tuberosity. I have provided an excellent level of care for my patients. My surgical privileges for

osseous (bony) structures likewise include the ankle, but would not change in any form with the wording of SB 2128.

I would respectfully request a 'do pass' recommendation from this committee. Thank you and I would be happy to try to answer any questions you may have.

House Industry, Business and Labor Committee

SB 2128

March 10, 2015

Testimony of Stacy Moldenhauer, Attorney for
North Dakota Board of Podiatric Medicine

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Stacy Moldenhauer, and I am here on behalf of the North Dakota Board of Podiatric Medicine. By statute, the Board is responsible for regulating the practice of podiatric medicine in the State of North Dakota. On behalf of the board, which is composed of four podiatrists, one physician and one public member from throughout the state, I speak in support of SB 2128.

As the Committee can see, Senate Bill 2128 is requesting subsection 5 of section 43-05-01 be amended to clarify the definition of podiatric medicine. As the current attorney for the Board of Podiatric Medicine, I respectfully request that you pass this bill because it provides much needed clarity regarding the scope of practice for current podiatrists and new podiatrists coming to the State of North Dakota. In developing the proposed language regarding the scope of practice, the Board looked at several different state statutes and also reviewed the American College of Foot and Ankle Surgeons Scope of Practice for Podiatrists. Ultimately, the language in Senate Bill 2128 is modeled very closely after the American College of Foot and Ankle Surgeons. If the committee looks at the current definition of podiatric medicine one can see how vague this current definition is and the reason why changing this definition is necessary. For

example, the Board recently had a case where a podiatrist closed up an ulcer on a patient's knee and the podiatrist tried to argue that was within the scope of practice of podiatric medicine in the State of North Dakota because the podiatrist was about to perform surgery on the patient's ankle and he felt that if he did not close up the ulcer on the knee it might provide an additional risk of infection for the patient which ultimately could have affected his ankle surgery. However, everyone including the podiatrist in question agreed that podiatric medicine does not allow a podiatrist to work on a patient's knee at all no matter what the circumstances are. It is situations like this that truly show why more clarity is needed in the definition of podiatric medicine.

It is important to note that when SB 2128 was heard in the Senate Human Services Committee, originally there were a few orthopedic surgeons that opposed the bill. Discussions ensued after the hearing which resulted in a small amendment where some additional exclusionary language was added. This amendment was acceptable to all parties and it came out of the Senate Human Services Committee with a unanimous 'do pass' recommendation._

Further, as the attorney for the Board of Podiatric Medicine it is legally very important for the scope of practice to be clearly defined not only for the podiatrists but also for the Board when they are reviewing potential violations of the scope of practice. Without clear parameters being defined the Board is left with a very vague statute to try and enforce. This poses great concern for the Board when prosecuting a podiatrist for violating the scope of practice as it does

not provide the administrative law judge with clear rules to enforce and leaves the Board potentially open to losing a case based simply on the fact that the current statute has many grey areas. The proposed language in Senate Bill 2128 would eliminate those grey areas and provide everyone with a clear understanding of what defines the scope of podiatric medicine in the State of North Dakota.

It is also important to point out that the proposed language in Senate Bill 2128 does not expand the scope of practice for podiatrist in the State of North Dakota it just clearly delineates what they are able to do within their profession. All podiatrists in the State of North Dakota are currently able to do all of the things delineated in Senate Bill 2128 per the terms of the current definition of podiatric medicine. Thus, this is not an expansion of their scope but rather is a clarification of their scope of practice. Enacting this legislation would provide some much needed clarity for not only the Board of Podiatric Medicine when performing its duty of regulating the profession of podiatric medicine but it would also provide some clear parameters for podiatrists currently practicing and new podiatrists coming to the State of North Dakota. Therefore, I urge you to give this bill a Do Pass Recommendation. With that, I will close by saying thank you for your time and attention and I would be happy to try and answer any question you may have.

Thank you.

Mar 10, 2015

SENATE HUMAN SERVICES COMMITTEE

SENATE BILL NO. 2128

February 17, 2015

Testimony of Duane Houdek

North Dakota State Board of Medical Examiners

Madam Chair, members of the committee. My name is Duane Houdek. I represent the North Dakota State Board of Medical Examiners.

Although I didn't rise in support of this bill, in the sense that the medical board initiated this piece of legislation, we have fully reviewed it, offered some changes which were incorporated into the bill before it was introduced and have no objection to the support of this bill.

Thank you. I would be glad to try to answer any questions you may have.

House Industry, Business and Labor Committee

SB 2128

March 10, 2015

Written Comments - Matthew Carpenter, MD

Orthopedic Surgeon, Bismarck ND

I have been informed of the intention of SB 2128 to clarify the scope of practice for podiatry. I think the wording for the scope of a podiatrist is fine. Bones of ankle and foot and soft tissues past the tibial tubercle sounds appropriate to me.

Sanford

Mar 16, 2015

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SANFORD

February 16, 2015

To Whom It May Concern:

My name is Aaste Campbell; I am the Director of the Office of the Professional Practice at Sanford in Fargo, which includes oversight of the credentialing & privileging process. I have reviewed the Senate Bill No. 2128 that is being proposed to amend & reenact subsection 5 of section 43-05-01 of the ND Century Code. After reviewing these changes, I do not foresee any change in the privileges of Podiatrists at Sanford.

Sincerely,

Aaste Campbell
Director, Office of Physician Practice
Sanford Health
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701.234.5840 (p)
701.234.6979 (f)

Our Mission:
Dedicated to the work of
health and healing

House Industry, Business and Labor Committee

SB 2128

March 10, 2015

Written Comments - Ian Fyfe, MD

Orthopedic Surgeon

As an orthopaedic surgeon working in the state of North Dakota, I have been asked to give an opinion on what I think would be a reasonable scope of practice for podiatrists practicing in this state. As a general principle I believe all physicians and surgeons should practice within a scope that they feel comfortable based on their training, work experience or ongoing maintenance of certification guidelines. I believe that all podiatrists should be able to deal with any bone, joint or soft tissue pathology from the ankle joint to the distal aspects of the toes. Because much of the musculature which controls the foot and ankle originates from the calf, I also believe they should be able to deal with any soft tissue pathology distal to the tibial tubercle.

Thank you for your consideration in this matter.