

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2163

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Medical Examiners)

1 A BILL for an Act to amend and reenact section 23-34-04, subsection 9 of section 43-17-31,
2 sections 43-17-31.1, 43-17-32.1, subsection 1 of section 43-17.1-02, subsection 1 of section
3 43-17.1-05, and subsection 3 of section 43-17.1-06 of the North Dakota Century Code, relating
4 to references to commission on medical competency, ex parte temporary suspension orders
5 issued by the state board of medical examiners, and investigative panels of the state board of
6 medical examiners.

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

8 **SECTION 1. AMENDMENT.** Section 23-34-04 of the 1999 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **23-34-04. Peer review committee - Mandatory reports.** A peer review committee
11 shall report to ~~the commission on an investigative panel of the board of medical competency~~
12 examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of
13 section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer
14 review committee fails to make any report required by this section.

15 **SECTION 2. AMENDMENT.** Subsection 9 of section 43-17-31 of the 1999
16 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17 9. The violation of any provision of a medical practice act or the rules and regulations
18 of the board, or any action, stipulation, condition, or agreement imposed by the
19 board or ~~the commission on medical competency~~ its investigative panels.

20 **SECTION 3. AMENDMENT.** Section 43-17-31.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-17-31.1. Costs of prosecution - Disciplinary proceedings.** In any order or
23 decision issued by the board in resolution of a disciplinary proceeding in which disciplinary
24 action is imposed against a physician, the board may direct any physician to pay the board a

sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and ~~the commission on medical competency~~ its investigative panels in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board. A physician may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician's license may be suspended for nonpayment.

SECTION 4. AMENDMENT. Section 43-17-32.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board ~~has probable cause to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm~~ determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician.
2. An ex parte temporary suspension remains in effect ~~for not more than sixty days, unless~~ until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall ~~set the date of a full hearing for suspension or revocation of the physician's license for~~ conduct a hearing on the merits of the allegations to

determine what disciplinary action, if any, shall be taken against the physician who is the subject of the ex parte suspension. That hearing must be held not later than sixty thirty days from the issuance of the ex parte temporary suspension order. ~~Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing~~ The physician is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.

4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 5. AMENDMENT. Subsection 1 of section 43-17.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, ~~excluding the president.~~ Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. ~~In addition, the~~ The president of the board shall serve on both neither investigative panels panel.

SECTION 6. AMENDMENT. Subsection 1 of section 43-17.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this

section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as it deems necessary to ~~resolve the matter as it deems appropriate. The investigative panel shall determine whether a formal hearing should be held to~~ determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law. Upon completion of its investigation, the investigative panel shall make a finding that the investigation discloses that:

- a. There is insufficient evidence to warrant further action;
- b. The conduct of the physician, physician assistant, or fluoroscopy technologist does not warrant further proceedings but the investigative panel determines that possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the physician, physician assistant, or fluoroscopy technologist; or
- c. The conduct of the physician, physician assistant, or fluoroscopy technologist indicates that the physician, physician assistant, or fluoroscopy technologist may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.

SECTION 7. AMENDMENT. Subsection 3 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Require~~ Upon probable cause, require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination, or chemical dependency evaluation.