

2009 HOUSE HUMAN SERVICES

HB 1269

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1269

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7196

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz called hearing to order on HB 1269.

Rep. Kreidt from Dist. 33 introduced bill he was sponsoring.

Shelly Peterson, President of ND Long Term Care Association testified in support. See Testimony #1.

Rep. Porter: Is there a charge for both for the UAP's and CNA?

Shelly Peterson: Health Dept. registration is free. Over 12,000 people on that registry. You pay registration fee to the Board of Nursing, but they accept everyone on the Health Dept. registry.

Rep. Porter: Do you know the Board of Nursing fee?

Shelly Peterson: The fee is now \$30 and you have criminal history checks and that is \$47.25 and fingerprinting costs is \$80-\$90.

Rep. Porter: So the \$30 is an annual fee. The other fees are a one time.

Shelly Peterson: You are getting into a lot of detail now. We may want to call on the Board of Nursing. I think every two years though.

Rep. Hofstad: You talked of (inaudible) totally \$6800. Is that just for UAPs and what is the time spent on that dollar amount.

Shelly Peterson: There was \$6800 for 2008 for about 12 or 13 people who received fines that range from \$100 and not sure what the top one was on there. It was just for UAPs. Depends on length you are practicing without registering. I believe, \$100 a month fine for every month you practice without that proper registration. If person let registration lapse, her fine would begin on day 1 of the lapsed period.

Rep. Nathe: Are UAPs fines paid by the employer as they feel responsible?

Shelly Peterson: The vast majority of cases is the employer pays it as they feel they should have known the law and feel responsible.

Dr. Constance Kalanek, Director of ND Board of Nursing took no position. See Testimony #2.

Rep. Holman: Is this more of an employer rather than an employee problem?

Dr. C. Kalanek: I don't think the employers are not checking.

Rep. Hofstad: Do you think reducing the fine would increase the incidence of non-compliance?

Dr. C. Kalanek: We haven't considered that \$100 a month would deter people.

Rep. Uglem: Do your nurses have two separate registrations they have to do?

Dr. C. Kalanek: No.

Rep. Damschen: Do you feel like these instances that have occurred are intentional or mostly oversights?

Dr. C. Kalanek: I think they are oversights.

Rep. Uglem: You stated you thought one registry would be beneficial. Do see that to be that being with the State Dept. of Health?

Dr. C. Kalanek: I'd leave that to the powers that be.

NO OPPOSITION:

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House Human Services Committee
Bill/Resolution No. 1269
Hearing Date: January 19, 2009

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1269

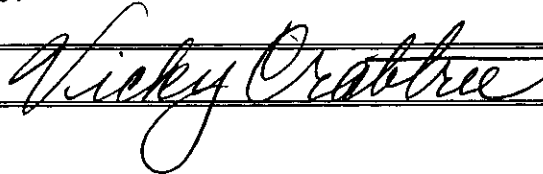
House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7497

Committee Clerk Signature



Minutes:

Chairman Weisz: Let's take up 1269. First time offense is a warning instead of \$500.00.

Rep. Porter: I'd like to ask Ms. Peterson a question. One of the points from Board of Nursing was, what about the person that is 6 months etc. and has ignored this licensing registry. Have you given any thought a limiting factor that there is 3 month window etc. when you (inaudible) could be under this warning statute and if 6 months is long enough and go back to the regular penalty portion of it.

Shelly Peterson: The person and facility for 4 years were not knowingly violating it. They didn't have any idea they were supposed to be in compliance.

Rep. Porter: How many states have dual certification system set up and how many just the Board of Nursing?

Shelly Peterson: ND is only state that has two registries.

Chairman Weisz: From the people fined for being unlicensed , how many lapses of current registration, should have known better?

Shelly Peterson: Have to look. Some move and didn't get notification.

Rep. Conklin: Why should person be responsible and not facility.

Shelly Peterson: Rules read person is responsible.

Rep. Conklin: This bothers me. This isn't a doctor or nurse. This is a low level employee.

Shelly Peterson: There is a very simple form to be signed off on.

Rep. Hofstad: I don't think this is a public health issue. It's necessary, but I don't think it a real threat and if you're ready for a motion.

Rep. Kilichowski: Couldn't board change their rules?

Shelly Peterson: We've looked at a way to be fairer. They have been hesitant to look at other options.

Rep. Porter: Move a DO PASS.

Rep. Hofstad: Second

Roll Call Vote: 9 yes, 0 no, 4 absent: Representatives Uglem, Conrad, Holman and Potter

MOTION CARRIED.

BILL CARRIER: Rep. Hofstad

Date: 1-21-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

☒ Do Pass☐ Do Not Pass☐ Amended

Motion Made By

Rep Porter

Seconded By

Rep Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	A	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	A	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	A	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	A				

Total (Yes) 9No 0Absent 4

Bill Carrier

Rep Hofstad

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

REPORT OF STANDING COMMITTEE (410)
January 22, 2009 2:00 p.m.

Module No: HR-12-0758
Carrier: Hofstad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1269: Human Services Committee (Rep. Welsz, Chairman) recommends DO PASS
(9 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1269 was placed on the
Eleventh order on the calendar.

2009 SENATE HUMAN SERVICES

HB 1269

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 11016, 11030

Committee Clerk Signature

Mary K Monson

Minutes:

Senator J. Lee opened the hearing on HB 1269 relating to discipline of an unlicensed assistive person practicing without registration.

Rep. Gary Kreidt (District #33) introduced HB 1269. This came to his attention during the interim. Periodically employees need to be registered through the Board of Nursing in order to work in facilities that utilize the UAP's. He received information that some of these employees who needed to be registered forgot to register and then were faced with fines, disciplinary action, sanctions, etc. These are unlicensed assistives.

He explained that with this bill an employee would receive a warning for a first time offense.

He thought an amendment might be coming forward that he would be in favor of.

(Meter 05:30) He talked about the confusion with having two registry boards – Board of Nursing and the Department of Health. It might be worth a study to combine the two.

Senator J. Lee read a paragraph from correspondence she received from a nurse concerning this issue confirming that there is confusion and duplication. (Meter 06:40)

Rep. Kreidt said the UAP is caught in an unfortunate happening.

Senator J. Lee asked who is responsible in a long term care facility for knowing what kinds of licenses are required.

Rep. Kreidt – The director of nursing usually is in charge of that.

Senator J. Lee asked if that person turns in the license applications or is the individual responsible for doing it.

Rep. Kreidt replied that it is up to the individual to obtain the license but it's the facilities duty to check with the individual to make sure the licenses are up to date.

Shelly Peterson (President of the Long Term Care Association) testified in support of HB 1269. Attachment #1

Rita Raffety (Administrator, Good Samaritan Society at Larimore) testified in favor of HB 1269. Attachment #2

Senator J. Lee asked Ms. Raffety to explain the difference in the training for a UAP or a CNA.

Ms. Raffety explained that a CNA has to take a 75 hour class. A UAP doesn't need any formal training if they aren't going to be doing meds. If they are trained as medication assistants they have to take a separate class. The CNA's have to take the medication assistant class in addition to the CNA class. The training for UAP's is dependent on their position.

Dr. Constance Kalanek (Executive Director of the NDBON) provided the committee with Attachment #3 taking a position in opposition to the proposed revision to the NPA. Her testimony included a proposed amendment and, if adopted, they would take a neutral position.

Senator J. Lee asked if all the workers in child care facilities have to be registered.

Dr. Kalanek said that wasn't her area of responsibility so she could not answer.

Senator Heckaman asked if her amendment addresses the issue of getting everyone licensed under the same entity.

Dr. Kalanek replied that it does not.

Senator Heckaman - That doesn't concern you at all then?

Dr. Kalanek – At this point that would not be covered in this amendment so the BON amendment was dedicated specifically for the proposed change in the practice act.

Senator J. Lee pointed out there would be further discussion to having a study with all the stakeholders involved.

Brian Bergeson (ND BON) explained the amendment that was attached to the testimony presented by Dr. Kalanek. (Meter 36:00)

Senator J. Lee asked if they were putting the responsibility on the supervising nurse and not on the administrator of the facility.

Mr. Bergeson said the Board has jurisdiction over the nurses. If they were to go into another level of a professional person managing they don't have the tools. (Meter 40:00)

Cal Rolfson (Representing the Board of Nursing) added some background information in terms of the amendment. (Meter 40:50) He said that Ms. Peterson and Rep. Kreidt agreed with the amendment. One of the concerns with the amendment is what if the DON is not responsible but the administrator or the HR director of the facility is responsible for making sure UAP's are registered and renewed. Would the nurse then be subject to discipline? His understanding would be "no" if they are not responsible for verifying.

Discussion on holding accountable others who are responsible followed. UAP's aren't always aware of the license regulatory process. The BON believes they have done everything they can do to educate people about what the law of the state is and what the rules of the Board are.

Senator Dever referred to the amendment – page 2 line 8 – asked if there is some question as to the jurisdiction the BON has now over UAP's.

Mr. Rolfson said not to his knowledge.

Senator Dever – Then why do we need this amendment?

Mr. Rolfson – It might just be to collaborate in a housecleaning effort to make sure it is clear. He deferred to Mr. Bergeson.

Mr. Bergeson – said there was another section that talks about being licensed and being registered in order to practice nursing or assist in the practice of nursing. Since it was addressed in other statutes this was somewhat of a housekeeping piece to make sure the same language was included in section 14.

Wanda Rose (President, ND Nurses Association) provided testimony in opposition to HB 1269. Attachment #4

Senator J. Lee asked what her thought was on the amendment.

Ms. Rose said their preference would be that the entire bill would be defeated.

(Meter 55:54) Speaking for herself she had concerns about the fact that the Director of Nurses is held accountable. She thinks the buck stops at the HR or whoever is employing the individual.

Senator Dever asked how the UAP demonstrates his qualifications to the BON.

Ms. Rose said one way is verification by a licensed nurse demonstrating their competency. They can also take a course and be tested.

(Meter 58:00) Discussion - Some difference in training for an OTA, CNA, and a UAP. An unlicensed assistive person is strictly an entry level position. Accountability - health care providers and the responsibility of the administrator. Who should the responsible party be?

Senator J. Lee thinks that ultimately the responsibility should be with the administrator. The only reason the supervising nurse is put into place here is because they are the only ones the BON has control over. There is a need for all of the stakeholders to be involved in figuring out a better way to approach this to figure out where the proper level of accountability is and where the responsibility should lie.

Ms. Rose stated that they still oppose HB 1269 and maybe it should be left that way until a study is done and all the people are at the table to understand where the accountability is.

Senator J. Lee asked Shelly Peterson what the perspective would be on who should be responsible.

Ms. Peterson replied the administrators feel responsible. There is a lot of confusion. The reprimand list is all over the board. She agrees there should be a study however, absent the study they feel this is good legislation because the penalty is too harsh. They are not against the registration process. She had concerns with the potential reprimand and fee to the licensed nurse administrator. She talked about facilities checking registries.

Senator J. Lee felt that, if they were trying to figure out how to make sure people are qualified to do this work, they needed to figure out how to put it into the hands of the right party.

The hearing on HB 1269 was closed.

Job #11030

Senator Heckaman asked why the UAP's need to be relicensed, reregistered. She felt the job they are doing, if trained once in it, why would they need to be reregistered again.

Senator J. Lee said that was a good point.

Committee work was put aside until later.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3/24/09

Recorder Job Number: 11472, 11502

Committee Clerk Signature

Mary K Monson

Minutes:

Senator J. Lee brought the committee to order to discuss HB 1269. She asked Shelly Peterson to bring the committee up to speed on it.

Shelly Peterson reminded the committee that they didn't think the crime fit the punishment. In essence the bill would put a warning on the first violation rather than the five year reprimand and fining. The BON opposed the bill but would be neutral with their proposed amendments. She liked the BON amendments except for the last sentence in section 2. (Meter 01:32)
Discussion followed on the testimony from Dr. Kalanek and the UPA statistics provided between the years 2003-04 and 2007-08.

The problem is more with the renewals than with new licensees because they are not necessarily notified that they need to renew. The amendment takes care of both the renewal and the initial license. They are given four months.

A yearly report was suggested. There is one already with the health department. Notices are sent out to people when they need to get registered. The BON doesn't send out reminders.

Senator J. Lee - Does there need to be two registries? Is there any way this can be consolidated for the benefit of everybody?

Shelly Peterson said they have been meeting with the Department of Health and the BON with that issue and haven't got very far. They each like their registries.

She suggested language if the committee were to consider a study (included in her e-mail message of 3/16/09) – attachment #5. (Meter 08:08)

Senator J. Lee referred to an e-mail message from Cal Rolfson (attachment #6) with amendments the same as Dr. Kalanek recommended. She asked Mr. Rolfson if he had any comments.

Mr. Rolfson (BON) said there are five groups involved in trying to come to term on this bill.

(Meter 10:00) They are all saying this is a good middle ground compromise. He agreed that the amendment was good but also agreed that the last sentence could be omitted in the amendment. He felt the board already had that authority. He talked about responsibility and delegation of duties to make sure competencies exist.

The only question that he has heard is whether the Board's sanctions are too strong for nursing or UAP's.

He didn't have a problem with including a study but did suggest that language focus on who should do it.

(Meter 15:00) Wording was discussed to clarify intent in the amendment.

(Meter 17:00) Study language was discussed in terms of examining the possibility of a single registry.

Attachment #7 – additional information.

The committee agreed to have an amendment drafted to consider.

Job #11502

The amendment dated 3/24/09 was reviewed by the committee.

Senator Erbele moved to adopt the amendment dated 3/24/09.

Second by **Senator Marcellais**.

Roll call vote 4-0-2. The vote was left open for the absent members.

Final vote 5-0-1. (Senator Dever) Amendment adopted.

Senator Erbele moved a **Do Pass as Amended**.

Second by **Senator Marcellais**.

Roll call vote 4-0-2. The vote was left open for the absent members.

Final vote 5-0-1. (Senator Dever) Motion carried.

Carrier is Senator Erbele.

[Signature]
3/25/09
1062

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

- Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to"
- Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"
- Page 1, line 7, remove "1."
- Page 1, line 12, overstrike the third "or"
- Page 1, line 13, after "treatment" insert "; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant"
- Page 1, line 14, remove the overstrike over "~~4.~~" and remove "a."
- Page 1, line 18, remove the overstrike over "~~2.~~" and remove "b."
- Page 1, line 22, remove the overstrike over "~~3.~~" and remove "c."
- Page 2, line 1, remove the overstrike over "~~4.~~" and remove "d."
- Page 2, line 4, remove the overstrike over "~~5.~~" and remove "e."
- Page 2, line 6, remove the overstrike over "~~6.~~" and remove "f."
- Page 2, line 8, remove the overstrike over "~~7.~~", remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"
- Page 2, line 10, remove the overstrike over "~~8.~~" and remove "h."
- Page 2, line 12, remove the overstrike over "~~9.~~" and remove "i."
- Page 2, replace lines 15 through 18 with:

"SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person - Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2009-10 interim, the legislative council shall study any steps necessary to enable the state department of health to administer the registry for certified nurse assistants and nurse assistants, and examine the possibility of one registry and a potential location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

205.

Date: 3/24/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 3-24-09

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

Motion Made By Sen. Erbele Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever			Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

Date: 3/24/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90639.0101 Title.0200

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

Motion Made By Sen. Erbele Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever			Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Erbele

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

REPORT OF STANDING COMMITTEE

HB 1269: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to"

Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"

Page 1, line 7, remove "1."

Page 1, line 12, overstrike the third "or"

Page 1, line 13, after "treatment" insert "; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant"

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Page 2, line 8, remove the overstrike over "~~7.~~", remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"

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REPORT OF STANDING COMMITTEE (410)
April 1, 2009 7:53 a.m.

Module No: SR-55-5804
Carrier: Erbele
Insert LC: 90639.0101 Title: .0200

Renumber accordingly

2009 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1269

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1269

House Human Services Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 11982

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Hofstad called the conference committee meeting to order.

Chairman Hofstad: We have no problems with the amendments except for some wording in the legislative study. We have prepared amendments to deal with that issue. (**See attached handout.**) This issue is in the Senate amendments when you talk about the steps necessary to enable the State Dept. of Health to administer the registry and when you talk about registry for certified nurse's assistants and nurse assistants. We have changed that to "any steps necessary to enable a state agency to administer the registry for certified nurse's assistance and unlicensed assistive persons". That is the change we are looking for. It was brought to our attention by Cal Rolfston.

Sen. Dever: I think there is a difference procedurally in whether or not it says on the most recent version of the bill engrossed and this one is no. If it was engrossed than the House would accede and further amend. Because it wasn't, then the Senate recede and amend.

Rep. Damschen: Move that the Senate recede their amendments and we adopt 0102 amendments.

Sen. J. Lee: I recall Mr. Rolfston indicated that we had neglected to include unlicensed assistive persons.

Sen. Dever: If I am correct in my understanding, the term, nurse assistant is included in the term unlicensed assistive person? It is not different just more expansive?

Rep. Hofstad: Exactly.

Roll Call Vote: 6 yes, 0 no, 0 absent.

MOTION CARRIED.

Shelly Peterson, President of Long Term Care Association: Right now the Health Dept. has a nurse's assistance registry of about 12,000 people. The federal government requires that the registry be free to the individuals. There are nurse's assistance and CNAs that go on that registry which is free and that is a plus right now through the board of nursing registry it is \$30 plus the record check. The board of nursing does expect everybody on Health Dept. registry. You have to be a certified nurse assistant to get on the Health Dept. registry. So the board of nursing registry, the Dept. of Health and our association has been meeting since late last year to see what we can do to have one registry in ND. Right now ND has to registries for long term care. We were hoping through this study would be to look at the steps necessary for the Health Dept. to administer it for our nurse's assistants, CNAs and UAPs that are (inaudible) to long term care. I thought the only thing Cal wanted to change was to make sure you mentioned UAP.

Chairman Hofstad: Your fix would be to keep the Health Dept.?

Shelly Peterson: To just keep it the State Health Dept. Add UAP (unlicensed assistive person).

Sen. J. Lee: Move we reconsider our actions of passing 90639.0102 on HB 1269.

Rep. Damschen: Second.

Voice Vote: Motion Carried.

Sen. J. Lee: Move adjustment made to 0102 would be to change Section 3 to read,
“during the 2009-10 interim, the Legislative Council shall study any steps necessary to
enable the State Dept. of Health to administer the registry for certified nurse assistance
and unlicensed assistive person”.

Rep. Holman: Second.

Voice Vote: Motion Carried.

Sen. Dever: Move the Senate accede from the amendments and adopt amendment.

Rep. Damchen: Second.

Roll Call Vote: 6 yes, 0

BILL CARRIER: Sen. Dever in Senate, Rep. Hofstad in House.

Vote 1

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1269 (, as (re)engrossed):

Date: 4-20-09

Your Conference Committee Human Services

For the Senate:

For the House:

Attend:

YES / NO

YES / NO

Attend:

✓	Sen Dever	✓		Rep. Hopstad	✓		✓
✓	Sen Jofel	✓		Rep. Damschen	✓		✓
✓	Sen Pomeroy	✓		Rep. Selman	✓		✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1118 - 1119

and place on the Seventh order.

, adopt (further) amendments as follows, and place 1269 on the Seventh order:

, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1269 was placed on the Seventh order of business on the calendar.

DATE:

CARRIER: Hopstad

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sen Dever

SECONDED BY: Rep. Damschen

OTE COUNT 6 YES 0 NO 0 ABSENT

Vote #2

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1269 (, as (re)engrossed):

Date: 4-20-09

Your Conference Committee Human Services

For the Senate:

For the House:

ATTEND

YES / NO

YES / NO

ATTEND

<input checked="" type="checkbox"/>	Sen. DEVER	<input checked="" type="checkbox"/>	Rep. Hofstad	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Sen. J. Lee	<input checked="" type="checkbox"/>	Rep. Damschen	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Sen. POMEROY	<input checked="" type="checkbox"/>	Rep. Holman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____

_____, and place _____ on the Seventh order.

x, adopt ^{House} (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

Reconsider
actions

((Re)Engrossed) 1269 was placed on the Seventh order of business on the calendar.

DATE:

CARRIER: Rep. Hofstad

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sen. Dever

SECONDED BY: Rep. Damschen

NOTE COUNT 6 YES 0 NO 0 ABSENT

VR
4/20/09
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

That the Senate recede from its amendments as printed on pages 1118 and 1119 of the House Journal and page 959 of the Senate Journal and that House Bill No. 1269 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to"

Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"

Page 1, line 7, remove "1."

Page 1, line 12, overstrike the third "or"

Page 1, line 13, after "treatment" insert "; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant"

Page 1, line 14, remove the overstrike over "~~4.~~" and remove "a."

Page 1, line 18, remove the overstrike over "~~2.~~" and remove "b."

Page 1, line 22, remove the overstrike over "~~3.~~" and remove "c."

Page 2, line 1, remove the overstrike over "~~4.~~" and remove "d."

Page 2, line 4, remove the overstrike over "~~5.~~" and remove "e."

Page 2, line 6, remove the overstrike over "~~6.~~" and remove "f."

Page 2, line 8, remove the overstrike over "~~7.~~", remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"

Page 2, line 10, remove the overstrike over "~~8.~~" and remove "h."

Page 2, line 12, remove the overstrike over "~~9.~~" and remove "i."

Page 2, replace lines 15 through 18 with:

"SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person - Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2009-10 interim, the legislative council shall study any steps necessary to enable the state department of health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a potential

location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Vote # 3

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1269 (, as (re)engrossed):

Date: 4-20-09

Your Conference Committee Human Services

For the Senate:

For the House:

YES / NO			YES / NO		
Sen. Dever			Rep. HOFSTAD		
Sen. J. Lee			Rep. Damschen		
Sen. Pomeroy			Rep. Holman		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____ and place _____ on the Seventh order.

_____ , adopt (further) amendments as follows, and place _____ on the Seventh order:

_____ , having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

OTE COUNT YES NO ABSENT

Revised 4/1/05

MOTION
Carried
on accepting
amendments

Vote # 4

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

 Bill Number 1269 (, as (re)engrossed):

 Date: 4-20-09

 Your Conference Committee Human Services

For the Senate:

For the House:

YES / NO			YES / NO		
Sen. Dever	✓		Rep. Hofstad	✓	
Sen. J. Lee	✓		Rep. Damuchen	✓	
Sen. Pomery	✓		Rep. Holman	✓	

 recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)

 the (Senate/House) amendments on (SJ/HJ) page(s) 1118 - 1119

and place _____ on the Seventh order.

 , adopt (further) amendments as follows, and place 1269 on the Seventh order:

, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

 ((Re)Engrossed) 1269 was placed on the Seventh order of business on the calendar.

DATE:

CARRIER:

Rep. Hofstad Sen. Dever in Senate

LC NO.	<u>90639</u>	of amendment	<u>.0103</u>
LC NO.		of engrossment	
Emergency clause added or deleted			
Statement of purpose of amendment			

 MOTION MADE BY: Sen. J. Lee

 SECONDED BY: Rep. Holman
motion carried

 VOTE COUNT 6 YES 6 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1269: Your conference committee (Sens. Dever, J. Lee, Pomeroy and Reps. Hofstad, Damschen, Holman) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1118-1119, adopt amendments as follows, and place HB 1269 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1118 and 1119 of the House Journal and page 959 of the Senate Journal and that House Bill No. 1269 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to"

Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"

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Page 2, line 6, remove the overstrike over "~~6.~~" and remove "f."

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Page 2, line 10, remove the overstrike over "~~8.~~" and remove "h."

Page 2, line 12, remove the overstrike over "~~9.~~" and remove "i."

Page 2, replace lines 15 through 18 with:

"SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

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SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2009-10 interim, the legislative council shall study any steps necessary to enable the state department of health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a

potential location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

HB 1269 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1269

#1

Testimony on HB 1269
House Human Services Committee
January 19, 2009

Good Morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent assisted living facilities, basic care facilities and nursing facilities in North Dakota. I am here this morning on behalf of our members and ask for your support of HB 1269. HB 1269, changes the penalty regarding a nurse assistant who is working without a current registration. First, let me assure you we are not advocating for individuals to violate this registration process. We are advocating for a change because the penalty appears harsh and confusion exists because North Dakota has two registries that impact long term care.

First, I'd like to share with you information regarding the issue that brought this to our attention, provide information on the two registries and conclude by asking for your support for a change in the penalty of a violation of the North Dakota Board of Nursing (BON) registration process for Unlicensed Assistive Persons (UAP).

Issue:

Today, 80% of all skilled nursing facilities have expanded their reach into assisted living, basic care or home care. The Good Samaritan Society in Larimore, North Dakota is a 45 bed nursing facility. To better meet the needs of their community they built a new 15 unit assisted living facility which opened on March 4, 2008. In preparation for meeting the needs of their new tenants they hired Maxine, a 68 year old female from their community.

Maxine came with extensive experience in caregiving and helping people. The tenants instantly loved her and she did them. Good Samaritan Society—Larimore trained her to be a universal worker, which includes housekeeping, setting up the supper meal and medication to one tenant. Maxine went through

the training to become a Medication Assistant I, she completed all of the course work and the clinicals. At 68 she was excited to begin her career! With her training and orientation complete, she started her job. What poor Maxine nor the Good Samaritan Society—Larimore didn't understand was that she needed to register with the BON as an "Unlicensed Assistive Person" (UAP).

The UAP term was unfamiliar to the facility and they thought they were doing everything correctly. Maxine had never hear of such a term and was devastated to hear that she "violated the law," was going to be fined and most traumatic to her, was that for five years that disciplinary action would be on her record at the BON. And if that wasn't bad enough the disciplinary action would be reported to healthcare agencies in North Dakota and to the BON in other states. (See purple handout)

Maxine as you can imagine was very upset. She truly did not know she was doing anything wrong and to this day it is difficult for Maxine. The employer, Good Samaritan Society—Larimore also feels bad, they feel they let Maxine down and they should have know of the registration process, but assisted living was a new business for them. Good Samaritan Society—Larimore paid the penalty assessed against Maxine and in September sent a letter to the BON on behalf of Maxine, as well as appeared before the BON. Attached is the letter Good Samaritan Society—Larimore sent to the BON as well as the letter in response to their plea of leniency. (See Attachment A and Attachment B) In essence the BON attorney said they needed to follow the law and administrative code and leniency was not possible.

You are probably thinking why change this penalty because of one person? Unfortunately, this has affected many others. After this issue surfaced and we asked others about their experience, it seems there is confusion on the UAP registration and many others reported similar fines and the five year sanction on your record. In trying to better understand why confusion exists it seems to center around a couple of items:

1. North Dakota unlike the vast majority of other states has two registries that impact only long term care. It is our goal to one day have only one registry like other states.
2. The term UAP is a term we do not use in long term care. We use CNA (certified nursing assistant), Nurse Assistant and Universal Worker.

We have been in discussion with the Health Department and BON regarding the two registries and have voiced our goal of someday only having one registry for long term care. We also have asked the BON to consider amending their rules to lessen the fine and penalty for the first violation. Use it as a teaching opportunity rather than a big hammer. The BON is meeting later this week and we understand they will be discussing this issue. We really don't know how the board feels or which direction they will go.

On behalf of Maxine and the many other Maxine's that have been impacted by this issue we urge your support of HB 1269. A change in the law will give the BON the flexibility we feel they need on this issue. In the meantime we will continue to educate our members on the registration requirements. The BON staff have committed to working with us on this education process. Further we will continue to work with the BON and Health Department toward our goal of one registry. (See Attachment C)

This concludes my testimony and I would try to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street • Bismarck, ND 58501
(701) 222-0660 • www.ndltca.org • E-mail: shelly@ndltca.org

**NORTH DAKOTA BOARD OF NURSING**

919 S 7th St., Suite 504, Bismarck, ND 58504-5881

Telephone: (701) 328-9777 Fax: (701) 328-9785

Web Site Address: <http://www.ndbn.org>

Workplace Impairment Program: (701) 328-9783

December 6, 2008

[REDACTED]
[REDACTED]
[REDACTED]

SENT VIA FAX: 701-483-6721

Dear [REDACTED]

The North Dakota Board of Nursing offers you the opportunity to enter into an administrative settlement if you have assisted in the practice of nursing in the state of North Dakota without a current registration. The administrative settlement is an agreement that:

- you admit you practiced as an unlicensed assistive person when you did not have a current registration to do so,
- you agree to pay the required penalty fee, and
- you accept a reprimand from the Board of Nursing.

If you agree to enter into an administrative settlement, please complete the enclosed administrative settlement form in the presence of a notary public and return the form with the appropriate fee to the board office by December 20, 2008. The Administrative Settlement will be presented to the Board of Nursing at the next regularly scheduled meeting.

If you choose not to enter into an administrative settlement and verification of practice is received, a formal administrative complaint will be filed and a disciplinary hearing scheduled.

You may contact me at 701/328-9783 with questions.

Sincerely,

Karla Bitz, PhD, RN
Associate Director

enclosure: Administrative Settlement

*Same handwritten
given to Senate.*

Fees Resolved

Penalty Fee _____

Late Fee _____

ADMINISTRATIVE SETTLEMENT

RE: ~~XXXXXXXXXX~~
REG#: **UAP APPLICANT**
DOB: ~~XXXXXXXXXX~~

*Same husband
give to Senate*

I, the undersigned, understand and agree that I have practiced as an unlicensed assistive person in the state of North Dakota without having a current registration to do so and by so doing, I am subject to disciplinary action by the Board of Nursing as set out in NDCC Chapter 43-12.1 and NDAC Title 54.

I enter into this Administrative Settlement without any further delay. I admit that my unlicensed assistive person registration has been expired for more than thirty (30) calendar days and that I have practiced as an unlicensed assistive person without a current North Dakota nursing registration in my possession. I am therefore subject to disciplinary action pursuant to NDAC 54-02-07-09(2). In order to avoid a formal disciplinary hearing, I agree to the following:

- A. I agree to pay a penalty fee of Five Hundred dollars (\$500) plus a late registration fee of Fifteen dollars (\$15), for a total of Five Hundred Fifteen Dollars (\$515.00) and have submitted the total amount due with this signed Administrative Settlement. I understand that upon compliance with board rules regarding registration and the remittance of all fees, a current registration shall be issued to me.
- B. I agree to accept a REPRIMAND from the Board of Nursing for practicing as an unlicensed assistive person without being so registered, and I waive my rights to an administrative hearing before the Board of Nursing, including all related due process rights and rights of appeal.
- C. I understand that this disciplinary action will be reported to health care agencies in North Dakota, to the boards of nursing of other states via the Nursys Data Bank of the National Council of State Boards of Nursing, and as required by NDCC 43-12.1-13.
- D. I understand that after five years of the date of the disciplinary action taken by the board for practicing without a registration, I may submit a written request for the disciplinary action information to be expunged, providing no further violations of the Nurse Practices Act, NDCC 43-12.1, have occurred.

I understand that this Administrative Settlement will be presented to the Board of Nursing at the next regularly scheduled meeting for review by the Board. If the Administrative Settlement is

P:\Board Manual\Section 8-Discipline 2 Administrative Settlement\DISCIPLINE\3 Administrative Settlement.UAP 08-0308.doc

Attachment A

September 3, 2008

Dear North Dakota Board of Nursing Members:

Good Samaritan Society Larimore built 10 new assisted living apartments which opened on March 4, 2008. In preparation for our new tenants, we hired and trained Maxine Barry to be a universal worker in February.

As a facility, training medication assistants was new to us, and we did not realize that we had to register Maxine as an Unlicensed Assistive Person. Maxine went through the training to become a Medication Assistant I, she completed all of the course work and the clinicals. She was trained to be a universal worker, which includes housekeeping, setting up the supper meal and giving medications to one individual. As an employee, Maxine did everything we, as her employer, requested of her.

In general, most people know that to be a nurse or a doctor, you must have a license. There is no way that Maxine would have known that she should have registered as a UAP with the Board of Nursing. As a facility, we should have known, but since this was all new to us, we were not aware either. Good Samaritan Society Larimore is paying the \$200.00 penalty for Maxine as we feel that this is a reasonable remedy and it was our responsibility to get her registered.

I feel that having a disciplinary action on Maxine's name for five years is not a reasonable remedy and is too severe. Maxine was a competent Medication Assistant and there was never a time that our tenants' safety was at risk. Maxine did not willfully neglect to register and she only did what any competent and reliable employee would do, which was to do what her employer asked of her. I am asking that you either take the disciplinary action off or substantially reduce the time it will remain on her record.

If you have any further questions, please give me a call at 701-343-6244.

Sincerely,

Rita J. Raffety
Administrator



Attachment B

SCHULZ GEIERMANN & BERGESON

LAW OFFICES P.C.

October 27, 2008

Rita J. Raffety
Good Samaritan Society
PO Box 837
Larimore ND 58261-0837

RE: UAP Registry

Dear Ms. Raffety:

I am the special assistant attorney general who represents the North Dakota Board of Nursing. In that capacity, I am writing in response to your September 3, 2008 letter to the North Dakota Board of Nursing ("Board"). In your correspondence, you express your concern about the Board's discipline of individuals who are practicing as unlicensed assistive persons but who are not registered as unlicensed assistive persons.

The Board must comply with the Nurse Practices Act (N.D.C.C. Chapter 43-12.1) and the North Dakota Administrative Code (N.D.A.C. Title 54) when regulating the practice of nursing. Under both of those authorities, an individual who is employed to carry out delegated nursing interventions as an unlicensed assistive person must be registered as an unlicensed assistive person. N.D.C.C. § 43-12.1-03; N.D.A.C. § 54-07-02-02.1(1). In order to obtain registration as an unlicensed assistive person, whether as part of an initial registration, a registration renewal or a registration reactivation, the individual must submit a verification of competency. N.D.A.C. §§ 54-07-02-01(1), 54-07-02-01.1(1) and 54-07-02-02.2(3). If the individual has never held registry status, the individual has four months from the date of initial employment to achieve registry status. N.D.A.C. § 54-07-02-02.1(3). For an individual who has previously held registry status, the North Dakota Administrative Code provides that a registration must be issued before the individual may work as an unlicensed assistive person. N.D.A.C. § 54-07-02-02.2(3). If an individual practices as an unlicensed assistive person without obtaining registration as set forth above, the Board will take action against the individual. N.D.A.C. § 54-02-07-09.

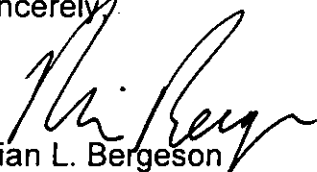
I do understand the concern you have expressed as an employer of unlicensed assistive persons, many of whom you claim may not be aware of their duty to register as unlicensed assistive person. You have suggested that the employer, rather than the unlicensed assistive person, should be responsible for the registration process. While I do understand your concern, the North Dakota Administrative Code does require that

the individual (and not the employer) is responsible for submitting his or her application for registration. If the application is not submitted, and the individual practices as an unlicensed assistive person without registration, the Board must deal with the individual directly, as it has no jurisdiction over the nursing employer or facility. Although this may result in discipline against the unlicensed assistive person, the discipline is typically minimal and may be expunged from the individual's record after five years.

As stated above, the Board must follow the rules provided in the North Dakota Administrative Code. It is for this reason that Maxine Barry, the unlicensed assistive person identified in your letter, was disciplined for practicing as an unlicensed assistive person without being registered. Notwithstanding, this matter will be addressed with the Board at its next meeting so that it can consider the issues you have raised.

I appreciate your concern with regard to this matter and thank you for bringing the issues to the Board's attention.

Sincerely,



Brian L. Bergeson
Special Assistant Attorney General
North Dakota Board of Nursing

cc: Dr. Constance B. Kalanek, Ph.D., R.N.,

**UNLICENSED ASSISTIVE PERSON AND
CERTIFIED NURSE AIDE
IN NORTH DAKOTA COMPARISON:**

Attachment C

*Same handbook
given to people.*

	Unlicensed Assistive Person	North Dakota Certified Nurse Aide
REGULATORY AUTHORITY	<ul style="list-style-type: none"> • North Dakota Board of Nursing • ND Administrative Code, Article 54-07 Unlicensed Assistive Person • Individuals may be placed on the Board of Nursing registry either through competency evaluation by an employer or licensed nurse or through a national nurse aide competency evaluation testing program. <ul style="list-style-type: none"> -Application processed by North Dakota Board of Nursing for a fee of thirty dollars. -Renew every two years. • North Dakota Board of Nursing recognizes the Health Department Certified Nurse Aide Registry. NDAC 54-07-01-03. 	<ul style="list-style-type: none"> • The North Dakota Division of Health Facilities is designated by the Centers for Medicare & Medicaid Services (CMS) for registration of CNAs. • Federal certification requirements for CNAs can be found in the Social Security Act at 1819(e)(2)(A) and at 1919 (e)(2)(A). • North Dakota Administrative Code, Chapter 33-07-06 • Individuals may be placed on the Health Department registry after successfully completing a state approved competency evaluation program. • The federal regulations prohibit charging fees to the individual for placement of their name on the Health Department registry. • The Health Department registry is recognized by the Board of Nursing as specified in NDAC 54-07-01-03. <ul style="list-style-type: none"> -Renew every two years.
DEFINITION	<ul style="list-style-type: none"> • Unlicensed assistive person means an assistant to the nurse who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a nurse. 	<ul style="list-style-type: none"> • Certified nurse aide means any individual who has successfully completed the requirements for the Health Department approved nurse aide training and competency evaluation program, or department-approved competency evaluation program and is entered on the department's nurse aide registry.
SCOPE OF WORK	<ul style="list-style-type: none"> • A licensed nurse may delegate a nursing intervention to a competent unlicensed assistive person if the licensed nurse utilizes a decision-making process to delegate in a manner that protects public health, welfare, and safety. • Retain accountability for the action of self. • Not transfer the authority of a delegated nursing intervention to another unlicensed assistive person. 	<ul style="list-style-type: none"> • The scope of work for a CNA includes infection control, safety and emergency procedures, promoting resident or patient independence, respecting resident rights, basic nursing skills, personal care skills, mental health and social service needs, care of the cognitively impaired resident or patient, basic restorative services, resident or patient rights, and communication and interpersonal skills.

DELEGATION	<ul style="list-style-type: none"> • NDAC Chapter 54-05-04 Standards for Delegation. • Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. Unlicensed assistive persons are generally responsible to the licensed nurse to assist with client care but may be responsible to an individual directing his or her own care or to the legally responsible person directing an individual's care for services provided to that individual. 	<ul style="list-style-type: none"> • Refer to specific healthcare facility rules for nursing services.
EMPLOYMENT	<ul style="list-style-type: none"> • Hospitals, Home Health • Assisted Living/Basic Care Facilities • Developmental Disabilities Facilities • Consumer Directed 	<ul style="list-style-type: none"> • Medicare/Medicaid Nursing Facilities • Other healthcare facilities • Employment requirements to include at least eight hours of CNA duties in a 24 month period to maintain CNA certification (renewal process).
TRAINING PROGRAMS	<ul style="list-style-type: none"> • Supply a verification of competence assessment from employer/licensed nurse. 	<ul style="list-style-type: none"> • 57 approved training programs. • Onsite review of each training program every two years
COMPLAINT PROCESS	<ul style="list-style-type: none"> • The ND Board of Nursing is required to investigate every complaint it receives. If the NDBON takes action against a UAP registration, that action is noted on the registry and is public record. 	<ul style="list-style-type: none"> • According to federal regulations, when a CNA has had a substantiated finding of abuse, neglect, misappropriation of property or a criminal conviction, the CNA may not work in any nursing facility anywhere in the United States. A finding of abuse, neglect or misappropriation determined by the ND Department of Health, is noted on the registry.
STATISTICS	<ul style="list-style-type: none"> • 4400 active UAPs on NDBON registry Medication Assistant - 2100 Technician - 245 	12,500 active on Health Department registry
VERIFICATION SYSTEM	<ul style="list-style-type: none"> • Facilities/employers can verify registry status for UAPs located at www.ndbon.org. The verification registration information generated from this system is considered primary source verification by the North Dakota Board of Nursing. 	<ul style="list-style-type: none"> • Division of Health Facilities has an online CNA Registry system where inquiry or verification, name and address changes, and CNA renewals can be completed. Point your browser to http://www.ndhealth.gov/HF/
CONTACT INFORMATION	North Dakota Board of Nursing 919 South 7 th Street, Suite 504 Bismarck, North Dakota 58504 Phone 701-328-9788	Division of Health Facilities 600 East Boulevard Avenue Dept 301 Bismarck North Dakota 58505-0200 Phone 701-328-2353

Reviewed 4/05; 11/06; 09/08



NORTH DAKOTA BOARD OF NURSING

919 S 7th St., Suite 504, Bismarck, ND 58504-5881

Telephone: (701) 328-9777 Fax: (701) 328-9785

Web Site Address: <http://www.ndbon.org>

Workplace Impairment Program: (701) 328-9783

Thank you for the opportunity to provide you with information related to HB 1269 relating to discipline of an unlicensed assistive person practicing without a registration. For the record, my name is Dr. Constance Kalanek, Executive Director of the NDBON. The Board has not taken a position on the proposed revision to the NPA. The Board will be meeting on Thursday and Friday of this week and will have discussion on this bill at that time.

The staff and I have put together a timeline of the actions by the Board over the past several years in an effort to provide you with as much information as you will need to make this policy decision.

I have been with the NDBON for over ten years and the nurse aide/UAP registry has been a challenge, to say the least, with initial and renewal applicants. It is obvious there have been challenges from its inception.

As I am sure you are aware, the initial applicants for the registry have four months after starting employment to apply for registry status. (Similar to the Certified Nurse Aide (CNA) Registry at the Health Department). So it's not that they are hired one day, start the next and must be on the registry immediately. The employers have the four months to assess their competency and then get them registry status. The applicants tell us that what happens in some cases, is they are given a stack of papers to sign on employment and do not even know they are going on a registry. Keep in mind, they are grass root workers, some high school students, some older workers, part-time after retirement—so they sign the application and receive the renewal card. So when they get the renewal reminder – it get's ignored or perhaps they change their address and never receive it.

So whose responsibility is it to check the registry status of these people? Of course, we can't deny the registrant has the responsibility, but the employer also has the responsibility and accountability.

Employers came to us in 2004, asking for a one time renewal for the UAP registrants. So the Board selected a June 30th renewal date, so half of the UAPs renew each June 30th. We phased this process in over an approximately three year time frame. We have received many positive comments with this change.

So that was implemented along with verification on the website. Employers, DONs, registrants can go onto the website 24/7 and verify status. No fee, no nothing, just the identifiers which all employers have access to, can take a look and run a copy of the verification page. It should not be that difficult for employer to go on line on July 1 and check their employees.

We have continued to educate employers and registrants, and licensees of this capability. Almost every edition of the Dakota Nurse Connection has information on verification of status on the website. Every presentation done by the NDBON staff concludes with information on online systems which includes verification.

In 2004 the Board placed the Health Department Medication Aides on the UAP registry as a courtesy. What we were finding is the CNAs on the HD Registry who also had Medication Assistant Registration, was failing to renew their CNA registry status when they renewed the MA registry thinking that is all they needed to do. So if they lapsed on the Health Department CNA Registry, they were still active on the NDBON registry and thus did not violate the NPA.

The next change we made was the rule change which gave the registrants and licensees a one month window after their renewal was due. So if July 15 rolled around and that employer was verifying status that registrant would not get disciplinary action.

In talking with employers, some acknowledge poor in house practices, others do not. Some just don't check- plain and simple. Certainly some can fall between the cracks. One of the issues is the high turnover in the leadership or HR positions in facilities. Seems the orientation does not include the verification process. We have had many a HR type person tells us they did not know the law or the rules about this process when they began this job.

There are consequences for the employer, if this is discovered during a survey by the health department. It can also jeopardize accreditation of institutions. Also some employers will pay the disciplinary fee- others will not!

Is this proposed revision to the NPA a good one? I don't know- what I do know is it will make the enforcement process and the job of the staff at the NDBON much easier. But are we meeting the mission of public protection? Maybe, maybe not! Do I feel sorry for the registrant, whether they are young or older, for practicing without registration? I do, but no more than for my staff who must endure the outbursts that happens so frequently by these registrants.

Also keep in mind that the fee for practicing with a registration is a deterrent. It is not meant to be revenue producing. The fee is \$100/month. The maximum fee is \$750. This past year we

had 22 UAPs that practiced without a current registration. Two practiced almost four years without a current registration.

TOTAL NUMBER OF UNLICENSED ASSISTIVE PERSON STATISTICS PER FISCAL YEAR*

(June 20, 2008)

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Total	3449	3530	3170	3479	4504

The proposed legislation was reviewed by SAAG Brian Bergeson. He had the following suggestion:

UAPs who assist in the practice of nursing without a current registration are violating 43-12.1-03, which in turn invokes discipline under 43-12.1-14, subdivision 1(i). If the new language is added, 43-12.1-14, subdivision 1(g), should be amended to include UAPs who practice without a registration.

Other questions we have regarding this proposed legislation include the following:

- Should nurses be given the same warning for a first violation?
- Section 2 refers to the disciplinary action of a warning, but a warning isn't disciplinary action. So, if a UAP practices for a year without a current registration that would result in only a warning? What about subsequent violations?
- What about the terms "knowingly or intentionally"? How could it be proven that a person practiced intentionally without a registration? This is also referred to in NDCC 43-12.1-15(4) and could be a class B misdemeanor.
- Should there be a time limit on the warning, such as less than some period of time, 6 months? They could go for years without being on the registry.

Thank you for your time and attention. I am open for questions.



NORTH DAKOTA BOARD OF NURSING

919 S 7th St., Suite 504, Bismarck, ND 58504-5881

Telephone: (701) 328-9777 Fax: (701) 328-9785

Web Site Address: <http://www.ndbon.org>

Workplace Impairment Program: (701) 328-9783

To: House Human Services Committee
Robin Weisz, Chairman

From: ND Board of Nursing
Constance Kalanek PhD, RN, FRE 

Date: January 23, 2009

Re: HB 1269 relating to discipline of an unlicensed assistive person practicing without registration.

To assist you and the Committee regarding HB 1269, as requested I am sending to you the Board's considered response regarding the UAP issues in this Bill.

The NDBON met on January 22, 2009 and made the following motion:

Motion made by JoAnne Sund and seconded by Julie Traynor that the Board oppose HB 1269 discipline of an unlicensed assistive person. The motion passed.

Roll call vote: Anderson, absent; Benson, yes; Case, yes; Christianson, yes; Frank, yes; Rustvang, yes; Sund, yes; Tello-Pool, yes; Traynor, yes;
8 yes, 0 no, 1 absent. Motion carried.

Further, in response to HB 1269 and to assist the UAP registrants, the facilities employing them and the ND Department of Health that licenses such facilities, the Board approved the following policy of the North Dakota Board of Nursing:

- That the Board, through its staff, to query its database annually by July 15 for unlicensed assistive persons (UAPs) who were eligible to renew and do not have a current registration. The list of unlicensed assistive persons shall be forwarded to the ND Department of Health to utilize during facility surveys with the request that the Department notify all facilities employing UAPs of the unregistered UAPs in their employment.
- That a list of non-renewed UAPs will also be posted on the website of the NDBON for the benefit of the facilities, the registrants and the public.
- That renewal notices will continue to be sent to UAPs prior to the June 30 renewal date to further assist them in updating their registrations.
- That the Board approved a public and professional presentation entitled "Unlicensed Assistive Persons Issues" for one contact hour to be offered upon request by health care organizations within the state.

The Board and I remain available to provide further detail to assist you and the committee in this deliberation. We have helpful background information for you if you require it. Simply call me for further information (701-328-9781).

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#1

Testimony on HB 1269
Senate Human Services Committee
March 16, 2009

Good Morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent assisted living facilities, basic care facilities and nursing facilities in North Dakota. I am here this morning on behalf of our members and ask for your support of HB 1269. HB 1269, changes the penalty regarding a nurse assistant who is working without a current registration, issued by the North Dakota Board of Nursing (BON). First, let me assure you we are not advocating for individuals to violate this registration process. We are advocating for a change in the penalty because it appears harsh.

Currently North Dakota has two registries for persons delegated to do nursing tasks (CNAs, NAs or UAPs), one through the BON and the other registry through the North Dakota Department of Health. The vast majority of individuals register through the Health Department. Currently their registry has over 12,000 individuals as CNAs. The majority of individuals use the Health Department registry because the federal government requires that it be free for the individual applicant. The Health Department receives federal funds to maintain and administer the registry. The BON also has a registry for anyone working under the delegation of a nurse. If you are not on the Health Department registry you must apply to the BON registry. Unfortunately individuals have not understood the BON registry process and confusion exists. Last year we provided over 100 hours of continuing education to our members and this is one of many topics addressed at regional meetings. We are committed to educating facilities on the various laws and rules impacting their profession. Last fall, the Administrator of Good Samaritan Society—Larimore brought to our attention a concern regarding a person in their employment who did not complete the BON registration process. She is here today to explain what happened, so I won't go into the specifics of that situation. However, I want to share with you, as we explored the extent of individuals being unaware of the registration process, the fines and reprimand process, we felt the system needed improvement.

After reviewing the registry process and the penalty for non-compliance, we believe the "punishment doesn't fit the crime." In December we asked the BON to lessen the fines and five year reprimanded for the first violation. Use it as a teaching opportunity, rather than a big hammer. Our suggestion to the BON did not result in a change so HB 1269 is before you today.

When a person is hired as a nurse assistant they have four months to get on either the Health Department or BON registry. The main reasons they do not register with the BON is because they are unaware of the requirements. Confusion exists because: 1) North Dakota has two registries (most states have one) and; 2) the term UAP is a term we do not use in long term care. We use CNA, caregiver, nurse assistant and universal worker.

Attached is a sample letter a person receives when it has been determined they have violated the nurse practice act, by not completing the proper registration process.

Let's review the letter. Doesn't the penalty seem harsh? HB 1269 proposes to make the first violation a warning. This allows the applicant an opportunity to comply and not have a disciplinary action on their record for five years.

Last week I became aware of an amendment from the BON. The BON indicated they would not oppose HB 1269 if we would accept their amendment. We have reviewed the amendment with the primary bill sponsor and we both concur the amendment does not interfere with our goals. After the BON presents their amendment, I would like to address one area for clarification purposes.

At this time, I would like to introduce Rita Raffety of the Good Samaritan Society—Larimore. Rita will bring a face to how this rule has been impacting the lives of some individuals impacted by the registration process.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street • Bismarck, ND 58501
(701) 222-0660 • www.ndltca.org • E-mail: shelly@ndltca.org

**2008 Administrative Settlement for Practice Without A Registration
UAP/Medication Assistant**

Date	Name	Facility	City	Months of Practice	Fee*
Long Term Care Facilities					
Mar 2008	T Dockter	Good Sam Society	Fargo ND	2	\$200
Nov 2008	G Moen	Valley Memorial Woodside Village	Grand Forks ND	4	\$400
Sep 2008	M Barry	Good Sam Society	Larimore ND	2	\$200
Basic Care Facilities**					
Jul 2008	U Dixon	Mapleview	Bismarck ND	2	\$200
Mar 2008	A Kruger	Evergreen	Dickinson ND	1	\$100
May 2008	S Swartz	Manor St Joseph	Edgeley	4	\$400
Nov 2008	B Esslinger	Dakota Hill Housing	Elgin ND	5	\$500
Jul 2008	C Anderson	Evergreen	Ellendale ND	5	\$500
Jul 2008	S Peterson	Evergreen	Ellendale ND	2	\$200
Jul 2008	T Otto	Bethel 4 Acres	Jamestown ND	45	\$750
Jul 2008	J Perleberg	Bethel 4 Acres	Jamestown ND	44	\$750
Sep 2008	D Reck	Borg Pioneer Home	Mountain ND	1	\$100
Psychiatric					
Mar 2008	K Krogstad	Prairie St Johns	Fargo ND	4	\$400
Sep 2008	J Anderson	Prairie St Johns	Fargo ND	4	\$400
Nov 2008	E Anderson	Prairie St Johns	Fargo ND	1	\$100
Nov 2008	M Green	Prairie St Johns	Fargo ND	2	\$200
Hospital					
May 2008	S Hochhalter	Medcenter One	Bismarck ND	5	\$500
Nov 2008	S Gross	St Alexius Med Ctr	Bismarck ND	1	\$100
Jul 2008	H Glinz	St Andrews Healthcare	Bottineau ND	3	\$300
Jul 2008	L Pedie	St Andrews Healthcare	Bottineau ND	3	\$300
Sep 2008	M Loibl	Innovis Health	Fargo ND	1	\$100
Developmental Center					
Nov 2008	E Mullens	Anne Carlsen Ctr	Jamestown ND	1	\$100
Total					\$6800

*Fee is \$100 per month of practice without a current registration

**Identified as Basic Care Facilities according to DOH website information

Medication Assistant I
Medication Assistant II

**Testimony on HB 1269
Senate Human Services Committee
March 16, 2009**

Good Morning Chairman Lee and members of the Senate Human Service Committee. I am Rita Raffety, Administrator at Good Samaritan Society Larimore. Our facility is a skilled nursing facility with an attached assisted living and a home care agency.

Just one year ago, in March of 2008, we opened our new assisted living facility. In preparation for the opening of the new building, we taught a BON approved medication assistant class, tested the students and gave each one a certificate of completion. Being new to the process, I did not know that medication assistants had to be licensed by the BON. When our building opened, we had our medication assistants administer medications, under the supervision of an RN, but they were not licensed by the BON. They were qualified and our tenants were never put at risk.

Maxine was hired to be a Universal Worker. She was 67 years old. Her schedule was to work three, three-hour shifts a week for a total of 9 hours weekly at a wage of \$9.30 an hour. As a universal worker her duties are to clean an apartment, set tables for supper, serve the meal, clean up and administer medications. We did not register her as a UAP upon hire, as we should have. By the time we realized the error, more than 4 months had passed. As soon as the mistake was discovered, the proper paperwork was filed. We did take Maxine off the medication pass, until the issue was resolved. The BON fined Maxine \$200 and gave her a sanction for "practicing without a license", which will be on her record for five years.

Maxine was devastated and when I asked her to sign the administrative settlement, she wanted to quit. She was unable to come today, but this is what she asked me to tell you. "I only did what my employer asked of me. I did what I was told to do. At my age I won't be out looking for another job, but if I was a younger person I may be and then this would be on my record. If I was younger I would have looked for a job in another industry where this wouldn't matter. I love my job. I love my tenants and they love me and that is the only reason I stayed." Maxine is an exemplary employee, a diligent worker who does not deserve to have this on her record.

I did ask the BON to remove the five year sanction on Maxine's record as I felt it was excessive punishment. The facility paid her fine. She truly was only doing what we directed her to. You have a copy of my letter to the BON, and their response.

We hire people to be universal workers, dining assistants, or medication assistants. They are required to be licensed as a UAP. Once initial registration paperwork is filed, an employee may never hear the term UAP again. I personally have been a nursing home administrator in North Dakota for over six years and until this issue came to light, I had no idea what a UAP was. We had 7 other individuals take the medication administration class when Maxine did. They also gave medications before we discovered the error of not registering with the BON, but since they were already on the registry as CNA's they did not receive the disciplinary action. The two tiered system we have now is unfair.

UAPs are entry level positions. The current system makes them personally accountable for knowing that they need to register. Not registering is one reason that UAPs have been disciplined. The second reason is that facilities have hired individuals that were previously registered as a UAP but they either did not disclose that information, or forgot that they were ever registered. If someone on the UAP registry quits and later starts another job they need to file a Renewal Application. Individuals have been disciplined with a fine and a 5 year sanction on their records because they filed an Initial Application when they should have filed a Renewal Application. Once again, the term UAP is not commonly used and one can easily understand how a new hire may not remember that a few years back they registered to become a UAP.

Shelly has outlined a much fairer and less confusing system. We struggle to staff our facilities and when people have to go through what Maxine and other individuals have, it only makes it more difficult. I am asking you to support HB 1269.



501 E Front St
PO Box 637
Larimore ND 58251-0637

Phone: 701-343-6244
Fax: 701-343-2153
www.good-sam.com

September 3, 2008

Dear North Dakota Board of Nursing Members:

Good Samaritan Society Larimore built 10 new assisted living apartments which opened on March 4, 2008. In preparation for our new tenants, we hired and trained Maxine [REDACTED] to be a universal worker in February.

As a facility, training medication assistants was new to us, and we did not realize that we had to register Maxine as an Unlicensed Assistive Person. Maxine went through the training to become a Medication Assistant I, she completed all of the course work and the clinicals. She was trained to be a universal worker, which includes housekeeping, setting up the supper meal and giving medications to one individual. As an employee, Maxine did everything we, as her employer, requested of her.

In general, most people know that to be a nurse or a doctor, you must have a license. There is no way that Maxine would have known that she should have registered as a UAP with the Board of Nursing. As a facility, we should have known, but since this was all new to us, we were not aware either. Good Samaritan Society Larimore is paying the \$200.00 penalty for Maxine as we feel that this is a reasonable remedy and it was our responsibility to get her registered.

I feel that having a disciplinary action on Maxine's name for five years is not a reasonable remedy and is too severe. Maxine was a competent Medication Assistant and there was never a time that our tenants' safety was at risk. Maxine did not willfully neglect to register and she only did what any competent and reliable employee would do, which was to do what her employer asked of her. I am asking that you either take the disciplinary action off or substantially reduce the time it will remain on her record.

If you have any further questions, please give me a call at 701-343-6244.

Sincerely,

Rita J. Raffety
Administrator



SCHULZ GEIERMANN & BERGESON

LAW OFFICES, P.C.

October 27, 2008

Rita J. Raffety
Good Samaritan Society
PO Box 837
Larimore ND 58261-0837

RE: UAP Registry

Dear Ms. Raffety:

I am the special assistant attorney general who represents the North Dakota Board of Nursing. In that capacity, I am writing in response to your September 3, 2008 letter to the North Dakota Board of Nursing ("Board"). In your correspondence, you express your concern about the Board's discipline of individuals who are practicing as unlicensed assistive persons but who are not registered as unlicensed assistive persons.

The Board must comply with the Nurse Practices Act (N.D.C.C. Chapter 43-12.1) and the North Dakota Administrative Code (N.D.A.C. Title 54) when regulating the practice of nursing. Under both of those authorities, an individual who is employed to carry out delegated nursing interventions as an unlicensed assistive person must be registered as an unlicensed assistive person. N.D.C.C. § 43-12.1-03; N.D.A.C. § 54-07-02-02.1(1). In order to obtain registration as an unlicensed assistive person, whether as part of an initial registration, a registration renewal or a registration reactivation, the individual must submit a verification of competency. N.D.A.C. §§ 54-07-02-01(1), 54-07-02-01.1(1) and 54-07-02-02.2(3). If the individual has never held registry status, the individual has four months from the date of initial employment to achieve registry status. N.D.A.C. § 54-07-02-02.1(3). For an individual who has previously held registry status, the North Dakota Administrative Code provides that a registration must be issued before the individual may work as an unlicensed assistive person. N.D.A.C. § 54-07-02-02.2(3). If an individual practices as an unlicensed assistive person without obtaining registration as set forth above, the Board will take action against the individual. N.D.A.C. § 54-02-07-09.

I do understand the concern you have expressed as an employer of unlicensed assistive persons, many of whom you claim may not be aware of their duty to register as unlicensed assistive person. You have suggested that the employer, rather than the unlicensed assistive person, should be responsible for the registration process. While I do understand your concern, the North Dakota Administrative Code does require that

the individual (and not the employer) is responsible for submitting his or her application for registration. If the application is not submitted, and the individual practices as an unlicensed assistive person without registration, the Board must deal with the individual directly, as it has no jurisdiction over the nursing employer or facility. Although this may result in discipline against the unlicensed assistive person, the discipline is typically minimal and may be expunged from the individual's record after five years.

As stated above, the Board must follow the rules provided in the North Dakota Administrative Code. It is for this reason that Maxine [REDACTED], the unlicensed assistive person identified in your letter, was disciplined for practicing as an unlicensed assistive person without being registered. Notwithstanding, this matter will be addressed with the Board at its next meeting so that it can consider the issues you have raised.

I appreciate your concern with regard to this matter and thank you for bringing the issues to the Board's attention.

Sincerely,


Brian L. Bergeson
Special Assistant Attorney General
North Dakota Board of Nursing

cc: Dr. Constance B. Kalanek, Ph.D., R.N.,

#3



NORTH DAKOTA BOARD OF NURSING

919 S 7th St., Suite 504, Bismarck, ND 58504-5881

Telephone: (701) 328-9777 Fax: (701) 328-9785

Web Site Address: <http://www.ndbon.org>

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Senate Human Services Committee
HB 1269 UAP Discipline

Senator Lee and Members of Senate Human Services Committee:

Thank you for the opportunity to provide you with information related to HB 1269 relating to discipline of an unlicensed assistive person practicing without a registration. For the record, my name is Dr. Constance Kalanek, Executive Director of the NDBON. The Board has taken a position of opposition to the proposed revision to the NPA, however, if the proposed amendments are adopted the Board will take a neutral position.

The Board opposed the legislation in its initial form in the House for several reasons which include the following:

1. It eliminates all responsibility to be on the registry for the Unlicensed Assistive Person (UAP).
2. The burden of proof identified as "willingly & knowingly" is inappropriate and burdensome use of Board resources for the investigation process.
3. There is conflict between the issuance of a "warning" as non-discipline and yet is placed under the disciplinary section in NDCC 43-12.1 Nurse Practices Act.

The staff and I have put together a timeline of the actions by the Board over the past several years in an effort to provide you with as much information as you will need to make this policy decision.

I have been with the NDBON for over ten years and the nurse aide/UAP registry has been a challenge, to say the least, with initial and renewal applicants. It is obvious there have been challenges from its inception.

As I am sure you have been made aware, the initial applicants for the registry have four months after starting employment to apply for registry status. (Similar to the Certified Nurse Aide (CNA) Registry at the Health Department). So it's not that they are hired one day, start the next and must be on the registry immediately. The employers have the four months to assess their competency and then get them registry status. The applicants tell us that what happens in

some cases, is they are given a stack of papers to sign on employment and do not even know they are going on a registry. Keep in mind, they are grass root workers, some high school students, some older workers, part-time after retirement—so they sign the application and receive the registration card. So when they get the renewal reminder – it get's ignored or perhaps they change their address, change employers or never receive it.

So whose responsibility is it to check the registry status of these people? Of course, we can't deny the registrant has the responsibility; the employer also has the responsibility and accountability, as well as the nurse delegating the nursing interventions.

Employers came to us in 2004, asking for a one time renewal for the UAP registrants. So the Board selected a June 30th renewal date, so half of the UAPs renew each June 30th. We phased this process in over an approximately three year time frame. We have received many positive comments with this change.

So that was implemented along with verification on the website. Employers, Director's of Nurses, registrants can go onto the website 24/7 and verify status. No fee, no nothing, just the identifiers which all employers have access to, can take a look and run a copy of the verification page. It should not be that difficult for an employer to go on line on July 1 and check their employees.

We have continued to educate employers and registrants, and licensees of this capability. The Board has used the Dakota Nurse Connection, the Board's newsletter, to provide information on verification of status on the website. Every presentation done by the NDBON staff concludes with information on online systems which includes verification.

In 2004 the Board placed the Health Department Medication Aides on the UAP registry as a courtesy. What we were finding is the CNAs on the HD Registry who also had Medication Assistant Registration, was failing to renew their CNA registry status when they renewed the MA registry thinking that is all they needed to do. So if they lapsed on the Health Department CNA Registry, they were still active on the NDBON registry and thus did not violate the NPA.

The next change the Board made was the rule change which gave the registrants and licensees a one month window after their renewal was due. So if July 15 rolled around and that employer was verifying status of their employees and found that individual who failed to renew, the registrant would not get disciplinary action.

In talking with employers, some acknowledge poor in house practices, others do not. Some just don't check- plain and simple. Certainly some can fall between the cracks. One of the issues is

the high turnover in the leadership or HR positions in facilities. Seems the orientation does not include the verification process. We have had many a HR type person tells us they did not know the law or the rules about this process when they began this job.

There are consequences for the employer, if this is discovered during a survey by the health department. It can also jeopardize accreditation of institutions.

Also some employers will pay the disciplinary fee- others will not!

Do I feel sorry for the registrant, whether they are young or older, for practicing without registration? I do, but no more than I would for myself if I got stopped for speeding and had to pay a fine (especially in Minnesota).

Also, would we be willing to make this exception if these workers were child care workers? Do we value the elderly in our society in the same way we value young people? Is it okay for LTC setting to have people employed who have not gone through the application process?

Also keep in mind that the fee for practicing without a registration is a deterrent. It is not meant to be revenue producing. The fee is \$100/month. The maximum fee is \$750. This past year we had 22 UAPs that practiced without a current registration. Two practiced almost four years without a current registration.

TOTAL NUMBER OF UNLICENSED ASSISTIVE PERSON STATISTICS PER FISCAL YEAR*

(June 20, 2008)

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Total	3449	3530	3170	3479	4504

Of the numbers above, I broke out the number that worked as a UAP in a LTC Settings, this does not include the Medication aides, surgical technicians, cardiac technicians, or dialysis technicians and I came up with only 108.

A question regarding this proposed legislation is the reference to in NDCC 43-12.1-15(4) and (6). 43-12.1-15. Violation - Penalties. It is a class B misdemeanor for a person to willfully:

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.

6. Employ a person to practice nursing or perform nursing interventions unless the person is licensed or registered by the board.

The proposed legislation was reviewed by SAAG Brian Bergeson. The Board is proposing following amendments. (See attached). Thank you for your time and attention. I am open for questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 7, remove "1."

Page 1, line 12, after "disorders;" overstrike "or"

Page 1, line 13, after "treatment" overstrike the comma, and insert immediately thereafter "; or issue a non-disciplinary letter of concern to a licensee, registrant, or applicant."

Page 1, line 14, remove the overstrike over "~~4.~~", and remove "a."

Page 1, line 18, remove the overstrike over "~~2.~~", and remove "b."

Page 1, line 22, remove the overstrike over "~~3.~~", and remove "c."

Page 2, line 1, remove the overstrike over "~~4.~~", and remove "d."

Page 2, line 4, remove the overstrike over "~~5.~~", and remove "e."

Page 2, line 6, remove the overstrike over "~~6.~~", and remove "f."

Page 2, line 8, remove the overstrike over "~~7.~~", and remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"

Page 2, line 10, remove the overstrike over "~~8.~~", and remove "h."

Page 2, line 12, remove the overstrike over "~~9.~~" and remove "i."

Page 2, after line 14, insert:

"Section 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person – Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern. The board may issue a reprimand and impose a fee against the licensed nurse administrator responsible for verifying the registration of the unlicensed assistive person."

Page 2, remove lines 15 – 18

Renumber accordingly

Testimony on HB 1269
March 16, 2009
Wanda Rose PhD, RN, BC
North Dakota Nurses Association

Chair Senator Lee and Members of Senate Human Services Committee

Good morning. I am Dr. Wanda Rose, President of the North Dakota Nurses Association. I appreciate the opportunity to provide testimony on HB 1269.

The North Dakota Nurses Association opposes HB 1269 that amends the ND Nurses Practices Act related to discipline of an unlicensed assistive person practicing without registration.

The issue of patient safety is a paramount concern for all nurses. Today families and patients are educated consumers who are demanding the best care available. With the employment of unlicensed assistive persons (UAPs) on the rise, it is on the shoulders of registered nurses to ensure patient safety from the care delivered by the UAP.

The risk of harm is decreased through legislation which regulates the conduct and performance of those providing the care - including unlicensed assistive persons.

Since 1992 the North Dakota Board of Nursing has had a registry for unlicensed assistive persons who provide nursing care under the direction and supervision of licensed nurse. The registry serves as a framework for hiring policies related to the employment and utilization of unlicensed assistive persons. Unlicensed assistive persons regardless of title who functions under the direction of the licensed nurse and are employed in a hospital, assisted living, basic care, developmental disabilities facilities or consumer directed care are required to be on the NDBON registry.

The nurse who assesses the patient's needs and plans nursing care determines the tasks to be delegated and is accountable for that delegation. However, it is important for the nurse to know that the person being delegated to is qualified for the position. It is inappropriate for employers or others to require nurses to delegate to an unlicensed assistive person when they do not know if that person who applies for a UAP position is qualified or not for the position. It is the employer's responsibility to check employment references, (if they're available),

assess skill proficiency, and inform the applicant of the requirement to become registered on the NDBON registry.

An applicant who is hired to perform nursing interventions delegated by a licensed nurse but has never been on a registry have four months from the date of initial employment to achieve registry status which includes a criminal history record check. Residents and patients can be placed in harm's way without the criminal background check. For UAP's already on the registry it is easy for hospitals, nursing homes, home health agencies, assisted living, and basic care institutions to confirm if the potential employee is qualified by checking the NDBON database.

Prior to employment it is imperative that employers review the registry to determine if an applicant is registered and does not have any disciplinary action taken against them and to follow up on ensuring the UAP becomes registered on the NDBOD. Failing to do so may be considered negligent hiring.

It is common practice for employers to assess and ensure that the employees they intend on hiring are licensed and or credentialed. I have always been asked for a copy of my nursing license and after employment have been requested to provide a copy of my license upon renewal. Hospitals also make sure physicians have the appropriate credentials prior to employment. Nursing home administrators are required to be licensed yearly and if they do not renew their license on an annual basis they are subject to paying a late renewal fee in the amount of twenty five dollars per month for each month following December thirty-first. If the requirements for renewal are not met within six months of expiration, the license is not renewed. The Board, after notice can discipline the licensee for practicing without a license. Occupational therapy assistants who are supervised by an Occupational therapist at the time of renewal are considered delinquent and a late charge is assessed if the renewal application, renewal licensure fee, are not submitted and postmarked on or before June first of the renewal year.

Protection of the public can only be achieved if persons involved in the delivery of health care services are regulated. The *nursing* profession has always supported regulation to reduce the risk of harm. The North Dakota Nurses Association opposes HB 1269 that allows a UAP to practice without proper registration.

Thank You

5

NDLA, S HMS

From: Lee, Judy E.
Sent: Tuesday, March 17, 2009 3:09 PM
To: NDLA, S HMS
Subject: FW: HB 1269 BON

Mary –
Please make copies of this for all of us.

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

From: Shelly [mailto:Shelly@ndltca.org]
Sent: Monday, March 16, 2009 9:43 PM
To: Lee, Judy E.
Subject: HB 1269 BON

Hello Senator Lee,
Thank you for your openness on HB 1269 regarding the fee and reprimand on UAPs. We tried getting this changed with the BON but they were not open to our concerns. We have also tried to work with them regarding our concerns regarding having two registries for long term care. With the Health Department having 12,000 individual on their registry and free for the CNA, it would be difficult to transition everyone to the BON registry (especially given the cost to the individual). If you commend a study of the two registries would you be open to language that states something like, Conduct a study to see what steps would need to occur to have the Health Department administer the registry for certified nurse assistants and nurse assistants. Thanks for considering this language. I will have my computer with me on my trip and will check my email periodically. Have a good week and we'll see you next week. Shelly

6

NDLA, S HMS

From: Lee, Judy E.
Sent: Saturday, March 14, 2009 5:37 PM
To: NDLA, S HMS
Subject: FW: HB 1269 (UAP registration)
Attachments: Prop_Amend_House_Bill_1269_6.doc

Mary –

Please make copies of the message and the attached amendment for each of us.

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

From: crolfson@comcast.net [mailto:crolfson@comcast.net]
Sent: Friday, March 13, 2009 3:37 PM
To: Lee, Judy E.
Cc: Kalanek, Constance B.
Subject: Re: HB 1269 (UAP registration)

Sen. Lee: I hit the send button BEFORE I engaged the attachment in the email I just sent to you.
Sorry. Here is the attached amendment. Cal

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

From: crolfson@comcast.net
To: jlee@nd.gov
Cc: ckalanek@ndbon.org, crolfson@comcast.net
Sent: Friday, March 13, 2009 3:34:26 PM GMT -06:00 US/Canada Central
Subject: HB 1269 (UAP registration)

Sen. Lee:

Just as a head's up and for your advance knowledge, I am attaching a proposed amendment to HB 1269 that the Board of Nursing will be proposing at this coming Monday's hearing at 11am (3/16).

Previously on the House side, the Board opposed HB 1269 because, as drafted, it emasculated the Board's authority to monitor and properly regulate unlicensed assistive persons (UAPs) doing delegated nursing duties in nursing homes. Some nursing administrators or their delegates had allowed UAPs to practice in their facilities for years without required registration. The Board's rules provide for some monetary sanctions up to the \$700 range for some of the egregious violators. The LTC Assoc. objected to the harshness of the Board's sanctions, which were nevertheless within the stated rules. As a result, they had Rep. Kreidt, et al. sponsor this Bill. The Board agreed at the House hearing to take a look at collaborating with the LTC and draft some suggested amendments that would come to a middle ground. They are attached.

The Board has agree to the attached amendments that will move the Board from objecting to the Bill, to a neutral position. I have met with Rep. Kreidt and Shelly Peterson and they support these attached amendments as well. I wanted to give you an advanced look at these, as Chair of the Committee.

I will be in attendance at the hearing on Monday and Dr. Kalanek will present the Board's position and the amendments. As always, track me down if you have any questions I might help answer. Have a great weekend. Cal Rolfson

NDLA, S HMS

7

From: Lee, Judy E.
Sent: Tuesday, March 24, 2009 8:17 AM
To: NDLA, S HMS
Subject: FW: UAP's and HB1269

Mary –

Please make a copy of this for everyone for Tuesday.

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

From: Buzz Benson [mailto:bbenson42@bis.midco.net]
Sent: Monday, March 23, 2009 8:17 AM
To: Lee, Judy E.
Subject: UAP's and HB1269

Senator Lee,

I hope this finds you warm and dry this morning.

I wanted to take a moment of your time and assure you the North Dakota Board of Nursing is concerned about UAP registration and the discipline that goes with it.

HB1269 with the amendments supported by Representative Kreidt and Shelly Peterson with Long Term Care, will give the board what it needs to better deal with issues of failure to register, especially those registering for the first time.

The Board at it's March meeting this past week took disciplinary action on several UAP's. One of whom, working at a Fargo Hospital was not aware she was to register. The Hospital agreed to pay one half of the \$200.00 fine and accepted 50% blame. It was difficult for the Board to take this action and make an exception to the current regulation. HB1269, is needed to help those first time offenders, and give the Board a better way to deal with the situation. We are looking forward to HB1269 going to the Governor's desk

Please be aware Nursing Board, State Health Department and Long Term Care, are meeting and discussing issues relating to the two registries we have in N.D. Under the leadership of Terry Dwelle, M.D., I am confident we will come up with a plan that will work and make the process easier for all.

Thank you for your dedication to the citizens of North Dakota. Please call or e-mail with any questions or concerns at any time. I look forward to a second four years on the North Dakota Board of Nursing.

Regards
Buzz Benson, R.N. Board Member

NDLA, S HMS

From: Lee, Judy E.
Sent: Monday, March 09, 2009 10:04 PM
Subject: NDLA, S HMS
FW: HB1269

Mary -
Please make copies of this for everyone on 1269.

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

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

From: Achter, Janna [mailto:JannaAchter@catholichealth.net]
Sent: Monday, March 09, 2009 8:24 PM
To: Lee, Judy E.
Subject: HB1269

Judy: hope your legislature sessions are going well. I suppose you are kept very busy. I am writing regarding HB 1269. I support removal of the fine and 5 year sanction on the first violation for not registering as a UAP. Working as a nurse in North Dakota, I was not aware of the requirement to register an unlicensed person with the Board of Nursing but heard about it at a meeting a few months back. I had just hired a new staff who was not a CNA, she had just moved to ND. She is in the process of application to a CNA class but has yet to get in, is on a waiting list. It is expensive for her to take the class as well as the cost of registry to the Board of Nursing since she is an unlicensed assistive person currently. In addition to the cost to the Board of Nursing she also has to be fingerprinted and there should be a cost to that too. Upon hire, we do check the persons criminal history, this just seems like double work with the Board of Nursing as well as the employer looking into their criminal history. I also have a staff member who is a retired nurse....did not keep her license but wanted to come back to work. I will have to register her also, not knowing that she is considered a UAP. Another comment I have is why two registries? We register UAP thru the Board of Nursing and CNA's thru the Health Department. I would think that one registry thru the Health Department would be sufficient; it gets kind of confusing. I hope you will consider my thoughts and am interested in knowing your position too. If you have any other questions, please let me know. Again hope all is going well. Janna

HB 1269

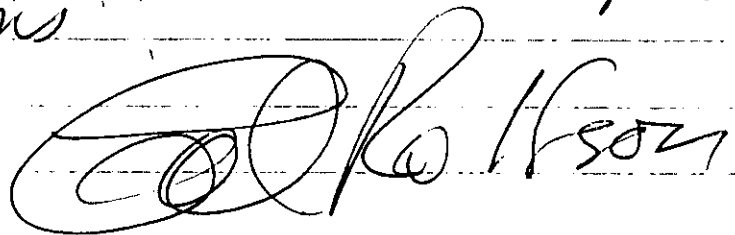
Sen. Lee -

As requested, I have visited w/ Dr. Kalenik & SAGE Bergeson about deleting that last underlined sentence ~~in~~ in the proposed amendment to HB 1269. That's the sentence that deals w/ nurse admrs. responsible for UAP registration.

Both are OK with deleting that sentence, as am I.

Condition (as we discussed): Please simply put a statement on the record that this sentence is basically redundant because the BON already does that and has the statutory responsibility to regulate delegated nursing practice anyway.

I'm behind the rail if you have questions



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

That the Senate recede from its amendments as printed on pages 1118 and 1119 of the House Journal and page 959 of the Senate Journal and that House Bill No. 1269 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to"

Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"

Page 1, line 7, remove "1."

Page 1, line 12, overstrike the third "or"

Page 1, line 13, after "treatment" insert "; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant"

Page 1, line 14, remove the overstrike over "4-" and remove "a."

Page 1, line 18, remove the overstrike over "2-" and remove "b."

Page 1, line 22, remove the overstrike over "3-" and remove "c."

Page 2, line 1, remove the overstrike over "4-" and remove "d."

Page 2, line 4, remove the overstrike over "5-" and remove "e."

Page 2, line 6, remove the overstrike over "6-" and remove "f."

Page 2, line 8, remove the overstrike over "7-", remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"

Page 2, line 10, remove the overstrike over "8-" and remove "h."

Page 2, line 12, remove the overstrike over "9-" and remove "i."

Page 2, replace lines 15 through 18 with:

"SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person - Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2009-10 interim, the legislative council shall study any steps necessary to enable a state agency to administer the registry for certified nurse assistants and unlicensed assistive persons,

and examine the possibility of one registry and a potential location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

3/24/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 2, after "registration" insert "; and to provide for a legislative council study"

Page 1, line 7, remove "1."

Page 1, line 12, after "disorders;" overstrike "or"

Page 1, line 13, after "treatment" overstrike the comma, and insert immediately thereafter "; or issue a non-disciplinary letter of concern to a license, registrant, or applicant."

Page 1, line 14, remove the overstrike over "1.", and remove "a."

Page 1, line 18, remove the overstrike over "2.", and remove "b."

Page 1, line 22, remove the overstrike over "3.", and remove "c."

Page 2, line 1, remove the overstrike over "4.", and remove "d."

Page 2, line 4, remove the overstrike over "5.", and remove "e."

Page 2, line 6, remove the overstrike over "6.", and remove "f."

Page 2, line 8, remove the overstrike over "7.", and remove "g.", after "nursing" insert "or assisted in the practice of nursing", and after "license" insert "or registration"

Page 2, line 10, remove the overstrike over "8.", and remove "h."

Page 2, line 12, remove the overstrike over "9.", and remove "i."

Page 2, replace lines 15 through 18 with:

"SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person – Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

"SECTION 3. LEGISLATIVE COUNCIL STUDY- The Legislative Council shall study, during the 2009-10 interim, any steps which are necessary to enable the Health Department to administer the registry for certified nurse assistants and nurse assistants, and to examine the possibility of one registry and a potential location for that registry. The legislative council shall report its findings and recommendations,

together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly."

Renumber accordingly