

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2403

Introduced by

Senators Dever, J. Lee, Triplett

Representatives Keiser, Schneider, Weisz

1 A BILL for an Act to create and enact a new section to chapter 23-34 of the North Dakota
2 Century Code, relating to the admissibility of peer review reports; and to amend and reenact
3 sections 23-34-01, 23-34-02, 23-34-03, 23-34-04, and 23-34-06 of the North Dakota Century
4 Code, relating to peer review records and reports.

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

6 **SECTION 1. AMENDMENT.** Section 23-34-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-34-01. Definitions.** As used in this chapter:

- 9 1. "Health care organization" means ~~any~~:
- 10 a. A hospital;
11 b. A hospital medical staff;
12 c. A clinic;
13 d. A long-term or extended care facility;
14 e. An ambulatory surgery center;
15 f. An emergency medical services unit;
16 g. A physician;
17 h. A group of physicians operating a clinic or outpatient care facility;
18 i. An association or organization, whether domestic or foreign, of medical
19 institutions or medical professionals;
20 j. A nonprofit corporation, whether domestic or foreign, that owns, operates, or
21 is established by any entity set forth in subdivisions a through i;
22 k. Any combination of ~~these~~ entities; set forth in subdivisions a through j; or
23 l. Any federally designated state peer review organization.

- 1 2. "Health care provider" means a physician or other person licensed, certified, or
2 otherwise authorized by the law of this state to provide health care services.
- 3 3. "Peer review ~~committee~~ organization" means ~~any~~:
4 a. A health care organization; or
5 b. A committee of a health care organization; which:
6 (1) Is composed of health care providers, employees, administrators,
7 consultants, agents, or members of the health care organization's
8 governing body, ~~which conducts; and~~
9 (2) Conducts professional peer review.
- 10 4. a. "Peer review records" ~~means all data~~ means:
11 (1) Data, information, reports, documents, findings, compilations and
12 summaries, testimony, and any other records generated by, acquired
13 by, or given to a peer review ~~committee~~ organization as a part of any
14 professional peer review, regardless of when the record ~~is~~ was created.
15 ~~The term does not include original patient source documents. Peer~~
16 ~~review records also include all communications; and~~
17 (2) Communications relating to a professional peer review, whether written
18 or oral, between ~~peer~~:
19 (a) Peer review ~~committee~~ organization members, ~~peer~~;
20 (b) Peer review ~~committee~~ organization members and the peer
21 review ~~committee's~~ organization's staff; ~~or peer~~
22 (c) Peer review ~~committee~~ organization members and other persons
23 participating in a professional peer review, including the person
24 who is the subject of the professional peer review.
- 25 b. The term does not include original patient source documents.
- 26 5. "Professional peer review" means all procedures a peer review ~~committee~~
27 organization uses or functions it performs to monitor, evaluate, and take action to
28 review the medical care provided to patients by health care organizations or health
29 care providers ~~to improve patient care and treatment or to provide~~ and includes
30 procedures or functions to:
31 a. Evaluate and improve the quality of health care;

- b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
- c. Develop and establish guidelines for medical care and the costs of medical care;
- d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;
- e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
- f. Provide quality assurance.

SECTION 2. AMENDMENT. Section 23-34-02 of the North Dakota Century Code is amended and reenacted as follows:

23-34-02. Peer review records - Confidentiality.

1. Peer review records are confidential and may be used by a peer review ~~committee~~ organization and the ~~committee~~ organization members only for conducting a professional peer review.
2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the department of health, the North Dakota healthcare association, and the North Dakota hospital foundation.
3. The department of health, the North Dakota healthcare association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.
4. This section does not prohibit access of the department of health to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under sections 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the department of health.

1 **SECTION 3.** A new section to chapter 23-34 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Peer review organization reports - Admissibility.** Any report, data, data compilation,
4 analyses, or summary that is generated by a peer review organization and made available to
5 the department of health or the public by the state department of health, the North Dakota
6 healthcare association, or the North Dakota hospital foundation, may not be introduced into
7 evidence, for any purpose, in any civil or administrative proceeding.

8 **SECTION 4. AMENDMENT.** Section 23-34-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23-34-03. Peer review records - Privileged - Exceptions.**

11 1. Peer review records are privileged and are not subject to subpoena or discovery or
12 introduction into evidence in any civil or administrative action, except:

13 ~~1-~~ a. Records gathered from an original source that is not a peer review ~~committee~~
14 organization;

15 ~~2-~~ b. Testimony from any person as to matters within that person's knowledge,
16 provided the information was not obtained by the person as a result of the
17 person's participation in a professional peer review; or

18 ~~3-~~ c. Peer review records subpoenaed in an investigation conducted by an
19 investigative panel of the board of medical examiners pursuant to chapter
20 43-17.1 or subpoenaed in a disciplinary action before the board of medical
21 examiners pursuant to section 43-17-30.1.

22 2. Any peer review records provided to an investigative panel of the board of medical
23 examiners or introduced as evidence in any disciplinary action before the board
24 are confidential and are not subject to subpoena, discovery, or admissibility into
25 evidence in any civil or administrative action, and are not public records subject to
26 section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

27 **SECTION 5. AMENDMENT.** Section 23-34-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **23-34-04. Peer review ~~committee~~ organization - Mandatory reports - Penalty.**

1. A peer review committee organization shall report to an investigative panel of the board of medical examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31.

2. A health care organization is guilty of a class B misdemeanor if its peer review committee organization fails to make any report required by this section.

SECTION 6. AMENDMENT. Section 23-34-06 of the North Dakota Century Code is amended and reenacted as follows:

23-34-06. Limitation of liability.

1. A person furnishing peer review records to a peer review ~~committee~~ organization with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.

2. A health care organization, health care provider, or member of a peer review ~~committee~~ organization is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the health care organization, health care provider, or ~~committee~~ member of the peer review organization acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the health care organization, health care provider, or ~~committee~~ member of the peer review organization.