

**Testimony before  
Administrative Rules Committee  
March 10, 2011**

Good morning Chairman Klein and members of the Administrative Rules Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here today to testify in opposition to a new definition added to the Nurse Practice Act. We are opposed to "Letter of Concern" outlined on page 225, number 28 in your packet.

I apologize in advance for raising this issue of concern, just as the Board of Nursing approaches this final step in the approval of new rules. We were unaware of the proposed rules until just this week. However, our concern is so great we felt it important that we approach you with our concern.

We have concerns regarding a new definition being added to the Nurse Practice Act and request that it be voided.

The proposed new definition is:

"Letter of concern" means a letter from the board or from the executive director or the executive director's authorized designee expressing concern that a licensee, registrant, or applicant may have been engaged in conduct that is unacceptable or considered low risk of harm to the public. A letter of concern is not disciplinary action and is not an appealable action."

What is disconcerting about this new definition is:

1. It is based upon an allegation, not proven facts. At the end of the third line it states, "...may have been engaged."
2. There is no definition of what conduct is unacceptable or considered low risk of harm to the public.
3. The letter of concern is not an appealable action.
4. It is in direct contradiction of legislation you passed in 2009.

What is ironic about this whole manner is, in the 2009 legislative session we asked you, through HB 1269, to give authorization to the Board to issue a non-disciplinary letter of concern. We requested this type of non-disciplinary action on behalf of nurse assistants, who were being disciplined and fined for forgetting to renew their registration. We felt the punishment was harsh, expensive and "did not fit the crime." You agreed and passed HB 1269 unanimously in the House and Senate.

However, what you passed in 2009 and the proposed definition before you today, do not resemble each other in one key area.

Attached please find HB 1269. HB 1269 states that the board may issue a non-disciplinary letter of concern based upon proof that the person has violated one of nine items outlined. Proof implies due process. The dictionary defines proof as, "evidence sufficient to establish a thing as true, or to produce belief in its truth."

In summary, we believe existing statute requires that proof of wrong doing be established prior to issuing a non-disciplinary letter of concern by the North Dakota Board of Nursing. The definition before you today does not meet that standard.

We urge you to void this definition and not approve an alternative definition unless it requires allegations be proven and the person is offered an appeal process.

Thank you for considering our perspective.

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## CHAPTER 362

### HOUSE BILL NO. 1269

(Representatives Kreidt, Pollert, Weisz, Wieland)  
(Senators Fischer, J. Lee)

AN ACT to 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 amend and reenact section 43-12.1-14 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-14. Grounds for discipline - Penalties.** The board may deny, limit, revoke, encumber, or suspend any license or registration to practice nursing issued by the board or applied for in accordance with this chapter; reprimand, place on probation, or otherwise discipline a licensee, registrant, or applicant; deny admission to licensure or registration examination; provide an alternative to discipline in situations involving impairments of chemical dependency or psychiatric or physical disorders; ~~or~~ require evidence of evaluation and treatment; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant, upon proof that the person:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs, or controlled substances for personal use or unauthorized use;
7. Has practiced nursing or assisted in the practice of nursing in this state without a current license or registration or as otherwise prohibited by this chapter;

8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

**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.

Approved April 24, 2009  
Filed April 29, 2009