

EDUCATION FUNDING AND TAXATION COMMITTEE**Tuesday, June 19, 2012****Harvest Room, State Capitol****Bismarck, North Dakota**

Testimony of Duane Houdek
North Dakota State Board of Medical Examiners

Madam Chairman, members of the committee, my name is Duane Houdek, Secretary of the North Dakota State Board of Medical Examiners. I appear today at the request of the committee to briefly address questions asked of the Board by your committee counsel, Anita Thomas, in a May 21, 2012 letter to me.

I have with me Dr. Chris Meeker, an emergency room physician at Medcenter One in Bismarck, to address the medical questions you may have regarding the diagnoses and management of concussions. Dr. Meeker may want to make a brief statement, as well.

I take the following questions from Ms Thomas's letter:

From the perspective of the State Board of Medical Examiners, does the diagnosis and treatment of a concussion constitute the practice of medicine?

Yes, without question this is a medical determination. It fits directly in our definition of the practice of medicine, which includes "the diagnosis or treatment of diseases or injuries of human beings". NDCC, 43-17-01 (3)(a). I surveyed other boards of medical examiners and, unanimously, all agreed this would be the practice of medicine in their state. It is consistent with the latest developments in dealing with sports concussions, especially in teenage and younger athletes. The Zurich protocol, for example, and the SCAT2 assessment tool which the protocol endorses, both emphasize the need for a medical determination prior to return to play, both for the purposes of a medical assessment of symptoms and the diagnosis of concussion, but equally importantly, to "exclude a more severe brain injury involving a structural abnormality". *Section 2.3, Consensus Statement on Concussion in Sport, 3rd International Conference on Concussion in Sport Held in Zurich, November 2008 (hereafter, Zurich protocol)*. In certain cases, this may require the ordering and interpretation of imaging studies.

Are there other health care providers who undergo sufficient training with their preparatory programs to diagnose and treat concussions?

Perhaps so. Within our statutory structure, the legislature has said that there are certain

professions which, when practicing within their scope of practice, are, by definition, not practicing medicine. NDCC, 43-17-02. These include physician assistants, nurses, dentists, optometrists, podiatrists, and chiropractors. By law, then, the board does not have jurisdiction over these providers when they practice within the scope of their practice.

Of these, I think you would find rather general agreement in other state statutes regarding return to play that, if properly trained and practicing within their scope, physician assistants and advance nurse practitioners, in addition to medical doctors and doctors of osteopathy, may make this diagnosis and provide appropriate treatment, with referrals to specialized physicians where appropriate.

There is lesser agreement as to chiropractors and, personally, I question whether the training received is sufficient. I don't think dentists, podiatrists and optometrists would claim they have the training to make this diagnosis, or provide treatment.

Given our statutory framework, the legislature may want to consider specifically naming those professions capable of making this determination. Many could claim it is within their scope of practice and, if they are within the exempt list I mentioned, the medical board would have legal difficulty taking any action.

When a student is removed from practice, training, or competition, is it medically necessary to require that the ensuing examination and authorization to return be undertaken by a health care provider whose scope of practice includes the diagnosis of concussions?

Yes.

Could the examination and authorization to return be undertaken by a health care provider who is permitted only to treat or manage concussions, and would such an undertaking in any way compromise or create substantial risk to a student's short-term or long-term medical well-being?

No, and yes it could compromise medical well being. First, before you manage something, you better know what you are managing. Although you may be dealing with only functional issues, and in some cases these may be determined through the use of approved algorithms, we know there are times when structural or other issues may be present and these need to be ruled out medically. Especially in pediatric cases, caution should be the byword.

With respect to semantics, if a provider's scope of practice authorizes the treatment or management of concussions, is it implicit that the provider may determine that a concussion exists (i.e., diagnose a concussion) or is the diagnosis of a concussion

a medical activity that is separate and apart from its treatment or management.

I would certainly defer to the physicians here today, but from a regulatory perspective, we would treat diagnosis as separate and apart from management.

Thank you.