

Re: Testimony in favor of HB 1468

Attn: Committee Members,

I, Todd Kjelland am writing in favor of a DO PASS on HB 1468

I am grateful to see legislative action which prohibit employers from mandating medical procedures as a requirement of employment. I believe by allowing this practice to continue, employers will have the precedent to force employees at will to become non-voluntary medical test subjects without future recourse. While I am in favor of HB 1468, however, I'd also like to make sure this law does not replace required Doctor-to-patient, face-to-face informed consent conversations, nor does it give authority to non-medically licensed government officials to obtain informed consent.

Please note: Any health facility which accepts Medicare/Medicaid, gains financially from forcing employees to be vaccinated or medically tested through CMS payment bonuses/penalties. This information is not freely disclosed to employees, thus violating Informed Consent laws for which forces employees to participate in medical procedures against their free will, inclusive of religious beliefs. This is Human Trafficking, a criminal action as defined by 18 U.S. Code Chapter 77, Title 18.

My second request regarding Medical Battery stems from North Dakota lacking in "Informed Consent" definitions and laws. I was told by Walsh County States Attorney Kellie Cole that North Dakota does not have a statute to address "Medical Battery."

Law states that patient "Informed Consent" must be applied or provided specifically by a "physician" to any "medical procedure". This includes administering vaccines and performing diagnostic medical tests.

In a review of North Dakota Century Code (NDCC), only a MD, DO or PA has the authority to acquire patient "Informed Consent" and this cannot be delegated. (See North Dakota Century Code § 43-17-01 and N.D. Cent. Code § 43-17-02.1.)

NDCC only gives MD, OD and PA licensees authority to obtain "Informed Consent." North Dakota has limited court cases to establish legal precedent of "Informed Consent delegation" so we must look to a State Supreme Court case in Pennsylvania...

<https://www.pamedsoc.org/detail/article/Informed-Consent-Brief>

The decision in Shinal v. Toms could have significant ramifications for Pennsylvania physicians. With this decision, the Pennsylvania Supreme Court holds that **physicians alone** have the duty to provide patients with the sufficient information required to obtain informed consent. Thus, Pennsylvania physicians can seemingly no longer rely upon the aid of their qualified staff in the informed consent process.

Shinal v. Toms, 162 A. 3d 429 - Pa: Supreme Court 2017

https://scholar.google.com/scholar_case?case=4383380347487734123&hl=en&as_sdt=6&as_vis=1&oi=scholar

..... Because a physician's duty to provide information to a patient sufficient to obtain her informed consent is non-delegable, ...

Why is "Informed Consent" important? Because if a "physician" doesn't answer all your questions, not only about the procedure, but all the risks and the financial disclosures of your inquiry (benefits to be

gained by the physician, the health facility he/she represents) voids any signed consent form you have been asked to sign as a waiver of liability. The physician (MD, OD or PA) is then held personally accountable and can be sued for the civil tort of battery.

Basic right to consent to medical care - Schoendorff v. Society of New York Hosp., 105 N.E. 92, 93 (N.Y. 1914)

In reference to HB 1468 (Section 5. A government official, medical provider, or employer that violates this section is guilty of an infraction.)

I would recommend also adding Medical Battery to the ND Criminal Code as North Dakota lacks this definition. Medical Battery is different from Medical Malpractice and thus needs specific laws and penalties which are currently absent from North Dakota Century Code.

<https://www.paulsonandnace.com/difference-medical-malpractice-medical-battery/>

While medical malpractice is usually unintentional and occurs out of some form of negligence, medical battery is intentional. The elements of medical battery include:

- The act
- Intent
- Causation (actual and proximate)
- Touching
- Harmful or offensive

(UND School of Law)

Medical battery is intentional touching without permission. The plaintiff does not have to prove that the perpetrator intended any harm. Former U.S. Supreme Court Justice Cardozo, in his opinion in *Schoendorff v. Society of New York Hospital* said, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency, where the patient is unconscious and where it is necessary to operate before consent can be obtained." (*Schoendorff v. Society of New York Hosp.*, 105 N.E. 92, 93 (N.Y. 1914))

As a pure legal issue, forcing treatment on an unwilling person is no different from attacking that person with a knife. The legal term for a harmful or offensive touching without permission is battery. Battery is a criminal offense, and it can also be the basis of a civil lawsuit. The key element of battery is that the touching be unauthorized, not that it be intended to harm the person. Thus forcing beneficial care on an unwilling patient would be battery. The classic statement of a physician's duty to get the patient's consent is Justice Cardozo's opinion in *Schoendorff v. Society of New York Hospital*:

<https://biotech.law.lsu.edu/cases/consent/Schoendorff.htm>

North Dakota Century Code defines penalties for practicing medicine without a license, however a penalty specifically for Medical Battery is needed to make sure properly licensed medical personnel are fulfilling the informed consent requirement.

NDCC - 43-17-34. Practicing without a license - Violation of chapter - Penalty. Any person who practices medicine in this state without complying with the provisions of this chapter, and any person who violates any of the provisions of this chapter for which another penalty is not specified is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

Below is an example of such a law in Oklahoma I would hope North Dakota would adopt:

2014 Oklahoma Statutes

Title 21. Crimes and Punishments

§21-650.11. Medical battery – Penalties - Definition.

Universal Citation: 21 OK Stat § 21-650.11 (2014)

A. Medical battery is a felony, upon conviction, punishable by imprisonment in the county jail for a term of not more than one (1) year, or imprisonment in the custody of the Department of Corrections for a term of not more than four (4) years, and a fine in an amount not more than Five Thousand Dollars (\$5,000.00). In addition, the defendant shall be ordered to make restitution to the victim in an amount as determined by the court.

B. For purposes of this section, “medical battery” means:

1. The defendant has been found guilty of practicing dentistry, medicine, osteopathic medicine, or surgery, without a license or authority as prohibited by the provisions of the State Dental Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the Oklahoma Osteopathic Medicine Act;
2. The treatment, or course of treatment, practiced in violation of the provisions of the State Dental Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the Osteopathic Medicine Act resulted in the victim having permanent physical injury or disfigurement;
3. The victim consented to such treatment, or course of treatment, under a belief that the defendant was licensed and authorized to diagnose and perform the treatment; and
4. The defendant willfully performed the act knowing that such act was prohibited pursuant to law.

Added by Laws 2008, c. 358, § 6, eff. Nov. 1, 2008.

Summary:

Committee Members, I thank you for your time. In recap, my desire for change stems from unauthorized medical personnel performing complex injections for which people have many questions which go unanswered before medical procedures are performed.

In my own experience, I was terminated from my employer, Sanford Health (Good Samaritan Society) because they refused to provide answers to my many medical questions. I sent human resources a list of questions two months prior to them mandating Covid testing. They told me they were not responsible

and to send them to NDDoH. I received confirmation they received my questions, however they never attempted to answer any of them. On my last day, I asked the person who was doing the testing to answer my informed consent questions. The lady was unqualified because she only had an EMT license, however she told me that I was the patient of the company who hired her, which was Sanford Health. Because she could not satisfy my questions, I refused to participate and was suspended for 30 days before being later terminated.

I believe many employees' rights can be preserved by taking legislative action now to assure our basic right to refuse unwanted medical testing and accepting injectables as mandated by employers is forbidden.

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