

JOINT TECHNICAL CORRECTIONS COMMITTEE
NOVEMBER 9, 2021

TESTIMONY OF THE
NORTH DAKOTA BOARD OF MEDICINE
HOUSE BILL 1514

Members of the Committee: I am Robert Sticca, M.D., Chairman of the North Dakota Board of Medicine, appearing on behalf of the Board in opposition to this bill.

It is the duty of the Board to protect the health, safety, and welfare of the public by verifying that North Dakota citizens are receiving optimal health care from qualified physicians. The Board regulates this through its licensure and disciplinary processes. Every complaint submitted to the Board is thoroughly reviewed by one of two Investigatory Panels. Once a complaint is received, it is sent to the licensee who then has the opportunity to submit a response, information, and anything else they would like to have considered, to the Panel for its review. Our Panel members are made up of physicians, a physician assistant, and public members and through their expertise, and after a thorough investigation, make decisions on whether disciplinary action should be initiated on the grounds set forth in North Dakota Century Code section 43-17-31.

Section 3 of this bill seeks to limit the Board's ability to initiate and perform this thorough investigation. It is not clear what would be considered "documented medical information" that would protect a licensee from disciplinary action. Is this any document with medical information in it that can be found by searching the internet? Or is it medical information based on credible, scientific evidence published in peer reviewed medical literature generally recognized by the relevant medical community?

As recognized by the Federation of State Medical Boards in its recent statement, “[d]ue to their specialized knowledge and training, licensed physicians possess a high degree of public trust and therefore have a powerful platform in society, whether they recognize it or not. They also have an ethical and professional responsibility to practice medicine in the best interest of their patients and must share information that is factual, scientifically grounded and consensus-driven for the betterment of public health.”

We hold physicians to a higher standard because of their position of power and their perceived medical knowledge and expertise, which results in many people not being able to delineate between “facts” versus “opinions” of the doctors. Physicians therefore must be extra careful in their communication not only to their patients but the public at large.

The Board of Medicine needs to be able to do a thorough review of a case and complaint to determine whether a physician’s actions have fallen below a standard of care that could result in harm to patients and members of the public. This section of bill would take away the Board’s ability to engage in such a review and public protection.

This section also limits the Board’s ability to review circumstances surrounding the prescription of any off-label drug for COVID treatment. The language of the bill is not limited to a particular drug, allowing a licensee to prescribe virtually any medication, including opioids, for COVID treatment, with no ability for the Board to review these decisions and prescriptive practices. It is especially important for physicians prescribing an off-label drug to communicate the risks associated with taking the medication in order to obtain informed consent by the patient. The Board would be prohibited from

reviewing the circumstances surrounding such prescription practices under this section of the bill.

Although not directly related to the Board, sections 1 and 2 of the bill also raise concerns. Section 1 provides hospitals cannot “discriminate” based on vaccination status. What is considered “discrimination” is not defined by the bill. One example of a problem this could create is: what if three patients present with a need for a ventilator, only two are available, and the physician makes a decision of who will get use of the available ventilators based on the totality of circumstances and who has the best option for survival. Could the physician now be at risk for claims of “discrimination” if the individuals who get the ventilators turn out to be vaccinated?

Section 2 of the bill seeks government restriction on licensees’ ability to utilize their expertise, experience, and training to make sound decisions. It is better left to a regulatory board to review the circumstances and all available information surrounding the decision to determine whether disciplinary action should be taken.

Based on the foregoing, the Board respectfully requests a “do not pass” on this bill.