

HOUSE BILL NO. 1105

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Chiropractic Examiners)

1 A BILL for an Act to create and enact section 43-06-15.1 of the North Dakota Century Code,
2 relating to disciplinary records of the state board of chiropractic examiners; and to amend and
3 reenact sections 43-06-14.1 and 43-06-15 of the North Dakota Century Code, relating to
4 disciplinary records of the state board of chiropractic examiners.

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

6 **SECTION 1. AMENDMENT.** Section 43-06-14.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-06-14.1. Peer review of services and fees.**

- 9 1. The board, upon receipt of a complaint, may appoint a peer review committee for the
10 purpose of investigation of the matter and rendering an opinion thereon.
- 11 2. The peer review committee must be appointed by the board and function as its agent
12 and may consist of different individuals for review of different cases.
- 13 3. The peer review committee shall investigate each inquiry submitted by the board. It
14 shall examine such witnesses, review such patient and business records, and
15 otherwise take whatever action is necessary to best ascertain the facts. It shall
16 transmit all information it possesses to the board and shall report its findings to the
17 board. The board shall furnish copies of the findings to the party making the complaint
18 and to the chiropractor.
- 19 4. The determinations of the peer review committee must be presumed valid and may be
20 considered as prima facie evidence in any further proceedings by the board.
- 21 5. The provision of treatment rendered to a patient by a chiropractor constitutes the
22 consent of the chiropractor to the submission of all necessary records and other
23 information concerning the treatment to the board or peer review committee.

- 1 6. The board may adopt rules it considers necessary and appropriate to implement the
2 peer review system and activities established under this chapter.
- 3 7. ~~All data and information, including patient records acquired by the board or the peer-~~
4 ~~review committee, in the exercise of its duties and functions, are confidential and~~
5 ~~closed to the public. All board and peer review committee meetings wherein patient~~
6 ~~testimony or records are taken or reviewed are confidential and closed to the public.~~
- 7 8. Except a patient, any party, including any governmental agency, making a request
8 under this section may be charged a fee by the board equal to the administration costs
9 of performing the review.

10 **SECTION 2. AMENDMENT.** Section 43-06-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-06-15. Grounds for denial of licensure, revocation, or suspension of license or**
13 **other action of the board - Signed written statement - Investigation - Hearing.**

- 14 1. The board may deny an application for licensure and may revoke, suspend, or take
15 such other action as provided in this section regarding the license of any chiropractor
16 in this state who:
- 17 a. Has a mental or physical condition such that the person is unable to safely
18 engage in the practice of chiropractic.
- 19 b. Has been declared incompetent or seriously mentally ill by a court of competent
20 jurisdiction and thereafter has not been declared competent or released from
21 supervision.
- 22 c. Is suffering from alcoholism or drug addiction which endangers the public by
23 impairing the chiropractor's ability to practice safely.
- 24 d. Procured the license to practice by fraud or mistake.
- 25 e. Has engaged in unprofessional or dishonorable conduct, including false or
26 misleading advertising, rendering excessive or inappropriate treatment, or
27 charging unconscionable fees.
- 28 f. Has been convicted of a crime involving sexual misconduct, infliction of physical
29 harm or bodily injury to another individual, corruption, dishonesty, illegal
30 possession or distribution of drugs, or any crime that would affect the person's

- 1 ability to practice as a licensed chiropractor. A copy of the record of conviction or
2 plea of guilty or nolo contendere is conclusive evidence.
- 3 g. Has aided, assisted, or enabled any unlicensed person to practice chiropractic
4 contrary to this chapter or rule of the board.
- 5 h. Has engaged in the practice of abortion.
- 6 i. Has made use of any advertising statement of a character tending to deceive or
7 mislead the public.
- 8 j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
- 9 k. Has incurred a disciplinary action, suspension, or revocation in another
10 jurisdiction; has surrendered a license while a disciplinary complaint was pending
11 in another jurisdiction; or has entered a settlement agreement to avoid or resolve
12 a disciplinary complaint in another jurisdiction as a result of acts similar to acts
13 described in this section or rule of the board. A certified copy of the board order in
14 the other jurisdiction is conclusive evidence.
- 15 l. Has committed any violation of the provisions of this chapter, the code of ethics,
16 or rules as adopted by the board, including the failure to submit for physical or
17 mental examination or to provide information as required by the board.
- 18 m. Has practiced chiropractic while the license to practice was suspended or
19 revoked.
- 20 n. Has, while under probation, violated the terms of probation.
- 21 o. Has failed to properly supervise a certified chiropractic clinical assistant or who
22 has delegated duties to a certified chiropractic clinical assistant which are beyond
23 the assistant's education or training or which are beyond the scope of practice of
24 a certified chiropractic clinical assistant.
- 25 2. Any person, health care facility, business, or organization is immune from civil liability
26 or criminal prosecution for submitting a signed written statement and other reports and
27 information to the board under subsection 5 or for otherwise reporting to the board
28 violations or alleged violations under this chapter. ~~The reports are not public records.~~
- 29 3. Members of the board and persons employed by the board or engaged in the
30 investigation or prosecution of violations and in the preparation and management of
31 charges of violations of this chapter on behalf of the board, including members of any

1 peer review committee, are immune from civil liability and criminal prosecution for any
2 actions, transactions, or publications in the execution of, or relating to, their duties
3 under this chapter.

4 4. A doctor of chiropractic who is the subject of an investigation by, or on behalf of, the
5 board shall cooperate fully with the investigation. Cooperation includes responding
6 fully and promptly to any question raised by, or on behalf of, the board relating to the
7 subject of the investigation and providing copies of patient records or any pertinent
8 information requested by the board, to assist the board in the board's investigation.

9 5. Any person, including a member of the board, may file a signed written statement and
10 other reports and information with any member of the board against a licensed
11 chiropractor charging the chiropractor with any of the offenses or conditions set forth in
12 subsection 1. The statement must set forth a specification of the charges. When the
13 statement has been filed, the board shall make an investigation as provided by
14 subsection 6.

15 6. When the statement and other reports and information have been filed, the board shall
16 notify the licensed chiropractor of the allegations and thereafter shall investigate to
17 determine whether the allegations in the statement constitute a basis for further
18 proceedings. The investigation must be conducted in such manner and at such time
19 and place as in the judgment of the board will best ascertain the facts. The board may
20 appoint a peer review committee. The board, in order to pursue the investigation, may
21 subpoena and examine witnesses and records, including patient records, and copy,
22 photograph, or take samples. The board may require the licensed chiropractor to give
23 statements under oath, to submit to a physical or mental examination, or both, by a
24 physician or physicians and other qualified evaluation professionals selected by the
25 board if it appears to be in the best interests of the public that this evaluation be
26 secured. The board may examine and review any relevant medical or psychological
27 records, including test results and x-rays relative to the examination or treatment of the
28 licensed chiropractor. A written request from the board constitutes authorization to
29 release information. ~~The medical or psychological information is not public record.~~

30 7. If, based on the investigation or report from a peer review committee, the board has
31 reasonable cause to believe there is a basis for further proceedings, the board shall

1 prepare a complaint and serve the complaint, along with a notice of hearing, on the
2 licensed chiropractor and thereafter proceed with a hearing on the matter under
3 chapter 28-32. All hearings must be held in Bismarck unless the board and the
4 licensed chiropractor agree otherwise.

5 8. After the hearing, the board, under section 28-32-39, shall make and give notice of the
6 board's determination or decision as to whether the offenses charged have been
7 committed or the conditions charged do not exist. If the finding is in the negative, the
8 board shall dismiss the charges. If the finding is in the affirmative, the board:

9 a. Shall revoke the license;

10 b. Shall suspend the licensee's right to practice for a period not to exceed one year;

11 c. Shall suspend the board's judgment of revocation on terms and conditions
12 determined by the board;

13 d. Shall place the licensee on probation; or

14 e. Shall take any other disciplinary action which the board in the board's discretion
15 considers proper, including the ordering of an adjustment to a patient's bill or
16 refund of an amount previously paid, including reasonable interest from the date
17 of the order, to a patient or payer of any unconscionable fees for chiropractic
18 services.

19 f. In addition to the actions imposed in subdivisions a through e, may:

20 (1) Require payment of all costs of proceedings resulting in a disciplinary
21 action, including administrative costs, investigation costs, attorney's fees,
22 peer review committee costs, witness costs and fees, the costs of the
23 offices of administrative hearings services, and court costs.

24 (2) Impose a civil penalty not exceeding ten thousand dollars for each separate
25 violation, to deprive the chiropractor of any economic advantage gained by
26 reason of the violation found and to reimburse the board for the cost of the
27 investigation and proceedings.

28 9. In cases of revocation, suspension, or probation, the board shall record the facts of the
29 case and all actions of the board.

30 10. On the expiration of a term of suspension, the licensee must be reinstated by the
31 board if the chiropractor applies to the board and furnishes evidence, satisfactory to

1 the board, that the licensee is then of good character and conduct or restored to good
2 health and the licensee has not practiced chiropractic during the term of suspension
3 and is competent to practice in this state. If the evidence fails to establish those facts
4 to the satisfaction of the board, the board may require the applicant to submit to an
5 examination in accordance with this chapter or shall proceed to hearing on revocation
6 with notice as provided in subsection 7.

7 11. Any licensed chiropractor may take corrective action or voluntarily relinquish the
8 chiropractor's license to the board before a formal order of the board on such terms
9 and conditions as may be agreed by the licensed chiropractor and the board.

10 **SECTION 3.** Section 43-06-15.1 of the North Dakota Century Code is created and enacted
11 as follows:

12 **43-06-15.1. Disciplinary records.**

- 13 1. Communications to and between the board and the board's agents, including peer
14 review committee members, regarding disciplinary complaints, investigations, and
15 proceedings are confidential.
- 16 2. All disciplinary records of the board, except the board's financial records, are
17 confidential. Formal disciplinary documents issued pursuant to chapter 28-32 are
18 considered open records, including the formal complaint and the findings of fact,
19 conclusions of law, and order of the board.
- 20 3. A fully executed settlement agreement of the board is an open record.
- 21 4. Notwithstanding the provisions of this section, if board or the board's agents determine
22 the disciplinary records disclose a possible violation of state or federal criminal law, the
23 board may provide the records to the appropriate law enforcement agency pursuant to
24 subsection 5 of section 44-04-18.10.