

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2115
(Workforce Development Committee)
(At the request of the North Dakota Board of Medicine)

AN ACT to create and enact section 43-17-02.5, two new subsections to section 43-17-07.1, section 43-17-27.2, and a new subsection to section 43-17-41 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; to amend and reenact sections 43-17-01, 43-17-02, 43-17-02.1, 43-17-02.2, 43-17-02.3, 43-17-03, 43-17-04, 43-17-05, 43-17-06, 43-17-07, 43-17-11, 43-17-14, 43-17-18, 43-17-24, 43-17-25, 43-17-26.1, 43-17-27.1, 43-17-31, 43-17-32.1, 43-17-37, 43-17-38, 43-17-43, 43-17-46, 43-17.1-01, 43-17.1-02, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, and 43-17.1-08 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; and to repeal sections 43-17-21 and 43-17-30 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means a physician, resident physician, or physician assistant licensed to practice in North Dakota.
3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
4. "Physician assistant" means an individual issued a physician assistant license under this chapter.
5. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons are regarded as practicing medicine:
 - a. A person that holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
 - b. A person that suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any individual, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
 - c. A person that maintains an office for the examination or treatment of individuals afflicted with disease or injury of the body or mind.
 - d. A person that attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings shall be held to be engaged in the practice of medicine.

6. "Resident physician" means an individual issued a postgraduate training license under this chapter.
7. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-forward technologies, and remote monitoring.

SECTION 2. AMENDMENT. Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02. Persons exempt from the provisions of chapter.

The provisions of this chapter do not apply to the following:

1. ~~Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the North Dakota board of medicine may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.~~
2. The domestic administration of family remedies.
- ~~3-2.~~ Dentists practicing their profession when properly licensed.
- ~~4-3.~~ Optometrists practicing their profession when properly licensed.
- ~~5-4.~~ The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.
- ~~6-5.~~ Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
- ~~7-6.~~ Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
- ~~8-7.~~ Podiatrists practicing their profession when properly licensed.
9. ~~An individual rendering services as a physician assistant. However, sections 43-17-02.1 and 43-17-02.2 apply to physician assistants. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.~~
- ~~10-8.~~ A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
- ~~11-9.~~ A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

- ~~42-10.~~ An individual duly licensed to practice medical imaging or radiation therapy in this state under chapter 43-62.
- ~~43-11.~~ An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

SECTION 3. AMENDMENT. Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.1. Physician assistant - Scope of practice.

1. An individual providing services of a physician assistant as outlined in this chapter to a patient located in the state shall possess an active North Dakota license for physician assistant practice. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by individuals licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
2. A physician assistant may:
 - a. Provide a legal medical service for which a physician assistant is prepared by education, training, and experience and is competent to perform, including:
 - (1) Obtaining and performing a comprehensive health history and physical examination;
 - (2) Evaluating, diagnosing, managing, and providing medical treatment;
 - (3) Ordering and evaluating a diagnostic study and therapeutic procedure;
 - (4) Performing a diagnostic study or therapeutic procedure not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01;
 - (5) Performing limited sonography on a focused imaging target to assess specific and limited information about a patient's medical condition or to provide real-time visual guidance for another procedure;
 - (6) Educating a patient on health promotion and disease prevention;
 - (7) Providing consultation upon request; and
 - (8) Writing a medical order;
 - b. Obtain informed consent;
 - c. Supervise, delegate, and assign therapeutic and diagnostic measures not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01 to licensed or unlicensed personnel;
 - d. Certify the health or disability of a patient as required by any local, state, or federal program;
 - e. Authenticate any document with the signature, certification, stamp, verification, affidavit, or endorsement of the physician assistant if the document may be authenticated by the signature, certification, stamp, verification, affidavit, or endorsement of a physician; and
 - f. Pronounce death.

- 2-3. A physician assistant shall collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and competence of the physician assistant, and the standard of care. The degree of collaboration must be determined at the practice which may include decisions made by the employer, group, hospital service, and the credentialing and privileging systems of a licensed facility. A physician assistant is responsible for the care provided by that physician assistant and a written agreement relating to the items in this chapter is not required.
- 3-4. A physician assistant:
- a. May prescribe, dispense, administer, and procure drugs and medical devices;
 - b. May plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, nutrition, blood and blood products, and diagnostic support services, including home health care, hospice, and physical and occupational therapy;
 - c. May prescribe and dispense schedule II through V substances as designated by the federal drug enforcement agency and all legend drugs;
 - d. May not dispense a drug, unless pharmacy services are not reasonably available, dispensing is in the best interest of the patient, or an emergency exists;
 - e. May request, receive, and sign for a professional sample, and may distribute a professional sample to a patient; and
 - f. If prescribing or dispensing a controlled substance, shall register with the federal drug enforcement administration and shall comply with appropriate state and federal laws.
- 4-5. A physician assistant shall practice at a licensed health care facility, facility with a credentialing and privileging system, physician-owned facility or practice, or facility or practice approved by the board.
- 5-6. Notwithstanding subsections 23 and 45, a physician assistant with less than four thousand hours of practice approved by the board under subsection 45 shall execute a written collaborative agreement that:
- a. Is between a physician and a physician assistant with less than four thousand hours practice;
 - b. Describes how collaboration required under subsection 23 must occur; and
 - c. Is available to the board on request.
- 6-7. A physician assistant shall comply with any privileging and credentialing systems at the facility at which the physician assistant practices.

SECTION 4. AMENDMENT. Section 43-17-02.2 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.2. ~~Physician assistant~~– Use of certain words or initials prohibited.

1. ~~A person that is not a physician assistant may not:~~
 - a. ~~Represent oneself as a physician assistant or act as a physician assistant; or~~
 - b. ~~Use any combination or abbreviation of the term or title "physician assistant" or "PA" to indicate or imply the person is a physician assistant.~~An individual not licensed as a physician or resident physician under this chapter is prohibited from using the title of

"doctor of medicine", "medical doctor", "doctor of osteopathic medicine", "osteopathic physician", "physician", "M.D.", or "D.O."

2. ~~However, an individual who is not licensed as a physician assistant under this chapter but who meets the qualifications for licensure as a physician assistant under this chapter may use the title "physician assistant" or "PA" but may not act or practice as a physician assistant unless licensed under this chapter.~~An individual not licensed as a physician assistant under this chapter is prohibited from using the title of "physician assistant" or "P.A."
3. This section may not be construed as to prohibit a licensed health care professional from using a title incorporating any of the words specified in subsection 1 or 2, or from using a title or designation that is not specifically protected by subsection 1 or 2, if the title or designation used is permitted under the health care professional's practice act.
4. Notwithstanding subsections 1 and 2, an individual who does not hold an active physician, resident physician, or physician assistant license may still use the title conferred by a qualified educational degree recognized under this chapter, but may not practice unless licensed under this chapter.

SECTION 5. AMENDMENT. Section 43-17-02.3 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license - Exceptions.

The practice of medicine is deemed to occur in the state the patient is located. A practitioner providing medical care to a patient located in this state is subject to the licensing and disciplinary laws of this state and shall possess an active North Dakota license for the practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the North Dakota board of medicine under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation on a diagnosis for a patient to a physician licensed in the state, or teaching assistance for a period of not more than seven days; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations; or
5. Under rules adopted by the board.

SECTION 6. Section 43-17-02.5 of the North Dakota Century Code is created and enacted as follows:

43-17-02.5. Licensure for resident physicians.

Resident physicians of medicine or osteopathy who are continuing their training and performing the duties of a resident in a hospital or institution maintained and operated by the state, an agency of the federal government, or a residency program accredited by the accreditation council on graduate medical education will be required to possess an active North Dakota residency license. The board shall adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such individuals.

SECTION 7. AMENDMENT. Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. North Dakota board of medicine - How appointed - Qualifications.

1. The governor shall appoint a North Dakota board of medicine consisting of ~~thirteen~~fourteen members: ~~ten~~ physicians, nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, ~~one~~; two of whom ~~is~~ are physician assistant, ~~assistants~~; and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. ~~The~~Each physician assistant member of the board must:
 - a. Be a practicing physician assistant of integrity and ability.
 - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
 - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 8. AMENDMENT. Section 43-17-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17-04. Term of office.

The term of office of each member of the board is four years and until a successor is appointed and qualified. The terms must be so arranged that no more than four terms expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment must be for the residue of the term only. The board, at least six months in advance of filling an expired term, shall communicate with the governor's office regarding specialty areas to be filled on the board. The governor's office shall take this information into consideration when filling vacancies. No member of the board may serve thereon for more than two ~~successive~~full terms.

SECTION 9. AMENDMENT. Section 43-17-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17-05. Removal of members of North Dakota board of medicine - Re-election.

1. The governor for good cause shown and upon the recommendation of three-fourths of the members of the North Dakota board of medicine may remove any member of such board for misconduct, incapacity, or neglect of duty.
2. If a member of the board is consistently absent from board or committee meetings, the board may declare a vacancy. Vacancies on the board must be filled by appointment by the governor.

SECTION 10. AMENDMENT. Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17-06. Officers of the board and executive director.

The board shall elect a president and vice president from its own number and employ an executive director to provide administrative services to the board. ~~The executive director need not be a member of the board. The executive director must be the general administrative and prosecuting officer of such board.~~

SECTION 11. AMENDMENT. Section 43-17-07 of the North Dakota Century Code is amended and reenacted as follows:

43-17-07. Meetings of the board.

The board shall hold at least three meetings in each calendar year ~~for the examination of applicants for licensure,~~ and may call such special meetings as may be necessary. The meetings must be held at such places as the board may designate.

SECTION 12. Two new subsections to section 43-17-07.1 of the North Dakota Century Code are created and enacted as follows:

Utilize board funds and resources for promotion, education, and outreach services for the professions and students of the professions licensed under this chapter.

Adopt rules to implement this chapter.

SECTION 13. AMENDMENT. Section 43-17-11 of the North Dakota Century Code is amended and reenacted as follows:

43-17-11. Records of board - License applications - Preservation.

The board shall keep a record of all of its proceedings and applications for license. ~~Application records must be preserved for at least six years beyond the disposition thereof or the last annual registration of the licensee, whichever is longer.~~ Failure of an applicant to submit a completed application within one year is grounds to discontinue processing the application, and records will be disposed of unless otherwise approved by the chairman and executive director for good cause.

SECTION 14. AMENDMENT. Section 43-17-14 of the North Dakota Century Code is amended and reenacted as follows:

43-17-14. Compensation - Expenses of board and the members thereof.

1. A member of the board shall receive for each day during which the member actually is engaged in the performance of the duties of the member's office such per diem as must be fixed by the board and such mileage as is provided in ~~section~~sections 44-08-04 and 54-06-09.

2. The executive director of the board shall receive such salary or other compensation, and such allowance for clerical and other expenses of the board as the board shall determine.
3. The board may employ staff to carry out the duties under this chapter.

SECTION 15. AMENDMENT. Section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

43-17-18. LicensePhysician license requirements.

1. General. Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant ~~is of good moral character and~~ satisfies all of the requirements of this chapter including:
 - a. Successful completion of a medical licensure examination satisfactory to the board;
 - b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable to the board; and
 - c. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action under this chapter; the board may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
 - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
 - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.
3. Graduates of international schools.
 - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
 - b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed ~~thirty~~twenty-four months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed thirty months of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the

United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:

- (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
 - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
- d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.
4. ~~Special license. The board may grant a temporary special license to an applicant who is a graduate of a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training; has successfully completed two years of approved postgraduate training in the United States or Canada; and is enrolled in an approved postgraduate training program in this state. This special license is valid only while the licensee continues to be enrolled in an approved postgraduate training program in this state.~~ Uniquely qualified license. The board may issue a medical license to an applicant who does not meet all the technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available to the citizens of the state. The board shall adopt rules for qualifications and factors to be considered under this subsection.
5. An applicant may require an interview before the board for such examination into the applicant's qualifications. The board may adopt rules to issue provisional and temporary licenses to be in effect in the interval between board meetings.

SECTION 16. AMENDMENT. Section 43-17-24 of the North Dakota Century Code is amended and reenacted as follows:

43-17-24. Physicians register licensure with the board.

~~On or before the due date established by the board, every person legally licensed to practice medicine within this state~~

1. An applicant shall file with the executive director of the board a registration statement upon blanks prepared and provided by the board ~~completed application~~ and shall pay to the executive director the ~~registration~~ application fee. No person may engage in the practice of medicine in this state without a current ~~registration certificate~~ license issued by the board.
2. Each licensee shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee will be sent. A licensee who changes the individual's electronic mail or mailing address shall notify the board in writing of the new contact information within sixty days.

3. If a licensee fails to notify the board in writing of the changes as required by this section after sixty days, the board may impose upon the licensee a fee not to exceed one hundred dollars and may initiate disciplinary action against the licensee.

SECTION 17. AMENDMENT. Section 43-17-25 of the North Dakota Century Code is amended and reenacted as follows:

43-17-25. RegistrationApplication fee.

The registration fee for any ~~person licensed to practice medicine~~individual seeking licensure or renewal in the state must be fixed by regulation of the board. All fees must be paid to and held by the executive director of the board and are subject to disbursement by the board in performing its duties.

SECTION 18. AMENDMENT. Section 43-17-26.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-26.1. LicensePhysician license renewals - Late fees.

A physician seeking to renew ~~the annual registration~~the physician's license who has failed to complete the ~~annual registration process~~renewal application within the time specified by the North Dakota board of medicine must be assessed a fee ~~equal~~up to three times the normal ~~annual registration~~licensure fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

SECTION 19. AMENDMENT. Section 43-17-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-27.1. ContinuingPhysician continuing education requirements.

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board. Physicians failing to comply with continuing education requirements in the time and manner specified by rule of the board will be assessed a fee up to three times the licensure fee, in addition to such other penalties as are authorized by law.
2. Before a license may be renewed, the ~~licensee~~physician shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may accept current certification, maintenance of certification, or recertification by a member of the American board of medical specialties, the American osteopathic association, or the royal college of physician and surgeons of Canada in lieu of compliance with continuing education requirements.
4. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.
5. Notwithstanding subsection 1, if an individual fails to file a timely response, the board may determine whether the individual's failure to file a timely response to an audit constitutes an admission of noncompliance with this section and whether the individual's license should be subject to action by the board. If the board determines that the individual's failure to file a timely response is an admission of noncompliance and that the individual's license should be

subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

SECTION 20. Section 43-17-27.2 of the North Dakota Century Code is created and enacted as follows:

43-17-27.2. Record retention requirements.

1. A licensee shall retain all medical records, unless otherwise appropriately transferred to another licensee or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.
2. The board may adopt rules to implement record retention and requirements for transfer of medical records for situations in which the licensee sells the licensee's medical practice, departs from the medical practice, or upon licensee death, incapacity, or retirement.

SECTION 21. AMENDMENT. Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action.

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
 - b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 - d. ~~Habitual use~~Use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice medicine.
 - e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
 - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 - g. Obtaining any fee by fraud, deceit, or misrepresentation.
 - h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
 - i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
 - j. The practice of medicine under a false or assumed name.
 - k. The advertising for the practice of medicine in an untrue or deceptive manner.
 - l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.

- m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
- n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
- o. Gross negligence in the practice of medicine.
- p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
- q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
- s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
- u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- x. The violation of any state or federal statute or regulation relating to controlled substances.
- y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~aa.~~ The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.
- ~~bb.~~ The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.
- ~~cc.~~bb. The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.
- ~~dd.~~cc. Noncompliance with the physician health program established under chapter 43-17.3.

2. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 22. AMENDMENT. Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physicianlicensee would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physicianlicensee, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physicianlicensee.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physicianlicensee who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The physicianlicensee is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The physicianlicensee may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempta confidential record as defined in section 44-04-17.1.

SECTION 23. AMENDMENT. Section 43-17-37 of the North Dakota Century Code is amended and reenacted as follows:

43-17-37. Emergency treatment by resident physicianlicensee.

Any ~~physician or surgeon~~individual licensed under the provisions of this chapter who in good faith renders in this state emergency care at the scene of the emergency is expected to render only such emergency care as in the ~~person's~~individual's judgment is at the time indicated.

SECTION 24. AMENDMENT. Section 43-17-38 of the North Dakota Century Code is amended and reenacted as follows:

43-17-38. Emergency treatment by nonresident physicianlicensee.

Any ~~physician or surgeon~~individual duly licensed to practice as a ~~physician or surgeon~~ in another state of the United States who renders in this state emergency care at the scene of the emergency may

only be held to the degree of care as specified in section 43-17-37, and may not be deemed to be practicing medicine within this state as contemplated by this chapter.

SECTION 25. A new subsection to section 43-17-41 of the North Dakota Century Code is created and enacted as follows:

Reports made under this section are exempt records as defined by section 44-04-17.1.

SECTION 26. AMENDMENT. Section 43-17-43 of the North Dakota Century Code is amended and reenacted as follows:

43-17-43. Topical fluoride varnish.

A ~~licensed physician or physician assistant~~licensee may apply topical fluoride varnish to an individual in accordance with rules adopted by the board.

SECTION 27. AMENDMENT. Section 43-17-46 of the North Dakota Century Code is amended and reenacted as follows:

43-17-46. Payment of fees under the interstate medical licensure compact.

1. Fees levied under subsection 1 of article XIII of the interstate medical licensure compact by the interstate medical licensure compact commission to the state of North Dakota must be paid by the board through the board's funding mechanism, and the board may not request funds deposited in the general fund for the fee. A physician granted licensure through the interstate medical licensure compact who fails to complete the addendum questions within the time specified by rule of the board must be assessed a fee up to three times the normal licensure fee, in addition to such other penalties as authorized by law.
2. Notwithstanding subsection 1, if an individual fails to timely submit the addendum questionnaire required by rule of the board, the board may determine whether the individual's failure to file a timely response constitutes an admission of noncompliance with this section and whether the license should be subject to action by the board. If the board determines the individual's failure to file a timely response is an admission of noncompliance and the individual's license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

SECTION 28. AMENDMENT. Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means an individual who is under the jurisdiction of the board of medicine.
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

SECTION 29. AMENDMENT. Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-02. Investigative panels of the board.

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a ~~physician or physician assistant~~licensee, the ~~president~~executive director of the board shall designate two investigative panels, each

composed of six members of the board. Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board. One member of each panel must be a physician assistant.

2. Each investigative panel shall select a chairman and a vice chairman from its own members ~~and a secretary who may or may not be a member of the panel and who shall keep minutes of all meetings thereof.~~
3. Each investigative panel may engage and share information with investigators, medical experts, and such other experts as the panel in its discretion determines to be necessary to accomplish its purposes. ~~The attorney general shall provide counsel to the investigative panels, but an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable~~Information shared to such entities or individuals remains confidential in the possession of the entities.
4. Cases for investigation must be assigned to each investigative panel by the ~~president~~executive director of the board.

SECTION 30. AMENDMENT. Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any ~~physician or physician assistant licensed to practice in this state~~licensee, or to request that an investigative panel review the qualifications of any ~~physician or physician assistant~~licensee to continue to practice in this state. Any person that, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as the panel deems necessary to determine whether any ~~physician or physician assistant~~licensee has committed any of the grounds for disciplinary action provided for by law. Upon completion of the investigation of the investigative panel, the investigative panel shall make a finding that the investigation discloses that:
 - a. There is insufficient evidence to warrant further action;
 - b. The conduct of the ~~physician or physician assistant~~licensee does not warrant further proceedings but the investigative panel determines possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the ~~physician or physician assistant~~licensee; or
 - c. The conduct of the ~~physician or physician assistant~~licensee indicates the ~~physician or physician assistant~~licensee may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.
2. If the investigative panel determines a formal hearing should be held to determine whether any ~~licensed physician or physician assistant~~licensee has committed any of the grounds for disciplinary action provided for by law, the panel shall inform the respondent ~~physician or physician assistant~~licensee involved of the specific charges to be considered by serving upon that individual a copy of a formal complaint filed with the board for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to the complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.

3. If an investigative panel finds there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The investigative panel shall provide written notice to the person filing the original complaint and the individual who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 31. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reporting requirements - Penalty.

1. A ~~physician, a physician assistant licensee,~~ a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a ~~licensed physician or physician assistant licensee~~ may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board ~~promptly~~ shall report that information in writing to the investigative panel of the board within thirty days from the date of occurrence or action. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment within thirty days.
2. In addition to the reporting requirements in subsection 1, a licensee shall report the following to the board within thirty days:
 - a. A citation, charge, arrest, or conviction of any violation of law, other than minor traffic citations.
 - b. A malpractice judgment or settlement made on behalf of an individual licensee.
 - c. Discipline by a licensing board, agency, or professional association.
 - d. An action affecting or limiting privileges or credentials.
 - e. A health care facility restriction of privileges due to practice concerns or discipline for reasons relating to the licensee's clinical competence which results in a limitation, restriction, suspension, revocation, relinquishment, or nonrenewal of the licensee's privileges to avoid an investigation or other disciplinary action.
 - f. A condition that impairs the licensee's ability to practice the profession in a competent, ethical, or professional manner. If the licensee is under treatment and able to practice in a competent, ethical, and professional manner, the condition does not need to be reported. A licensee also does not need to report under this section if the licensee has a current contract with the North Dakota professional health program and is in compliance with program requirements.
3. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board.
- ~~3.4.~~ A person required to report under this section that makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the

extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct.

- 4.5. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A ~~physician or physician assistant~~licensee who violates this section is subject to ~~administrative disciplinary~~ action by the board as specified by law or by administrative rule.

SECTION 32. AMENDMENT. Section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. Powers of the board's investigative panels.

The board's investigative panels may:

1. Subpoena witnesses and ~~physician and hospital~~medical or other records relating to the practice of any ~~physician or physician assistant~~licensee under investigation. The confidentiality of the records by any other statute or law does not affect the validity of an investigative panel's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of a committee which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Upon probable cause, require any ~~physician or physician assistant~~licensee under investigation to submit to a physical, psychiatric, or competency examination or an addiction evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators if necessary.
6. Hold confidential conferences with any complainant or any ~~physician or physician assistant~~licensee with respect to any complaint.
7. File a formal complaint against any ~~licensed physician or physician assistant~~licensee with the board.

SECTION 33. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-08. Communication to investigative panel privileged.

1. Communications to the investigative panels and their agents are privileged and confidential, and no member of the investigative panels nor any of their agents may be compelled to testify with respect thereto in any proceedings except in formal proceedings conducted before the board.
2. All records of the investigative panels, except their financial records, are confidential. Only the formal disciplinary documents issued pursuant to chapter 28-32 are considered open records, including the formal complaint, finding of facts, conclusions of law, and order. If a disciplinary action is resolved by settlement agreement, the fully executed agreement is a public record.
3. Notwithstanding the provisions of this section, if an investigative panel determines that the records of the investigative panel disclose a possible violation of state or federal criminal law, the investigative panel may provide the records to the appropriate law enforcement agency.

4. Investigative information in the possession of the board and investigatory panels which relates to licensee discipline may be disclosed to the appropriate licensing authorities within this state, the appropriate licensing authority in another state, or as permitted under chapter 43-17.4, if the receiving entity has statutory protections in place to protect the records from disclosure.

SECTION 34. REPEAL. Sections 43-17-21 and 43-17-30 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2115.

Senate Vote: Yeas 46 Nays 1 Absent 0

House Vote: Yeas 72 Nays 20 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State