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- Licensed Chiropractor in ND (and previously NC)
- Owner of Freedom Chiropractic Health Center in Fargo
- Founder and president of the Association of Wellness Chiropractors
- Business co-owner of several entities in ND involving land, minerals, water, and real estate
- Associates degree at Williston State College, BS in Chemistry at Dickinson State University, Doctor of Chiropractic at Northwestern Health Sciences University, Master's degree in Human Nutrition and Functional Medicine at University of Western States, and finishing Doctorate in Clinical Nutrition at University of Western States
- Married with 4 children

Chairman Weisz, Representatives of the House Human Services Committee,

My name is Dr. Jake Schmitz, and I am testifying on behalf of myself as a licensed chiropractor in the state of North Dakota (ND). I have been a practicing chiropractor in Fargo for over 11 years. My testimony is in opposition of SB 2064.

With SB 2064, the ND chiropractic board would like to take the word "hearing" out of 43-06. That one word being in the law makes it a requirement to hold a hearing when a licensee is subject to a complaint. Removing that word undermines the license holder's right to a hearing. I would submit, that everyone deserves the right to a hearing, based on the definition of due process in our constitution. All chiropractors should have the same right to defend their license. It was put in place by the legislature, is there for a reason, and should stay there to protect that right.

What's being offered here is the case of reds. One is a red flag where the board wants to remove the right of an accused to a hearing, and the other is a red herring where they claim this bill is intended for the case where no hearing is required due to default. In my 11 years as a chiropractor, there hasn't been a case of default happening. Even if that did happen, a hearing would be scheduled and the person wouldn't show up, so the judge would rule in favor of the board. Quick and painless.

Ms. Hicks, in her oral testimony in the Senate Workforce Judiciary Committee hearing for SB 2064:

"In the case before the Supreme Court the board just accepted the summary judgment grant because I'll be honest with you, that's a very legally dense issue that the board's not really equipped to grapple on its own whether or not it's correct or not." (Why the board accepted the ALJ Summary Judgment)

What she omits from her response is that the board's attorney made the motion for summary judgment. The board's attorney was also aware that ALJ's grant summary judgment motions for agencies a disproportionate amount of time so there wasn't anything to lose in moving for summary judgment. The board's legal counsel advised the board to accept the ALJ's recommendation, while knowing or should have known it was inappropriate and not applicable to the situation.

According to Tim Dawson, director of the Office of Administrative Hearings in his HB 1154 testimony, agencies prevail 75-85% of the time. What does the board have to lose moving for summary judgment? The answer is nothing, and by removing the word "hearing" from our century code, they will have the authority to do so in every case, denying the right of the accused to a hearing, and hence due process.

Of course, SB 2064 would be a "much easier pathway" for the board because then they don't have to hold a hearing and can rely on summary judgment in each case.

"What it would do is it protects the board's ability to utilize dispositive motions such as default judgments and summary judgments. That is the only thing that it does." ~ Ms. Hicks on why this bill was created.

What it also does is increases the likelihood of chiropractors not having an opportunity to defend themselves, makes the ALJ determine "genuine issues of material facts" for every case, and undermines the most fundamental right of our judicial system…the right to a hearing.

The intent of this bill is to add another hurdle for the license holder to get a hearing, namely forcing them to also defeat a summary judgment motion by the board. Every extra hurdle costs more. The executive director of the board said it best in her Senate testimony,

"This language would clarify to the licensees what they can expect through the disciplinary process, and that a hearing might not occur in all cases…"

The fact that a hearing "might not occur in all cases" eliminates due process for the person defending their license to practice, their livelihood, and should be a terrifying precedent for all professional license holders in ND.

"This is not meant to limit the ability of a licensee to have an administrative hearing ***when one is warranted…****"*

Based on the board's interpretation, and without the word hearing in statute, when would a hearing be warranted? The board decided it wasn't warranted for me even with the word hearing in statute. We know that's true because they moved for summary judgment.

SB 2064 is moving in the wrong direction. If any changes are made, it should be to guarantee license holders will be granted a formal, evidentiary hearing, not the other way around. It should be ensured license holders won't have to go through what I went through, or worse, by having the door completely shut on them for no chance at all for true, fair, and complete due process.

Thank you for your time. Please vote DO NOT PASS on SB 2064. I will gladly answer any questions.

Maximum Blessings,

Dr. Jake Schmitz