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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 Wobbema, Senators of the Workforce Development 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 about 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. The word being in the law makes it a requirement to hold a hearing when a licensee is subject to a complaint. It appears the desire of the chiropractic board is to strip away license holders' rights to defend their personal property (their license).

The North Dakota Supreme Court ruled in *Schmitz v State Board of Chiropractic Examiners 2022 ND 113* that evidentiary hearings are required whenever an administrative agency acts in a quasi-judicial capacity. In case you're wondering, I'm the Schmitz from that case. The ND chiropractic board failed to hold a hearing for a license holder, which was me, attempting to defend my license from a board complaint. Instead, they moved for (and were granted) summary judgment, which was inappropriate, both due to 43-06-15.7, 28-32-21, and 28-32-22.

SB 2064 is a blatant attempt to remove due process from license holders. Why would this board, a state agency, want to eliminate the word "hearing" from their Century Code? The timing is interesting due to the recent timing of the Supreme Court opinion from 2022. To me, it appears they would like to do the same thing to other license holders in the future and have the legislature make it legal.

An argument the chiropractic board might make for this bill is to streamline the hearing process, for the times when no material facts are in dispute. However, the Supreme Court also said in the case that,

"[a] motion for summary judgment is not an opportunity to conduct a mini-trial."

My fear is this board fully intends to use this bill as the impetus for conducting mini-trials in the future, depriving license holders of the right to a fair hearing.

In my case, I argued the facts were in dispute, and the administrative law judge disregarded my arguments and instead ruled in favor of the board, granting summary judgment. I had a weeklong hearing scheduled, but when the administrative law judge granted summary judgment, my hearing was

canceled. I was not given an evidentiary hearing, and 2 years later the Supreme Court ruled this was inappropriate (the ruling was reversed and remanded). Below is the highlight of Schmitz v. State Board of Chiropractic Examiners 2022 ND 113 from the Supreme Court website:

“A formal, evidentiary hearing is required whenever an administrative agency acts in a quasi-judicial capacity unless the parties either agree otherwise or there is no dispute of a material fact. A summary judgment is inappropriate if a fact-finder must draw inferences and make findings on disputed facts to support its decision. Even when facts are undisputed, a summary judgment may not be granted if reasonable differences of opinion exist as to the inferences to be drawn from those facts.”

A hearing should be held for licensing complaints, which is vital to uphold due process. I spent over \$125,000.00 in pursuit of an opportunity for a hearing (due process) and to find this out. The passing of SB 2064 would remove the word “hearing” from law and would not keep other licensees from having a hearing. How is that due process? 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.

Please vote DO NOT PASS on SB 2064.

**POSSIBLE AMENDMENT:**

To make this extremely clear, you could add the following after line 11.

**“a. The board or license holder may move for informal disposition in lieu of a hearing if both parties agree in writing there are no genuine disputes of material facts.”**

This language further supports the ruling of the Supreme Court. Thank you for your time. Feel free to call or email me if you have any questions.

Maximum Blessings,

A handwritten signature in black ink, appearing to read "Dr. Jake Schmitz". The signature is stylized and cursive.

Dr. Jake Schmitz