

**Senate Human Services Committee**  
**Senator Judy Lee, Chair**  
**February 4, 2025**  
**SB 2297**

Chair Lee and members of the Senate Human Services Committee. I am Dr. Steven Mitchell, a retired neuroradiologist. I completed my medical training at the University of North Dakota School of Medicine and spent the majority of my career working for Sanford Health Fargo. I have served on Sanford Fargo's ethics committee for 14 years and serve as emeritus chair. I also help teach medical ethics for the UND 3<sup>rd</sup> year medical students.

Thank you for your consideration of Senate Bill 2297, a bill designed to help medical providers care for individuals who do not have the capacity to make medical decisions nor have anyone to do so for them.

We are seeing increasing numbers of patients in our hospitals that do not have decision-making capacity, do not have an advance care directive, and do not have any family or close friends available to represent them as a substitute decision-maker. A person in this situation is often referred to as an "unrepresented patient."

Our care teams are sometimes unable to provide proper care to these individuals when that care needs a procedure that requires informed consent. We search diligently to find a decision-maker, but if one does not exist, we cannot perform that procedure unless it is an emergency.

I can give you an example of a patient scenario where a medical decision needs to be made, but there is nobody to make one on the patient's behalf: a homeless patient with significantly infected foot ulcer that is also infecting the bone. Due to confusion and/or a mental health condition, the patient is not able to make a decision about their own care. Despite our best efforts, we cannot find a close friend or family member willing to make decisions for this individual. We could treat the soft tissue infection with intravenous antibiotics and discharge the patient to a homeless shelter. However, if the underlying bone infection is severe, the proper treatment may be a partial foot amputation which cannot be done because it is neither life threatening nor an emergency. As a result, this individual may have repeated hospitalizations for improperly treated bone infection due to the inability to get consent for the correct procedure.

Some states allow a "two-physician rule" for situations like this. If the attending physician and the surgeon both agree that surgery should be done, the surgeon proceeds. Nobody speaks on behalf of the patient. Our ethics team and many other ethicists across the country believe the best practice is for an

interdisciplinary medical team, not directly involved in the patients care, to make careful and informed decisions on the patient's behalf. However, under current North Dakota law, that is not an option. SB 2297 adds a new subsection to North Dakota law that would add an interdisciplinary health team as a last resort decision-maker.

We, and other hospitals in North Dakota, are committed to good-faith efforts to find relatives or friends willing and able to make medical decisions for patients, but for those patients for whom none can be found, we would sincerely appreciate a yes vote on SB 2297.

Thank you for your consideration. I would welcome any questions you might have.

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