

Fifty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1157

Introduced by

Human Services Committee

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

1 A BILL for an Act to amend and reenact sections 23-34-03, 43-17-03, 43-17.1-01, 43-17.1-02,  
2 43-17.1-04, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, 43-17.1-08, and 43-17.1-09 of the North  
3 Dakota Century Code, relating to the commission on medical competency; and to repeal  
4 section 43-17.1-03 of the North Dakota Century Code, relating to compensation of members of  
5 the commission on medical competency.

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

7 **SECTION 1. AMENDMENT.** Section 23-34-03 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **23-34-03. Peer review records - Privileged - Exceptions.** Peer review records are  
10 privileged and are not subject to subpoena or discovery or introduction into evidence in any civil  
11 or administrative action, except:

- 12 1. Records gathered from an original source that is not a peer review committee;
- 13 2. Testimony from any person as to matters within that person's knowledge, provided  
14 the information was not obtained by the person as a result of the person's  
15 participation in a professional peer review; or
- 16 3. Peer review records subpoenaed in an investigation conducted by ~~the commission~~  
17 on medical competency an investigative panel of the board of medical examiners  
18 pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the  
19 board of medical examiners pursuant to section 43-17-30.1. Any peer review  
20 records provided to ~~the commission~~ an investigative panel of the board of medical  
21 examiners or introduced as evidence in any disciplinary action before the board  
22 are confidential and are not subject to subpoena, discovery, or admissibility into  
23 evidence in any civil or administrative action, and are not public records subject to  
24 section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

1           **SECTION 2. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **43-17-03. State board of medical examiners - How appointed - Qualifications.**

- 4           1. The governor shall appoint a state board of medical examiners consisting of ~~ten~~  
5 eleven members, eight of whom are ~~M.D.'s~~ doctors of medicine, one of whom is a  
6 ~~D.O.~~ doctor of osteopathy, and ~~one~~ two of whom ~~is~~ are designated as a public  
7 ~~member~~ members. If no osteopathic physician is qualified and willing to serve,  
8 any qualified physician may be appointed in place of the osteopathic physician.
- 9           2. Each physician member must:
- 10           a. Be a practicing physician of integrity and ability.
- 11           b. Be a resident of and duly licensed to practice medicine in this state.
- 12           c. Be a graduate of a medical or osteopathic school of high educational  
13 requirements and standing.
- 14           d. Have been engaged in the active practice of the physician's profession within  
15 this state for a period of at least five years.
- 16           3. ~~The~~ Each public member of the board must:
- 17           a. Be a resident of this state.
- 18           b. Be at least twenty-one years of age.
- 19           c. Not be affiliated with any group or profession that provides or regulates health  
20 care in any form.
- 21           4. A person appointed to the board shall qualify by taking the oath required of civil  
22 officers.

23           **SECTION 3. AMENDMENT.** Section 43-17.1-01 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **43-17.1-01. Definitions.** As used in this chapter, unless the context or subject matter  
26 otherwise requires:

- 27           1. ~~"Commission"~~ "Board" means the ~~commission on medical competency~~ state board  
28 of medical examiners.
- 29           2. ~~"Commissioner"~~ means the commissioner of insurance.
- 30           3. "Physician" means a person engaged in the practice of medicine in this state  
31 pursuant to the provisions of chapter 43-17.

1           **SECTION 4. AMENDMENT.** Section 43-17.1-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **43-17.1-02. ~~Commission on medical competency~~ Investigative panels of the**  
4 **board.**

5           1. ~~There is hereby created a commission on medical competency which must consist~~  
6 ~~of:~~

7           a. ~~Two members of the state board of medical examiners appointed by the~~  
8 ~~chairman of the board to two year terms, except one of the initial appointees~~  
9 ~~must be appointed for a term of three years.~~

10          b. ~~Two physicians in active practice who have been actively engaged in the~~  
11 ~~practice of medicine in this state for at least eight years, selected by the state~~  
12 ~~medical association. Members so selected shall serve three year terms,~~  
13 ~~except one of the initial members so selected shall serve for only two years.~~

14          c. ~~The commissioner and the attorney general, or their designated~~  
15 ~~representatives.~~

16           ~~No appointed member of the commission may serve more than two terms~~  
17 ~~consecutively. For the purpose of investigating complaints or other information~~  
18 ~~that might give rise to a disciplinary proceeding against a physician, a physician~~  
19 ~~assistant, or a fluoroscopy technologist, the president of the board must designate~~  
20 ~~two investigative panels, each comprised of five members of the board, excluding~~  
21 ~~the president. Four members of each panel must be physician members of the~~  
22 ~~board. One member of each panel must be a public member of the board. In~~  
23 ~~addition, the president of the board shall serve on both investigative panels.~~

24          2. ~~The commission~~ Each investigative panel shall select a chairman and a vice  
25 chairman from its own members, and a secretary who may or may not be a  
26 member of the ~~commission~~ panel and who shall keep minutes of all meetings  
27 thereof.

28          3. ~~The commission may employ an executive secretary,~~ Each investigative panel  
29 may engage investigators, medical experts, and such other experts as the  
30 ~~commission~~ panel in its discretion determines to be necessary to accomplish its  
31 purposes. The attorney general shall provide counsel to the ~~commission~~

1 investigative panels, but ~~the commission~~ an investigative panel may employ  
2 special counsel in any proceeding wherein it decides it is advisable.

3 4. Cases for investigation must be assigned to each investigative panel by the  
4 president of the board.

5 **SECTION 5. AMENDMENT.** Section 43-17.1-04 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **43-17.1-04. ~~Commission meetings~~ Meetings of investigative panels.** Meetings of  
8 the ~~commission~~ investigative panels must be held at least once annually in Bismarck, North  
9 Dakota, and at such other place or places within the state and at such times as ~~the commission~~  
10 each investigative panel may determine. A majority of the members of ~~the commission~~ an  
11 investigative panel constitutes a quorum, and no action of ~~the commission~~ an investigative  
12 panel is effective without the concurrence therein of a majority of ~~its~~ the members present at  
13 the time of the decision. Special meetings of ~~the commission~~ an investigative panel may be  
14 called at any time by the chairman or vice chairman of ~~the commission~~ an investigative panel or  
15 upon the written request of any three members of ~~the commission~~ an investigative panel.

16 **SECTION 6. AMENDMENT.** Section 43-17.1-05 of the 1997 Supplement to the North  
17 Dakota Century Code is amended and reenacted as follows:

18 **43-17.1-05. Complaints.**

19 1. ~~All residents have the right to~~ Any person may make or refer written complaints to  
20 the ~~commission~~ investigative panels with reference to the acts, activities, or  
21 qualifications of any physician, physician assistant, or fluoroscopy technologist  
22 licensed to practice in this state, or to request that ~~the commission~~ an investigative  
23 panel review the qualifications of any physician, physician assistant, or fluoroscopy  
24 technologist to continue to practice in this state. Any person who, in good faith,  
25 makes a report to the ~~commission on medical competency~~ investigative panels  
26 under this section is not subject to civil liability for making the report. For purposes  
27 of any civil proceeding, the good faith of any person who makes a report pursuant  
28 to this section is presumed. Upon receipt of any complaint or request, the  
29 ~~commission~~ investigative panel shall conduct the investigation as it deems  
30 necessary to resolve the matter as it deems appropriate. The ~~commission~~  
31 investigative panel shall determine whether ~~the~~ a formal hearing should be held to

1 determine whether any physician, physician assistant, or fluoroscopy technologist  
2 has committed any of the grounds for disciplinary action provided for by ~~section~~  
3 ~~43-17-34~~ law.

4 2. If the ~~commission~~ investigative panel determines that a formal hearing should be  
5 held to determine whether any licensed physician, physician assistant, or  
6 fluoroscopy technologist has committed any of the grounds for disciplinary action  
7 provided for by ~~section 43-17-34~~ law, it shall inform the respondent physician,  
8 physician assistant, or fluoroscopy technologist involved of the specific charges to  
9 be considered by serving upon ~~him~~ that person a copy of a formal complaint filed  
10 with the board of medical examiners for disposition pursuant to the provisions of  
11 chapter 28-32. The board members who have served on the ~~commission~~  
12 investigative panel may not participate in any proceeding before the board relating  
13 to said complaint. The complaint must be prosecuted before the board by the  
14 attorney general or one of ~~his~~ the attorney general's assistants.

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

21 **SECTION 7. AMENDMENT.** Section 43-17.1-05.1 of the 1997 Supplement to the  
22 North Dakota Century Code is amended and reenacted as follows:

23 **~~43-17.1-05.1. Reports to commission on medical competency—When required~~**  
24 **Reporting requirements.** A physician, a physician assistant, or a fluoroscopy technologist, a  
25 health care institution in the state, a state agency, or a law enforcement agency in the state  
26 having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy  
27 technologist may have committed any of the grounds for disciplinary action provided by law or  
28 by rules adopted by the board shall promptly report that information in writing to the  
29 ~~commission~~ investigative panel of the board. A medical licensee or any institution from which  
30 the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall  
31 report that licensee's action to the ~~commission~~ investigative panel of the board if that action

1 occurs while the licensee is under formal or informal investigation by the institution or a  
2 committee of the institution for any reason related to possible medical incompetence,  
3 unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning  
4 a licensee ~~the commission~~ an investigative panel shall, or on its own motion ~~the commission~~ an  
5 investigative panel may, investigate any evidence that appears to show a licensee is or may  
6 have committed any of the grounds for disciplinary action provided by law or by rules adopted  
7 by the board. A person required to report under this section who makes a report in good faith is  
8 not subject to criminal prosecution or civil liability for making the report. For purposes of any  
9 civil proceeding, the good faith of any person who makes a report pursuant to this section is  
10 presumed. A physician who obtains information in the course of a physician-patient  
11 relationship in which the patient is another physician is not required to report if the treating  
12 physician successfully counsels the other physician to limit or withdraw from practice to the  
13 extent required by the impairment. A physician who obtains information in the course of a  
14 professional peer review pursuant to chapter 23-34 is not required to report pursuant to this  
15 section. A physician who does not report information obtained in a professional peer review is  
16 not subject to criminal prosecution or civil liability for not making a report. For purposes of this  
17 section, a person has actual knowledge if that person acquired the information by personal  
18 observation or under circumstances that cause that person to believe there exists a substantial  
19 likelihood that the information is correct. An agency or health care institution that violates this  
20 section is guilty of a class B misdemeanor. A physician, physician assistant, or ~~radiology~~  
21 fluoroscopy technologist who violates this section is subject to administrative action by the  
22 North Dakota state board of medical examiners as specified by law or by administrative rule.

23 **SECTION 8. AMENDMENT.** Section 43-17.1-06 of the 1997 Supplement to the North  
24 Dakota Century Code is amended and reenacted as follows:

25 **43-17.1-06. ~~Commission powers~~ Powers of the board's investigative panels.** The  
26 ~~commission~~ board's investigative panels may:

- 27 1. Subpoena witnesses and physician and hospital records relating to the practice of  
28 any physician, physician assistant, or fluoroscopy technologist under investigation.  
29 The confidentiality of the records by any other statute or law does not affect the  
30 validity of ~~the commission's~~ an investigative panel's subpoena nor the admissibility  
31 of the records and board proceedings; however, the proceedings and records of a

1 committee that are exempt from subpoena, discovery, or introduction into evidence  
2 under chapter 23-34 are not subject to this subsection.

- 3 2. Hold preliminary hearings.
- 4 3. Require any physician, physician assistant, or fluoroscopy technologist under  
5 investigation to submit to a physical, psychiatric, or competency examination, or  
6 chemical dependency evaluation.
- 7 4. Appoint special masters to conduct preliminary hearings.
- 8 5. Employ independent investigators when necessary.
- 9 6. Hold confidential conferences with any complainant or any physician, physician  
10 assistant, or fluoroscopy technologist with respect to any complaint.
- 11 7. File a formal complaint against any licensed physician, physician assistant, or  
12 fluoroscopy technologist with the state board of medical examiners.

13 **SECTION 9. AMENDMENT.** Section 43-17.1-08 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **43-17.1-08. Communication to ~~commission~~ investigative panel privileged.**

16 Communications to the ~~commission~~ investigative panels and ~~its~~ their agents are privileged, and  
17 no member of the ~~commission~~ investigative panels nor any of ~~its~~ their agents may be  
18 compelled to testify with respect thereto in any proceedings except in ~~these~~ formal proceedings  
19 conducted before the board of medical examiners ~~wherein the competency of a physician is at~~  
20 issue. All records of the ~~commission~~ investigative panels, except ~~its~~ their financial records, are  
21 confidential. Notwithstanding the provisions of this section, if ~~the commission~~ an investigative  
22 panel determines that the records of the ~~commission~~ investigative panel disclose a possible  
23 violation of state or federal criminal law, the ~~commission~~ investigative panel may provide the  
24 records to the appropriate law enforcement agency.

25 **SECTION 10. AMENDMENT.** Section 43-17.1-09 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **43-17.1-09. ~~Commission immunity~~ Immunity.** Members of the ~~commission~~  
28 investigative panels, special masters appointed by ~~it~~ an investigative panel, and agents of ~~the~~  
29 ~~commission~~ an investigative panel, are immune from any liability of any kind based upon any  
30 acts or omissions in the course of the performance of responsibilities in an official capacity

1 except liability for bodily injury arising out of accidents caused, or contributed to, by the  
2 negligence of the member or agent.

3           **SECTION 11. REPEAL.** Section 43-17.1-03 of the North Dakota Century Code is  
4 repealed.