

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2094
(Human Services Committee)
(At the request of the North Dakota Board of Medicine)

AN ACT to create and enact sections 43-17-44, 43-17-45, and 43-62-14.1 of the North Dakota Century Code, relating to the practice of telemedicine and the regulation of fluoroscopy technologists; to amend and reenact sections 43-17-01, 43-17-02, and 43-17-02.3, subsection 1 of section 43-17.1-02, and sections 43-17.1-05, 43-17.1-05.1, and 43-17.1-06 of the North Dakota Century Code, relating to the definitions of the practice of medicine and telemedicine, the practice of medicine, and the regulation of fluoroscopy technologists; to provide a penalty; and to provide for application.

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.

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means a 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.).
- ~~3.4.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
 - a. One who holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
 - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
 - c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
 - d. One who 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 ~~must~~shall be held to be engaged in the practice of medicine.
5. "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. Dentists practicing their profession when properly licensed.
4. Optometrists practicing their profession when properly licensed.
5. 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. 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. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. Podiatrists practicing their profession when properly licensed.
9. Any person rendering services as a physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician. However, sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. The North Dakota board of medicine shall prescribe rules governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of physician assistants. Physician assistants may not be authorized to perform any services which 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 the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
11. ~~A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the North Dakota board of medicine prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide these services.~~
12. A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.
- 43-12. An individual duly licensed to practice medical imaging or radiation therapy in this state under chapter 43-62.

14-13. An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

SECTION 3. 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 ~~twenty-four hours~~seven days; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

SECTION 4. Section 43-17-44 of the North Dakota Century Code is created and enacted as follows:

43-17-44. Standard of care and professional ethics.

A licensee is held to the same standard of care and same ethical standards, whether practicing traditional in-person medicine or telemedicine. The following apply in the context of telemedicine:

1. Professional ethical standards require a practitioner to practice only in areas in which the practitioner has demonstrated competence, based on the practitioner's training, ability, and experience. In assessing a licensee's compliance with this ethical requirement, the board shall give consideration to board certifications and specialty groups' telemedicine standards.
2. A licensee practicing telemedicine shall establish a bona fide relationship with the patient before the diagnosis or treatment of a patient. A licensee practicing telemedicine shall verify the identity of the patient seeking care and shall disclose, and ensure the patient has the ability to verify, the identity and licensure status of any licensee providing medical services to the patient.
3. Before initially diagnosing or treating a patient for a specific illness or condition, an examination or evaluation must be performed. An examination or evaluation may be performed entirely through telemedicine, if the examination or evaluation is equivalent to an in-person examination.
 - a. An examination utilizing secure videoconferencing or store-and-forward technology for appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation meets this standard, as does an examination conducted with an appropriately licensed intervening health care provider, practicing within the scope of the provider's profession, providing necessary physical findings to the licensee. An examination or evaluation consisting only of a static online questionnaire or an audio conversation does not meet the standard of care.

- b. Once a licensee conducts an acceptable examination or evaluation, whether in-person or by telemedicine, and establishes a patient-licensee relationship, subsequent followup care may be provided as deemed appropriate by the licensee, or by a provider designated by the licensee to act temporarily in the licensee's absence. In certain types of telemedicine utilizing asynchronous store-and-forward technology or electronic monitoring, such as teleradiology or intensive care unit monitoring, it is not medically necessary for an independent examination of the patient to be performed.
4. A licensee practicing telemedicine is subject to all North Dakota laws governing the adequacy of medical records and the provision of medical records to the patient and other medical providers treating the patient.
5. A licensee must have the ability to make appropriate referrals of patients not amenable to diagnosis or complete treatment through a telemedicine encounter, including a patient in need of emergent care or complementary in-person care.

SECTION 5. Section 43-17-45 of the North Dakota Century Code is created and enacted as follows:

43-17-45. Prescribing - Controlled substances.

1. A licensee who has performed a telemedicine examination or evaluation meeting the requirements of this chapter may prescribe medications according to the licensee's professional discretion and judgment. Opioids may only be prescribed through telemedicine if prescribed as a federal food and drug administration approved medication assisted treatment for opioid use disorder or to a patient in a hospital or long-term care facility. Opioids may not be prescribed through a telemedicine encounter for any other purpose.
2. A licensee who, pursuant to this chapter, prescribes a controlled substance, as defined by North Dakota law, shall comply with all state and federal laws regarding the prescribing of a controlled substance, and shall participate in the North Dakota prescription drug monitoring program.

SECTION 6. AMENDMENT. Subsection 1 of section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 7. 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, ~~or fluoroscopy technologist~~ licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, or physician assistant, ~~or fluoroscopy technologist~~ to continue to practice in this state. Any person ~~whethat~~ whethat, 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 ~~whethat~~ whethat 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~~ the panel deems necessary to determine whether any physician, or physician assistant, ~~or fluoroscopy technologist~~ has

committed any of the grounds for disciplinary action provided for by law. Upon completion of ~~itsthe~~ 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; ~~or fluoroscopy technologist~~ does not warrant further proceedings but the investigative panel determines that 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; ~~or fluoroscopy technologist~~; or
 - c. The conduct of the physician; or physician assistant; ~~or fluoroscopy technologist~~ indicates that the physician; or physician assistant; ~~or fluoroscopy technologist~~ 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 that a formal hearing should be held to determine whether any licensed physician; or physician assistant; ~~or fluoroscopy technologist~~ has committed any of the grounds for disciplinary action provided for by law, ~~itthe panel~~ shall inform the respondent physician; or physician assistant; ~~or fluoroscopy technologist~~ involved of the specific charges to be considered by serving upon that ~~person~~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 ~~saidthe~~ 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 that 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 ~~individual or entity~~person filing the original complaint and the ~~person~~individual who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 8. 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; ~~or a fluoroscopy technologist~~, 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; ~~a~~ or physician assistant; ~~or a fluoroscopy technologist~~ may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board promptly shall ~~promptly~~ report that information in writing to the investigative panel of the board. 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.
2. 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. A person required to report under this section ~~whothat~~ 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 ~~whothat~~ 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. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, or physician assistant, ~~or fluoroscopy technologist~~ who violates this section is subject to administrative action by the board as specified by law or by administrative rule.

SECTION 9. 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 records relating to the practice of any physician, or physician assistant, ~~or fluoroscopy technologist~~ 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 ~~that~~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, ~~or fluoroscopy technologist~~ under investigation to submit to a physical, psychiatric, or competency examination or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators ~~when~~if necessary.
6. Hold confidential conferences with any complainant or any physician, or physician assistant, ~~or fluoroscopy technologist~~ with respect to any complaint.
7. File a formal complaint against any licensed physician, or physician assistant, ~~or fluoroscopy technologist~~ with the board.

SECTION 10. Section 43-62-14.1 of the North Dakota Century Code is created and enacted as follows:

43-62-14.1. Fluoroscopy technologist.

1. Effective August 1, 2019, an individual licensed or permitted as a fluoroscopy technologist by the North Dakota board of medicine who is in good standing on that date, automatically becomes licensed as a fluoroscopy technologist by the North Dakota medical imaging and radiation therapy board.
 - a. Effective August 1, 2019, the North Dakota board of medicine shall expire every active fluoroscopy technologist's license issued by that board.

- b. Effective August 1, 2019, the North Dakota medical imaging and radiation therapy board shall issue a fluoroscopy technologist license to every individual qualified under this subsection to be automatically licensed.
- 2. The scope of practice of a licensed fluoroscopy technologist is limited to gastrointestinal fluoroscopy of the esophagus, stomach, and small and large intestines.
- 3. Fluoroscopy services provided by a licensed fluoroscopy technologist must be provided under the supervision of a primary supervising physician.
- 4. If a fluoroscopy technologist performs a fluoroscopy procedure outside the presence of the technologist's primary supervising physician, the technologist must be supervised by an onsite supervising physician who is immediately available to the technologist for consultation and supervision at all times the technologist is performing a fluoroscopy procedure.
- 5. Under this section, a supervising physician may not designate the fluoroscopy technologist to take over the physician's duties or cover the physician's practice. During an absence or temporary disability of a primary supervising physician, the fluoroscopy technologist is responsible to the substitute primary supervising physician.
- 6. To qualify for biennial license renewal, a fluoroscopy technologist shall submit to the board with radiography license renewal:
 - a. Evidence of completion of at least six hours of continuing education on fluoroscopy safety and relevant radiation protection; and
 - b. A copy of an agreement with a primary supervising physician.
- 7. A licensee under this section is subject to the disciplinary authority of the board under section 43-62-19.

SECTION 11. APPLICATION. To facilitate application of sections 2 and 6 through 10 of this Act, the North Dakota board of medicine shall provide the North Dakota medical imaging and radiation therapy board with the files regarding all active fluoroscopy technologists licensed by the North Dakota board of medicine necessary for the North Dakota medical imaging and radiation therapy board to take over licensure and regulation of these technologists.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2094.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 88 Nays 2 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State