

2013 HOUSE HUMAN SERVICES

HB 1086

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1086
January 14, 2013
17151

Conference Committee

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:

Relates to powers of Board of Podiatric Medicine in investigating and prosecuting complaints.

Minutes:

Testimony attachment 1

Chairman Weisz: Opened the hearing on HB 1086.

Stacy Moldenhauer: representing ND Board of podiatric medicine. (See testimony #1).

Vice-Chair Hofstad: Maybe you can give me some examples of other boards that have subpoena power?

Stacy Moldenhauer: The Board of Optometry, Board of Chiropractors, Board of Engineers and Land Surveyors, Board of Dentistry, Board of Veterinarians, Board of Psychologists, I stopped researching after I found that many.

Vice-Chair Hofstad: Give me an example of where you used the subpoena power.

Stacy Moldenhauer: The subpoena power is necessary, a podiatrist is required to cooperate with us via statutory authority already, however if I need to interview patients or an outside employee of that podiatrist, they don't necessarily have to cooperate with me. So if I have somebody who doesn't want to work with us or get involved in a situation have to come testify at an administrative hearing I need to have that subpoena power in order to compel them to produce the testimony that is necessary.

Vice-Chair Hofstad: Have you had that circumstance where failing to have that subpoena power caused you not to continue your investigation or compromised your investigation?

Stacy Moldenhauer: I haven't yet, I have been employed by Podiatric medicine as their attorney for only 1 year. We only have 31 podiatrists in ND at the present time. The disciplinary actions that have ensued are very minimal. We don't want to find ourselves in a situation with a podiatrists who does need disciplinary action taken and we are at a stand-still hoping a legislative session is coming in two years so we can subpoena witnesses

necessary. I do represent the board of medical examiners as well and in that situation many times I have to use our subpoena power. Any other questions?

Rep. Laning: You mentioned the ability of wanting to hire an investigator; do the board members have annual fees? How do you finance something like that?

Stacy Moldenhauer: Yes they do. It would be funded by the money brought in by the board of podiatric medicine already.

Rep. Fehr: Is there a technical difference between language to compel witnesses and language uses the term subpoena?

Stacy Moldenhauer: No.

Rep. Fehr: Is there a difference in terms of compensating someone?

Stacy Moldenhauer: No, with subpoena if they are willing to accept service if not you have to serve them personally with it so you incur that fee. If you have to have them come testify, you pay the witness fee and mileage.

Rep. Fehr: Line 16, number 4, it says appoints special masters to conduct preliminary hearings, I don't know what that is?

Stacy Moldenhauer: If we hold a preliminary hearing on a matter it gives us the ability to appoint a special master and have them hold the hearing versus going through the administrative process.

Rep. Fehr: What is a special master?

Stacy Moldenhauer: An individual that the is licensed to conduct the preliminary hearings

Rep. Fehr: Line 18 item 6 holding confidential conferences, don't you already have this authority by executive session?

Stacy Moldenhauer: Technically we can, we don't; want to end up with a problem with the open records or hearings. This would allow us to hold confidential conferences with the complaint especially who is filing the complaint against the podiatrist and also with podiatrists.

Rep. Fehr: The decisions are made in the open hearing not in that executive session.

Stacy Moldenhauer: Absolutely.

Rep. Mooney: Have you had instances in the past with the podiatry association or field as far as complaints or is this just more of a preventative measure?

Stacy Moldenhauer: We have had complaints the board hasn't had to act on and have monitored physicians. If we had to go forward I voiced concerns with how we are going to get some of this information if the individuals are not willing to cooperate with us.

Rep. Mooney: So the functionality doesn't exist for you to be able to pursue further is where you're at right now?

Stacy Moldenhauer: We can pursue further as long as we have compliant individuals this helps with the investigation of prosecution should we run into individuals who are not compliant.

Chairman Weisz: You indicated the medical examiners have subpoena powers but can you give me the section when looking at the powers of the board, it doesn't list anything about it?

Stacy Moldenhauer: Section 43-17.1-06, Board of medical examiners is split up into an investigative panel so there is a panel A and B.

Chairman Weisz: Further questions from the committee?

Chairman Weisz: How often do you receive a complaint in a given year?

Stacy Moldenhauer: Board of Podiatry only meets once a year. At last meeting we had 4 complaints. The previous meeting had 4 or 5 with one that needed to be monitored.

Chairman Weisz: If you meet once a year, do you leave the complaint for 12 months?

Stacy Moldenhauer: No, the complaints are forwarded to the board and if something needs to be taken as a panel, the board of podiatry medicine has the ability to do an emergency suspension of a license.

Chairman Weisz: Further questions from the committee? Further support of HB 1086? Any opposition? Seeing none hearing is closed on HB 1086.

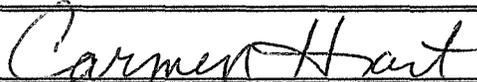
2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1086
January 22, 2013
17544

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the powers of the board of podiatric medicine in investigating and prosecuting complaints

Minutes:

You may make reference to "attached testimony."

Chairman Weisz opened the session on HB 1086. The language that is in 1086 is the same as in the board of medicine's language. They are breaking new ground in this case, but not all boards do have this language. Most boards don't have this much authority, particularly Number 1 in Section 1.

Rep. Fehr: Do you have any opposition to this bill?

Chairman Weisz: A little background. They were in 1999 when it occurred. At that time there were 14 total podiatrists. They had gone after one of their docs and then it became more of a personality contest. The board was \$80,000 in the hole and wanted the state to bail them out. It became a real issue at that time that there were so few practicing podiatrists that it was hard to have a functioning board that could even be impartial. The biggest problem with that board is just their size. The reality is they are not big enough to function. We have tried an allied health board that would have forced them to all go into a single board.

Rep. Porter: It got to the point that the ongoing process of lawyers and fighting this virtually bankrupted that board. We raised their license fee for a period of time to \$1,300 or \$1,400 a year in order to pay back the loan for, I am guessing, 15 or 16 podiatrists working in the state. I don't know if they have even more than 25 right now.

Chairman Weisz: He claimed there were 31. That is still tiny from the standpoint of a board that regulates its numbers to try to get to the point of being non conflict.

Rep. Porter: When I look at the board of medical examiners and the number of physicians across the state that they regulate, and we set up a very clear process through the course of many legislative sessions to create their A and B panels so that one would be the investigative panel and one would be outside of that panel, there was a level of neutrality that existed in the process of taking action against a physician in their practice. With this

group and the size of the board and the number of individual licenses in the state, it would be very easy with these powers to get retaliatory in a really quick hurry. My personal feeling is that this is not the type of board that should have these powers that they are asking for.

Rep. Damschen: I am thinking back to last session when we passed that legislation for small boards that didn't have enough members to almost be a board. This would give this board quite a bit more authority.

Chairman Weisz: This board wouldn't fall under it, because it is grandfathered.

Rep. Damschen: I realize that. I am just making the comparison that a board this size formed today wouldn't be independent really.

Rep. Silbernagel: You mentioned an allied board.

Chairman Weisz: This board could petition to join that group, but we can't make them join once they are grandfathered in. Any new group would have to go in. If they reach a certain size, they have the ability to petition out of the group.

Rep. Silbernagel: They have another option for a governing board other than a self-governing board?

Chairman Weisz: Right. I can pretty much guarantee this board will never ask to go into that.

Rep. Mooney: Why don't just fall under the board of medical examiners or something like that?

Chairman Weisz: I don't know the history on when they became separate, but I do know that the board of medical examiners evidently considers them a very poor stepchild. They didn't want anything to do with them.

Rep. Fehr: From my experience with the psychology board, if we had an issue where members of the board had a conflict because they knew the people or whatever, we had the option of going to another state or we had a national association we could go to help us out and be an impartial party to go to. Presumably, this board should have some other option if they have a conflict within themselves.

Chairman Weisz: If they had the option, they weren't using it at that point.

Rep. Porter moved a **Do Not Pass**.

Rep. Kiefert seconded the motion.

Rep. Laning: What is the drawback as far as the state is concerned? We don't have any financial obligations of any sort in this, do we?

Chairman Weisz: Technically, no. When they had their fund the other time, they did come into the state and wanted us to bail them out which we didn't have to do and we didn't do. To me, from the state's perspective, it is the citizen who can get caught up in this. From a financial standpoint, this won't affect the state.

Rep. Fehr: I am looking at Number 3 under their powers. Isn't that already in their law that they would have the authority if there was good reason to require one of their members to seek an evaluation in terms of continuing their license?

Chairman Weisz: I would agree with you, because it is a podiatrist that sets the licensing rules. They could certainly at least choose not to relicense them if he or she doesn't submit to those evaluations.

Rep. Fehr: They should need that explicit language.

Chairman Weisz: They copied this straight out of another board's section. It doesn't mean they don't already have the ability to do most of these things inherent in here within the powers of a board that we give all boards. I am not sure about Number 6, but I would assume they are subject to the same privacy law so they would have the ability to hold the confidential conference within our state's open records. I know we have exceptions in there already. Mostly it is Number 1 and maybe Number 2 depending on your definition of a preliminary hearing. Maybe that can't appoint a special master.

Rep. Oversen: If you are saying that they probably have the other powers besides Number 1, 2, and possibly 4, they inherently have those powers? Otherwise, are we assuming that is how the law could be interpreted? Wouldn't this be clarifying some of those things then?

Chairman Weisz: You could argue it is clarifying, but if you look in the whole chapter that has to do with boards, they have the ability to regulate their own members pretty much as they wish. Every now and then the state will require something specifically we want them to do in different boards. Out of roughly 50 boards, maybe 6 of them have specific powers.

Rep. Oversen: I can certainly see that if they have been dysfunctional in the past, we don't want to be giving them unnecessary powers that will continue to cause problems. I also don't think it is fair to base something that happened ten plus years ago on the way that the board is currently functioning. I don't want to set the idea that if another board would come in requesting those powers and we would grant it, that we would say we didn't grant these to this board because of past experiences.

Chairman Weisz: You make a good point. Because of the small size of the group is what makes it prone to have the abuse that happened back in 1999. The group is still incredibly small.

A roll call vote was taken and resulted in a **DO NOT PASS, 13-0.**

Rep. Hofstad is the carrier of the bill.

Date: 1-22-13
 Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1086

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. PORTER Seconded By Rep. Kiefert

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA	✓	
REP. ANDERSON	✓		REP. OVERSEN	✓	
REP. DAMSCHEN	✓				
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING	✓				
REP. LOOYSEN	✓				
REP. PORTER	✓				
REP. SILBERNAGEL	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Hofstad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1086: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1086

4/1

House Human Services Committee

HB 1086

January 14, 2011

Testimony of Stacy Moldenhauer, Attorney for
North Dakota Board of Podiatric Medicine

Chairman Weisz and members of the House Human Services Committee, my name is Stacy Moldenhauer, and I am here on behalf of the North Dakota Board of Podiatric Medicine. By statute, the Board is responsible for regulating the practice of podiatric medicine in the State of North Dakota. On behalf of the board, which is composed of four podiatrists, one physician and one public member from throughout the state, I speak in support of HB 1086.

As the Committee can see, House Bill 1086 is requesting a new section of N.D.C.C. 43-05 be enacted to give the Board of Podiatric Medicine certain powers in investigating and prosecuting complaints. This section is necessary for the Board to adequately carry out its duties in regulating the practice of podiatric medicine in the State of North Dakota. When drafting this section, the Board used the Board of Medical Examiners statute (43-17.1-06) as a guide for formulating this section.

As the current attorney for the Board of Podiatric Medicine, I respectfully request that you pass this bill because it is essential for the Board to have these powers in order for it to be able to properly investigate and prosecute the complaints it receives. For example, currently the Board of Podiatric Medicine does not technically have the power to subpoena witnesses while investigating a

complaint against a podiatrist. The statutes do require a podiatrist to cooperate with the Board, but if the Board needs to interview other individuals in the Board's investigation of a podiatrist and one of those individuals does not cooperate with the Board, the Board needs to have the power to subpoena those individuals to obtain the necessary information to complete its investigation or prosecution of a podiatrist. This statute is not out of the ordinary for agencies like the Board of Podiatric Medicine. In fact, this statute is similar to other agency statutes wherein other Boards are given the authority to subpoena witnesses, subpoena records and compel the production of testimony when investigating or prosecuting a complaint.

The other sections of this bill allow the Board of Podiatric Medicine to have some options when investigating or prosecuting complaints. For example, in some instances it may be more beneficial for the Board to hire an independent investigator to conduct parts of the investigation than having a Board member do the investigation. This section would give the Board the authority to do that as well. With that, I will close by saying thank you for your time and attention and I would be happy to try and answer any question you may have.

Thank you.