1999 HOUSE HUMAN SERVICES

HB 1158

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1158

House Human Services Committee

❑ Conference Committee

Hearing Date 01-12-99

Tape Number	Side A	Side B	Meter #
1	x		16.5
Committee Clerk Signature			

Minutes:

Mr. John Olson, Attorney for ND Board of Medical Examiners supports the bill. Telemedicene is a popular topic because of its increased use. The federation of medical examiners did not pass a bill on telemedicene. Using this technology requires trained personnel because of its complexity. With telemedicene, doctors can practice medicine from a remote area which may not be in the best interest of patient. This proposed bill will prevent this form happening. The issue of licensing covers students who practice medicine while continuing education. In the Minot ND program, about 10,000 patients are seen through this program. Mr. Olson went on to explain various portions of the proposed bill. The attorney general's office suggested that certain areas of the bill receive language changes. The Board of Medical Providers is recommending language changes to reprimand physicians for non compliance. The fines and penalty amounts will be deposited in the general funds.

Mr. Michael J. Mullen, Department of Health, supports the bill, said he is willing to work with board on technical issues and languages in the bill.

(see attached written testimony)

Mr. Rolf P. Sletten, ND State Board of Medical Examiners, spoke in favor of bill,

(see attached written testimony)

Mr. Dave Peske, ND Medical Association, spoke in favor of the bill, he represents physicians and are not connected to board of medical examiners. He clarified definition and video telemedicine further. Mr. Peske is suggesting an amendment will be forthcoming.

Ms. Bonnie Steiger, Executive Director of Psychological Association, supports the bill. She commented on the terms in the bill. Telemedicine could offer benefits. The association supports the bill with amendments that have been suggested to include page 2, 4, and page 7.

There was no opposition to the bill.

Chairwomen Price closed the hearing on HB 1158.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1158

House Human Services Committee

❑ Conference Committee

Hearing Date February 3, 1999

Tape Number	Side A	Side B	Meter #
1		X	31.0 - End
Committee Clerk Signature Susann Lindtvogen			

Minutes:

Committee Discussion.

Rep. CLARA SUE PRICE asked does the committee have any concerns other than Section 1? Rep. TODD PORTER mentioned page 7., the ambulance service question was answered by the board.

Rep. CLARA SUE PRICE asked does the committee have any ideas on what is the definition of telemedicine? Rep. TODD PORTER stated this bill only goes into existing laws on the Board of Medical Examiners. We are dealing with a specific group who wants a specific definition. Rep. ROBIN WEISZ discussed the laws in California. People won't go through the hassle to get a license if they have to go through all of this procedure. If this bill passes, ND will restrict choices and the ability to get advanced care. Rep. TODD PORTER stated I cannot agree more.

The intent is we don't want physicians in Florida giving consultation to a North Dakota patient through telemedicine.

Rep. CLARA SUE PRICE appointed a subcommittee to define telemedicine. Subcommittee members appointed are Rep. ROBIN WEISZ, Rep. ROXANNE JENSEN, and Rep. BRUCE ECKRE.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1158

House Human Services Subcommittee

❑ Conference Committee

Hearing Date February 8, 1999

Tape Number	Side A	Side B	Meter #
2	X		11.6 - End
2		X	0.0 - End
Committee Clerk Signature Susann Lindteigen			

Minutes:

Present were Representatives Robin Weisz, Roxanne Jensen, and Bruce Eckre.

Also, present was John Olson, Arnold Thomas, Rolf Sletten, David Peske, and Mike Mullen.

ROLF SLETTEN stated the 1997 bill failed on limited licensure.

Rep. ROBIN WEISZ asked for an explanation of limited licensure.

ROLF SLETTEN discussed these points - The Federation of State Medical Boards of the United States developed a model telemedicine license law. It calls for a limited license which makes it easier to obtain a license. The idea has not done well around the country. Telemedicine will continue to evolve. A very important point is this bill will not require a license of any one who doesn't need one now.

DAVID PESKE, ND Board of Medicine, stated some committee members are losing site of the point. This is a vehicle to regulate the profession and clarified interpretation of phone calls between physicians. We talked to colleagues and we have clarified the definition.

Rep. BRUCE ECKRE asked does this happen a lot? DAVID PESKE stated yes.

Rep. ROBIN WEISZ asked about concern in the medical profession when a local doctor is dealing with the Mayo Clinic doctor not licensed in North Dakota? ROLF SLETTEN responded it goes beyond a telephone call and consulting with a doctor.

ARNOLD THOMAS stated that he didn't know if being licensed means compensation. Is practice of medicine for compensation?

JOHN OLSON discussed the practice of medicine through telemedicine, i.e., The Internet.

Rep. ROBIN WEISZ asked at what point do you define the physician is practicing medicine? When they are involved in the diagnosis and prognosis of medicine? We need an interpretation of the law.

Rep. ROXANNE JENSEN stated I'm not hearing if there is an issue that you have a problem with? We all agree that the proposed definition will work.

ARNOLD THOMAS asked is this necessary?

Rep. ROXANNE JENSEN discussed the new part is if they act without acting under a licensed physician. If the medical industry is in agreement, do we have an issue?

Rep. ROBIN WEISZ stated we aren't sure the court agrees. The wording is critical so it doesn't hold up the practice of medicine.

Rep. BRUCE ECKRE asked what is UND's definition of telemedicine?

Rep. ROBIN WEISZ stated there are concerns on types of e-mail, faxes, etc. We don't know if we need to define the mode of consultation.

Rep. ROXANNE JENSEN stated South Dakota says information through electronic means.

Rep. ROBIN WEISZ mentioned California merely says interactive.

We're saying consultation is not an interactive video component. In other words, we would be saying that every doctor who does a direct interactive video with a patient has to have a North Dakota license but then it would exclude virtually any form of communication from physician to physician or consumer to physician. Discussion continued about proper language and definition of telemedicine.

Rep. ROXANNE JENSEN expressed the possibility of amending to allow a person to receive medical advise without restricting it over the Internet.

Rep. ROBIN WEISZ asked does every doctor need a license but exclude interactive video?

ROLF SLETTEN stated in theory they would need a license.

Rep. ROXANNE JENSEN asked if we need to regulate the electronic presence of information? Further stated that the medical board should advise what they want but we need to give the ND consumer protection.

Rep. ROBIN WEISZ said the consumer should be able to make their own decisions and they have that protection of anyone practicing medicine. We are requiring them to be licensed doctors. At what point does it become the business of the board when they are just passing information or ideas if the consumer wants to access it on the Internet?

MIKE MULLEN stated you can access all kinds of sites on the Internet, i.e., Mayo, Tuft's University. I don't see this bill preventing me from being able to go to those sites.

Rep. ROBIN WEISZ discussed direct consultation with any doctor outside the state of North Dakota if its by e-mail or Internet. It's very specific.

JOHN OLSON continued with only if he's diagnosing or treating...

Rep. ROBIN WEISZ said I'm not talking about just looking it up on the Internet. I'm talking about direct.

Rep. ROBIN WEISZ discussed Page 7, 29., with the definition on telemedicine if a ND doctor in Fargo goes to Moorhead they can't do it anymore. Its saying you have to stay within state boundaries.

Rep. ROXANNE JENSEN mentioned putting it in the law and let the practical application of time determine if it works. I'm willing to let them take it and be responsible for it.

Committee dismissed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1158

House Human Services Committee

❑ Conference Committee

Hearing Date February 10, 1999

Tape Number	Side A	Side B	Meter #
1		X	58.1 - End
2	X		0.0 - End
Committee Clerk Signature	Susanne Lindteigen		

Minutes:

Committee Discussion.

Rep. ROBIN WEISZ discussed the subcommittee meetings with the committee members, Medical Association, Health Care Association and Medical Licensing Board. After research, we came up with the amendments (attached). There was a two to one vote on these amendments in subcommittee.

Rep. ROBIN WEISZ moved to ADOPT AMENDMENTS.

Rep. TODD PORTER second the motion.

Further Committee Discussion.

Rep. ROXANNE JENSEN stated I have no complaint on the amendments. I experienced reservations about this because of the fact we sat for one afternoon with all of our people lined up in a row. They all seemed to be holding firm to the provision that they wanted the bill

unamended. This morning, there had been some more discussion that the changes were now going to happen. I didn't know where this was coming from. It turned out that Mr. Arnold Thomas had not bothered to let anybody know what his feelings were when they were all together in the subcommittee hearing. So, as a gesture, I am going to vote against the amendments, just as a protest to Mr. Thomas' misuse of our time and our intelligence.

Rep. BRUCE ECKRE stated the Western Governor's Conference is studying this issue for the next two years.

Rep. CLARA SUE PRICE passed out the definitions, page 210 (attached).

Rep. TODD PORTER asked for a grammatical language change of the amendments. Change "the" to "this" in the last sentence.

VOICE VOTE: 14 yeas, 1 nay (Jensen), 0 absent

Rep. ROBIN WEISZ moved DO PASS As AMENDED.

Rep. TODD PORTER second the motion.

ROLL CALL VOTE #3: 15 yeas, 0 nays, 0 absent

CARRIER: Rep. ROBIN WEISZ

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1158 Amendment to: _____

Requested by Legislative Council Date of Request: 1-4-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

   Narrative:

2. **State** fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	**Special Funds**	**General Fund**	**Special Funds**	**General Fund**	**Special Funds**
Revenues:					
Expenditures:					

3. What, if any, is the effect of this measure on the appropriation for your agency or department:
   a. For rest of 1997-99 biennium: this bill expands the Boards authority to
   b. For the 1999-2001 biennium: levy fines. therefore it may result in
   c. For the 2001-03 biennium: a small, but undetermined, increase in the State general fund.

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	**Cities**	**School Districts**	**Counties**	**Cities**	**School Districts**	**Counties**	**Cities**	**School Districts**

If additional space is needed, attach a supplemental sheet.

Signed Rolf Sletten

Typed Name Rolf Sletten

Department North Dakota State Board of Medical Examiners

Phone Number 701-328-6500

Date Prepared: _____

Adopted by the Human Services Committee
February 10, 1999

VK
2/11/99

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1158

Page 2, line 6, remove "from a practice location outside this"

Page 2, line 7, remove "state" and remove "with the"

Page 2, remove line 8

Page 2, line 9, remove "a consultation provided by telephone or facsimile"

Page 7, line 1, overstrike "commission on medical competency" and insert immediately thereafter "investigative panel"

Page 7, line 3, overstrike "commission" and insert immediately thereafter "investigative panel"

Page 7, line 4, replace "in consultation with" with "under the supervision of"

Page 7, line 5, remove "and is primarily responsible for the"

Page 7, line 6, remove "care of the patient"

Renumber accordingly

Date: 2-10-99
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1158

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Robin Weisz Seconded By Todd Porter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman	X		Bruce A. Eckre	X	
Robin Weisz - Vice Chairman	X		Ralph Metcalf	X	
William R. Devlin	X		Carol A. Niemeier	X	
Pat Galvin	X		Wanda Rose	X	
Dale L. Henegar	X		Sally M. Sandvig	X	
Roxanne Jensen	X				
Amy N. Kliniske	X				
Chet Pollert	X				
Todd Porter	X				
Blair Thoreson	X				

Total Yes 15 No 0
Absent _____

Floor Assignment Robin Weisz

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

REPORT OF STANDING COMMITTEE

HB 1158: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1158 was placed on the Sixth order on the calendar.

Page 2, line 6, remove "from a practice location outside this"

Page 2, line 7, remove "state" and remove "with the"

Page 2, remove line 8

Page 2, line 9, remove "a consultation provided by telephone or facsimile"

Page 7, line 1, overstrike "commission on medical competency" and insert immediately thereafter "investigative panel"

Page 7, line 3, overstrike "commission" and insert immediately thereafter "investigative panel"

Page 7, line 4, replace "in consultation with" with "under the supervision of"

Page 7, line 5, remove "and is primarily responsible for the"

Page 7, line 6, remove "care of the patient"

Renumber accordingly

1999 SENATE HUMAN SERVICES

HB 1158

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1158

Senate Human Services Committee

❑ Conference Committee

Hearing Date MARCH 8, 1999

Tape Number	Side A	Side B	Meter #
1		X	
3/16/99 1		X	5,430
3/16/99 2	X		
Committee Clerk Signature	Carol Kolodejchuk		

Minutes:

The hearing was opened on HB1158.

JOHN OLSON, Special Assistant Attorney General, explained the bill in written testimony.

SENATOR KILZER asked if there was a need for license in the 2nd and 3rd years of residency. MR. OLSON explained that the first year is closely mentored, but the 2-3 years are starting to be on their own. There has not been a problem with the majority. They have their license by years 2-3. Just some that do not. SENATOR DEMERS stated that this was aimed at 1st year residents and how would you adjust foreign educated doctors. MR. OLSON said they practice only in the context of the program. Foreign education would be the same. SENATOR DEMERS asked about the relationship with telemedicine. MR. OLSON stated that if they were not licensed in ND they must be working with a physician that is licensed in the state.

MIKE MULLEN, Dept of Health, presented written testimony the interest of the Dept in this legislation. SENATOR DEMERS asked about the licensing of doctors that live out of state. MR. MULLEN said there were several who are licensed in different states. They would like to see physicians practicing telemedicine from out of state become licensed in ND. There are exceptions stated in law. The language of the House provokes ambiguity.

DAVE PESKE, ND Medical Association, supports the preceding testimony. We were involved with all exemptions and are in agreement with Mr. Mullen's amendments.

There was no neutral or opposing testimony.

The hearing was closed on HB1158.

Discussion was held on 3/17/99. All points of Dr. Wilson will be addressed in rules. SENATOR KILZER moved the amendments of the Health Department. SENATOR FISCHER seconded it. Roll call carried 5-1-0. SENATOR KILZER moved a DO PASS AS AMENDED. SENATOR FISCHER seconded it. Roll call carried 5-1-0. SENATOR KILZER will carry the bill.

Date: 3/16/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1158

Senate HUMAN SERVICES COMMITTEE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment by Health Dept

Motion Made By Sen Kilzer Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers		✓			
Senator Mutzenberger	✓				

Total 5 (yes) 1 (no)

Absent 0

Floor Assignment _____

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

Date: 3/16/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1158

Senate HUMAN SERVICES COMMITTEE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Sen Kilzer Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers		✓			
Senator Mutzenberger	✓				

Total 5 (yes) 1 (no)

Absent 0

Floor Assignment Sen Kilzer

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

REPORT OF STANDING COMMITTEE

HB 1158, as engrossed: Human Services Committee (Sen. Thane, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1158 was placed on the Sixth order on the calendar.

Page 1, after line 11, insert:

"2. "Interactive telecommunications" means any audio, video, or data communication involving a real-time or store and forward two-way transfer of data or information."

Page 1, line 12, replace "2" with "3"

Page 1, line 14, replace "3" with "4"

Page 2, line 6, replace "4" with "5" and replace "audio," with "telecommunications, with the intention of receiving, directly or indirectly, any compensation, but does not include a consultation consisting of only an oral conversation by telephone or a textual message by electronic mail or fascimile."

Page 2, remove line 7

Page 7, line 1, after "telemedicine" insert "from a place outside this state" and replace "under the supervision of" with "in consultation with"

Page 7, line 2, after "state" insert "and who is primarily responsible for the care of the patient"

Renumber accordingly

1999 HOUSE HUMAN SERVICES

HB 1158

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1158

House Human Services Committee

☑ Conference Committee

Hearing Date March 31, 1991

Tape Number	Side A	Side B	Meter #
1	x		0.0-end
Committee Clerk Signature			

Minutes:

Chairman Weisz called the meeting to order. Also present were Representatives B. Thoreson, Eckre, Senators Kilzer, Thane, DeMers.

MIKE MULLENS, Department of Health, explained the basis for the recommended changes that the Senate adopted which incorporated telecommunications and telemedicine. Senator DEMERS asked if the state currently licenses physicians who receive and interpret x-rays, EKGs.

ROLF SLETTEN, Executive Director, North Dakota Board of Medical Examiners was asked to explain. By law these actions are supposed to be performed by licensed persons, even though there are probably people who are currently doing this without licenses.

Further discussion brought out additional points. Telemedicine will be addressed on the national level in the future. There has been some discussion about a limited license for people who

proactive only telemedicine. This idea has not caught on around the country. The proposal in HB1158 is less restrictive than current law.

It doesn't seem reasonable that a physician, licensed in another state, should have to be licensed in North Dakota just to answer an informal question from a North Dakota physician. Yet this law would require that. It was suggested that consulting physicians should not have to be licensed in the state. There was some discussion of who should have to be licensed. The idea was put forth that a consulting physician would not need to be licensed in North Dakota if he/she was not the primary care physician.

It has always been necessary to have a license to practice medicine in North Dakota. When the issue of telecommunications comes up there is a question as to what constitutes "practicing medicine". There was the question of licensing being required only if there was compensation provided for the consulting.

In discussing telemedicine licensing, there may be a danger of limiting access to medical treatment options to the citizens of North Dakota. In the future, telemedicine will be a common as the telephone is today.

It appeared that the issue would relate to the definition of "consulting" for purposes of licensing requirements. It was decided that another meeting would be required.

Meeting adjourned.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1158

House Human Services Committee

☒ Conference Committee

Hearing Date April 2, 1999

Tape Number	Side A	Side B	Meter #
1	x		0.0-end
Committee Clerk Signature	Wayne B Hamilton		

Minutes:

Meeting called to order by Rep. ROBIN WEISZ. Also present were Reps.. BLAIR THORESON, BRUCE ECKRE, Senators RALPH KILZER, RUSSELL THANE, JUDY DEMERS.

Rep. WEISZ presented two different proposed amendments prepared by the Legislative Council staff. Rep. B. THORESON moved the Senate recede from its amendments and further adopt amendments 98117.0203. Rep. ECKRE seconded. There was considerable discussion on the correct definition of "interactive telecommunication" and "telemedicine". There did not seem to be a common definition that was applicable to every situation. It was pointed out that all proposals relative to telemedicine was rejected in the last session. The federal government and the federation of state boards were both looking at definitions of telemedicine without coming up

with a common definition. Based on this it was decided that reference to telemedicine should be removed from HB1158 at the present time.

Rep. ECKRE withdrew his second to the motion. Rep. B. THORESON withdrew his motion.

Sen. DeMers moved the Senate recede from its amendments and further amend the bill to effectively remove references to telemedicine from the bill. Rep. B. THORESON seconded.

The motion PASSED on roll call vote:

Representatives: 3 YES, 0 NO, 0 ABSENT. Senators: 3 YES, 0 NO, 0 ABSENT.

The meeting adjourned.

98117.0203
Title.

Prepared by the Legislative Council staff for
Representative Weisz
April 1, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1158

That the Senate recede from its amendments as printed on page 917 of the House Journal and page 741 of the Senate Journal and that Engrossed House Bill No. 1158 be amended as follows:

Page 2, line 19, remove the overstrike over "~~Any physician~~"

Page 2, line 21, after "~~within~~" insert "located outside this state to the extent the out-of-state physician is in actual consultation with a licensed physician in this state if at the time of consultation the out-of-state physician is licensed in the state or country of that physician's residence. The out-of-state physician is not exempt from this chapter if the out-of-state physician opens a medical office in this state, appoints a place in this state to meet a patient, issues an order for a patient located in this state, or has ultimate authority over the care or primary diagnosis of a patient who is located in" and remove the overstrike over "~~this state.~~"

Page 2, line 22, remove the overstrike over "~~3.~~"

Page 2, line 23, remove the overstrike over "~~4.~~" and remove "3."

Page 2, line 24, remove the overstrike over "~~5.~~" and remove "4."

Page 2, line 25, remove the overstrike over "~~6.~~" and remove "5."

Page 3, line 1, remove the overstrike over "~~7.~~" and remove "6."

Page 3, line 6, remove the overstrike over "~~8.~~" and remove "7."

Page 3, line 8, remove the overstrike over "~~9.~~" and remove "8."

Page 3, line 9, remove the overstrike over "~~10.~~" and remove "9."

Page 3, line 20, remove the overstrike over "~~11.~~" and remove "10."

Page 3, line 22, remove the overstrike over "~~12.~~" and remove "11."

Page 7, line 1, replace "supervision" with "consultation"

Renumber accordingly

Adopted by the Conference Committee
April 2, 1999

VR
4/2/99

HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1158 HUMSER 4/2/99

That the Senate recede from its amendments as printed on page 917 of the House Journal and page 741 of the Senate Journal and that Engrossed House Bill No. 1158 be amended as follows:

Page 1, line 4, remove "and telemedicine"

HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO.1158 HUMSER 4/2/99

Page 2, remove line 4

Page 2, remove lines 6 and 7

HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO.1158 HUMSER 4/2/99

Page 7, remove lines 1 and 2

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB 1158 (, as (re)engrossed):

Your Conference Committee 4-2-99

For the Senate:	Attendance	Vote
Sen. Kelzer	x	Y
Sen. Thane	x	Y
Sen. DeMers	x	Y

For the House:	Attendance	Vote
Rep. Weiss	x	Y
Rep. B. Thoreson	x	Y
Rep. Eckre	x	Y

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

☐ and place _____ on the Seventh order.
727

☐ , adopt (further) amendments as follows, and place

_____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: ____/____/____

CARRIER: _____

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Sen Amende.

Amend: SO moved ~~am House~~ Senate recede & amend bill to ~~reform~~ remove all reference to telemedicine.

REPORT OF CONFERENCE COMMITTEE

HD 1158, as engrossed: Your conference committee (Sens. Kilzer, Thane, DeMers and Reps. Weisz, B. Thoreson, Eckre) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 917, adopt amendments as follows, and place HD 1158 on the Seventh order:

That the Senate recede from its amendments as printed on page 917 of the House Journal and page 741 of the Senate Journal and that Engrossed House Bill No. 1158 be amended as follows:

Page 1, line 4, remove "and telemedicine"

Page 2, remove line 4

Page 2, remove lines 6 and 7

Page 7, remove lines 1 and 2

Renumber accordingly

Engrossed HD 1158 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1158

Testimony

on
House Bill 1158 Regarding Telemedicine

Before the
House Human Services Committee

by
Michael J. Mullen, Department of Health

January 13, 1999

Madame Chairman, I am Michael J. Mullen, Senior Advisor for Health Policy with the Department of Health. Thank you for the opportunity to outline the Department's position in support of House Bill No. 1158, relating to the practice of telemedicine across state lines.

Telemedicine is becoming an increasingly important means of providing diagnosis and treatment for patients, particularly in rural areas where specialists are not available on a daily, or in some cases even a weekly basis, to see and treat patients in person. As you know, there are a number of telemendicne networks that have been established in North Dakota.

While the Medical Practices Act should, and probably would, be construed to apply to the diagnosis or treatment of a patient by means of telemedicine from a location outside this state, we cannot be certain that the courts will construe the law in that manner. A decision of the North Dakota Supreme Court, Ranta v. McCarney, 391 N.W.2d 161 (N. D. 1986), focused on the services that a Minnesota lawyer provided to a North Dakota client. Mr. Ranta was not licensed to practice in North Dakota and the court held that "an out-of-state lawyer not authorized to practice in this state is prohibited from recovering any fees related to the practice of law *actually conducted in this state*." Id. at 166 (emphasis added).

The significance of this case is that the Court seemed to distinguish between services provided while the lawyer was physically present in North Dakota, and legal research that he conducted and memoranda that he wrote at his Minneapolis, Minnesota law office. While it is, of course, not clear that the Ranta case would be followed in a telemedicine licensing dispute, it suggests the benefit of clarifying the authority of the Board of Medical Examiners—to explicitly cover the diagnosis and treatment of a patient by means of telemedicine.

The rationale for the Board's authority to regulate the practice of interstate telemedicine is quite simple. The Department, like the Board of Medical Examiners, seeks to assure that medical care is provided by properly licensed, competent physicians who are subject to disciplinary action for misconduct. The fact that diagnosis or treatment is provided by means of telemedicine does not change that public health concern.

An example will illustrate the point. If a diagnosis or treatment is provided by means of telemedicine to a patient located in western North Dakota by a physician located in the River Valley, the Board of Medical Examiners is authorized to examine a complaint alleging that the physician has engaged in misconduct in violation of section 43-17-13, such as gross negligence in the practice of medicine.

Now if the diagnosis or treatment of that same patient located in western North Dakota is provided by means of telemedicine by a physician located in another state, we believe the North Dakota Board of Medical Examiners should have the same authority to take disciplinary action as they would in the case of a physician physically located in North Dakota.

There is an additional reason for supporting the Board's authority to regulate telemedicine. If an out-of-state physician specializes in telemedicine and does not treat any patients in the state in which he or she is located, that state's board of medical examiners may place a low priority on investigating the conduct of that particular physician.

And, while it may be necessary for the North Dakota Board of Medical Examiners to obtain the assistance and cooperation of other state boards to discipline out-of state physicians, we believe that by giving the North Dakota Board of Medical Examiners explicit authority to regulate telemedicine, the Board will be in a better position to gain the cooperation of their counterparts in other states.

Madame Chairman, it is possible that concern might be expressed regarding the application of this legislation to certain routine laboratory tests conducted by out-of-state medical facilities. In that regard, I would note that the Colorado Telemedicine Act provides an exemption for certain tests conducted by a laboratory certified under the federal Clinical Laboratories Improvement Act of 1967. Other states have similar exemptions for certain narrowly defined procedures. The Department has no position on these kinds of exemptions at this time. But, however this issue is addressed, we believe it should not preclude the Committee from moving forward on this legislation.

* * *

Madame Chairman, that completes my prepared testimony. I would be pleased to answer any questions that you or other members of the Committee may have regarding the Department's testimony.

North Dakota State
Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

TO: CHAIRPERSON PRICE AND THE MEMBERS OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY & TREASURER

RE: HOUSE BILL NO. 1158

DATE: JANUARY 12, 1999

House Bill No. 1158 addresses a number of issues pertaining to the operation of the State Board of Medical Examiners. The Board offers the following explanation and information in support of this bill:

PAGE 2, LINE 6 - TELEMEDICINE. This language must be read in conjunction with the language at Line 4 of Page 7. This amendment arises out of the debate which was conducted during the 1997 legislative session. At that time the Board was promoting a telemedicine licensure bill which would have authorized the Board to issue a limited license to those out of state physicians who practice telemedicine in North Dakota. That bill failed. This language is not an attempt to revisit that debate. It is also important to understand that this language does not establish a licensure requirement for any individual who is not required to have a license under current North Dakota law.

During the 1997 debate, a number of individuals pointed out that it would be possible for an out of state physician to rent office space in North Dakota, equip that office with certain interactive equipment, and staff the office with a number of techs who were trained to operate that equipment. That out of state physician could then sit on a sailboat in Florida, or almost any

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other remote location, and practice medicine on patients in North Dakota. The patients would never actually see a physician. We believe it is fair to say that almost everyone agreed that that is not a desirable scenario. This language is intended to prevent that type of practice from evolving. You will note that this language will require the out of state physician to act in consultation with another licensed physician who is physically located in this state and is primarily responsible for the care of the patient.

PAGE 2, LINE 18 - LICENSURE OF MEDICAL RESIDENTS. Under current North Dakota law, medical school graduates who are enrolled in postgraduate training programs are not required to hold a license to practice medicine in this state. As a matter of fact, most residents have been very quick to obtain or apply for a license immediately upon becoming eligible to do so (generally after completing one year of postgraduate training), however, there has been no requirement that they do so and, consequently, a few individuals have continued to work through the second and third year of their postgraduate training without any license from the Board of Medical Examiners.

North Dakota has become one of the very few states where a resident can still complete the entire residency training process without obtaining a license to practice medicine.

It is important to understand that when medical residents enroll in postgraduate training programs (residency training) they are very closely mentored during the early stages of their training, however, as they progress through the programs, they are granted more and more autonomy. There can be no dispute about the fact that these people are practicing medicine. They do so on a fairly large scale. For example, the residents enrolled in the Minot Family Practice Program see approximately 10,000 patients per year including about 200 obstetric cases

obstetric cases per year. The Minot Program is just one of four such sites located around the state. There are, of course, a number of programs in various other specialties as well.

The Board of Medical Examiners has spent considerable time discussing this issue with representatives of the UND Medical School and the residency programs. Dr. Wilson, the Dean of the Medical School, and Bruce G. Pitts, M.D., the chairman of the Medical School's Committee on Graduate Medical Education, have both indicated their support for this amendment. You will find Dean Wilson's letter attached here.

PAGE 2, LINE 21 - PHYSICIANS RESIDING ON THE BORDER. We suggest that this language should be repealed. The Code contains no definition of what is meant by "residing on the border". It is impossible to determine who is intended to be embraced by this statement. Furthermore, we don't believe that any physician in today's world has any expectation that he/she will be allowed to practice medicine in North Dakota without a license merely because they have a license somewhere else and live close to the border.

PAGE 3, LINE 14 - PHYSICIAN ASSISTANTS. The Board of Medical Examiners has regulated PA practice in this state for many years. Throughout that time we have collected registration fees, established qualifications for practice, defined and monitored the scope of PA practice, and closely monitored the supervision of physician assistants. The PAs recently came to the Board requesting that the administrative rules be amended to provide that they are "licensed" rather than "registered". This change in the rules was requested because many regulations, particularly those pertaining to reimbursement issues, now speak of "licensed providers". The Board agreed to the rule change requested by the PAs and subsequently promulgated the necessary amendments to the administrative rules. When those rules reached

the Attorney General's office we were advised that in the Attorney General's opinion, the enabling act was too restrictive to accommodate the administrative rule. Consequently, the Attorney General's office suggested that we go back to the Legislature seeking additional language in the enabling act. This is our attempt to do so. As a practical matter, the Board of Medical Examiners has regulated the licensure (registration), fees, qualifications and discipline of PAs for many years.

PAGE 3, LINE 27 - RADIOLOGIC TECHNOLOGISTS. This is very similar to the situation involving the physician assistants. During the last legislative session we came to you seeking legislation which would permit us to develop administrative rules pertaining to the conduct and supervision of radiologic technologists. That legislation was passed into law and we subsequently developed the administrative rules. Once again, the Attorney General's office told us that the enabling act is too restrictive to permit approval of the rules and, consequently, we are back seeking to insert the "magic words" which will finally permit the long awaited rules to be adopted.

PAGE 4, LINE 15 and LINE 17 - FORMS OF DISCIPLINARY ACTION. Sec. 43-17-30.1, NDCC, sets out the various forms of disciplinary action which the Board of Medical Examiners is authorized to take against North Dakota physicians who have violated the Medical Practice Act. We find that there is no meaningful distinction to be made between "reprimand", "letter of censure" and "letter of concern". The Code is, therefore, somewhat confusing, and we are asking the Legislature to remove "reprimand" and "letter of concern" from the list of possible actions.

PAGE 4, LINE 21 - FINES. - Over time, the Board has found that there are a few

situations when physician misconduct warrants some punitive measure which does not seem to be appropriately addressed by revocation or suspension of the physician's license or by any of the rehabilitative measures which the Board may impose. The Board feels that in a few such cases, it would be appropriate to assess a fine against the offending physician. Please note that this language provides that any fines so collected would be deposited in the State General Fund. This is not an attempt to collect money for the Board of Medical Examiners.

PAGE 7, LINE 11. - The Board finds that there are a few special circumstances when it is desirable to permit an out of state physician to work in North Dakota without requiring that physician to first submit to the rigors of the licensure process. Those circumstances are specified in Section 6 of this bill.

SUMMARY - It is the opinion of the members of the North Dakota State Board of Medical Examiners that the various measures specified in this bill will enable the Board to more effectively meet its obligation to protect the health and safety of the citizens of this state. Thank you for your consideration.

UNIVERSITY OF UND NORTH DAKOTA

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March 20, 1998

Kathy Wood, M.D.
113 Parkview Circle
Grand Forks, ND 58201

Dear Dr. Wood,

Thank you for meeting with Dr. Mann and me to discuss resident physician licensure. The School of Medicine and residency program directors want to cooperate with the State Board of Medical Licensure to help certify and license these physicians-in-training but in as efficient a fashion as possible.

We believe the Board should use the (1) Electronic Residency Application System (ERAS) for the issuance of an institutional license or permit. This is a secure database. Student work stations are not permitted to be connected to the computer in the Dean's Office which handles the data. A sample of the common application form is included. (2) The complete product, which would be available for the Board, would also include the Dean's letter, three letters of recommendation, a personal statement, the applicant's photograph and the academic transcript. In the case of foreign medical graduates, not entering through ERAS, (3) the Board should advise us which information from the common application form they would wish collected. (4) We believe that it would be more efficient and reliable if the programs submitted the information directly to the Board, and the institutional licenses for the first year were returned to the programs.

It would be our intent to reassure our affiliated hospitals that all residents beyond the first year physician would be licensed where applicable. In the case of U. S. graduates, this would mean full licensure after the initial 12 months, but the agreement would be extended somewhat, say perhaps 15 months, to allow for the difficulty in scheduling meetings and appearances before the Board by applicants. In the case of foreign medical graduates, whom I believe would be ineligible for full licensure before 36 months of completed post graduate activity, some thoughts should be given to continuing the institutional licensure for the three year period. (5)

(6) We would like the Board to be silent on the matter of when first year residents may sit USMLE Part III. We believe it should be the students decision as to when the student feels that he or she is ready for examination and there is a great deal of advantage to both the Board of Medical Examiners and the residency programs by having those students who are able to sit and successfully pass the examination do so in a manner which allows the greatest flexibility to the Board in the scheduling of full licensure interviews.

Following full licensure, some of our residents do have limited clinical experience outside the training programs (moonlighting). We do not believe, within reason, that this is harmful. These young physicians do help meet the needs of smaller communities. The faculty are usually available to answer questions during these periods and with the federal student loans becoming due now during residency training (previously, deferred until after training), many residents need some supplemental income which this can provide.

We hope these ideas and suggestions are helpful to you and to the Board.

Respectfully,

H. David Wilson, M.D.
Dean
Professor of Pediatrics

HDW:lls

Enclosure

43-17-01. Definitions.

1. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
2. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
   a. One who holds himself 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 his name, indicating that he is engaged in the treatment or diagnosis of the diseases or injuries of human beings must be held to be engaged in the practice of medicine.
3. "Board" means the state board of medical examiners.

Source: S.L. 1911, ch. 189, §§ 5, 6; C.L. 1913, §§ 462, 463; R.C. 1943, § 43-1701; S.L. 1957, ch. 302, § 1; 1957 Supp., § 43-1701; S.L. 1969, ch. 395, § 1.

Cross-References.

Physician may sell drugs, see § 43-15-14, and ch. 19-03.1.

Object of Law.

A statute making it an offense to practice medicine without a license is aimed at one holding himself out to be a "physician", "doctor", or "surgeon". State v. Miller (1930) 59 ND 286, 229 NW 569.

Practicing Medicine.

The term "practicing medicine" is not concerned with the efficacy of the remedy. When one diagnoses disease and prescribes and applies any therapeutic agent as a remedy, he is, in a broad sense, practicing medicine. State v. Miller (1930) 59 ND 286, 229 NW 569.

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.
2. Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.
3. The domestic administration of family remedies.
4. Dentists practicing their profession when properly licensed.
5. Optometrists practicing their profession when properly licensed.

North Dakota
Psychological
Association

Bonnie Staiger
Executive Director

Testimony Regarding HB 1158

Chairperson Price and members of the House Human Services Committee, my name is Bonnie Larson Staiger (Lobbyist # 52). I am the Executive Director of the North Dakota Psychological Association. I speak in favor of HB 1158 however, we would like the ND State Board of Medical Examiners to consider amending this bill to include the more universal term "telehealth" to describe this function.

First, I would like to comment on the term telehealth vs. telemedicine. We are convinced that the term telehealth is a more accurate description of this field than telemedicine.

Telehealth is simply a tool that with appropriate accommodations and limitations, makes it easier to practice already established professional skills across distance -- and to serve individuals and organizations who may not, but for telehealth, have access to such services. While the mechanism for providing services may be unfamiliar, behavioral telehealth practice, like any means of practice, is still required to uphold the core values of professional practice. This definition of telehealth is more inclusive and functionally accurate than are a number of recently proposed and somewhat problematic definitions.

The scope of the definition appears to include any type of support or provision of health information and services, including non-medical services such as behavioral assessment and intervention, or similar services delivered by non-medically trained providers. In that sense, the broad term telehealth actually provides a better functional fit with the range of technology and applications.

We are uncomfortable with the language of HB 1158 because it appears to define the broader telehealth as a strictly medical form of practice. Such a definition is troublesome for two significant reasons. First, the broad range of integrated clinical services envisioned by the evolving health care system will not be solely derived from medically based interventions. The term defined this way also does a great disservice to the bulk of the providers who currently supply most of the services to these systems, particularly in rural areas.

Survey after survey has shown that health care entities all over the country use a vast array of telecommunications technology to supply a full range of health services. In many rural communities, nurses, psychologists, social workers, and other non-physician providers operate these systems. The term telehealth encompasses this broad range of technology, services, and providers without drawing artificial and potentially harmful distinctions that will only slow the development of integrated multi-use systems.

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The FCC has now changed their web site and all official documents to use the word telehealth. And regionally, US West uses the term telehealth.

It is in that spirit that we ask this bill be amended to use the term telehealth. And we will actively seek reassurances that this bill will not limit the scope and practice of clinical psychology in ND.

The North Dakota Psychological Association (NDPA) is the only scientific and professional organization representing psychology in North Dakota. NDPA represents doctoral level researchers, educators, clinicians, consultants and psychology students.

North Dakota State
Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

January 14, 1999

Rep. Clara Sue Price
Chairperson
House Health and Human Services Committee

RE: House Bill 1158 (Telemedicine)

Dear Rep. Price:

During the informational meeting on telemedicine yesterday afternoon, I asked for permission to respond to a number of questions in writing. I did so because I wanted to make sure that my answers were clear and helpful, and that they would not simply lead to more confusion. I hope I have characterized the questions properly. Those questions and our responses are as follows:

1. QUESTION: Would it be advantageous to include the phrase "physician to physician" in the definition of a consultation.

   ANSWER: We believe that you should not include that sort of language in the definition of a consultation. First of all, it is important to remember that this bill is an amendment to the Medical Practice Act. It specifically provides that "telemedicine means the practice of medicine...". The practice of medicine is already defined in this section, therefore, it is already clear that this section only applies to people who practice medicine. This section does not apply to psychologists, nurses, EMT personnel or podiatrists, etc. It is not necessary to say that we are talking about physicians. Furthermore, if, for example, the reference to consultation was amended to say that "telemedicine is not a physician to physician consultation provided by voice telephone or facsimile", then it might imply that a consultation (a telephone conversation) between a patient and an out of state physician could not be conducted unless the out of state physician involved a resident North Dakota physician in the conversation. I don't think anyone intends to make this legislation that restrictive.

2. QUESTION: Would it be advantageous to refer to a link between "practitioners and patients" in the definition of telemedicine.

   ANSWER: We suggest that it would not be advantageous to do so. As I said in our response to the previous question, this language pertains only to the individuals who practice medicine. The practice of medicine is already defined.

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3. QUESTION: Whether this bill affects EMT's who might respond to an emergency in a neighboring state and then communicate with their home facility while they are still across the border in the other state.

ANSWER: No. Once again, this section pertains only to people who are engaged in the practice of medicine and are, therefore, covered by the Medical Practice Act. EMT practice is not regulated through the Medical Practice Act. This section does not inhibit the EMT's authority to communicate with their base facility. Of course EMT's, like all other practitioners, must operate within the scope of practice which has been authorized by law.

I should perhaps point out, once again, that the term "telemedicine" is sometimes used to cover a very broad range of activity. Included under this umbrella are a very large number of issues which are the subject of a great deal of debate and study across the United States. This is by no means intended to be a comprehensive telemedicine law. This bill only addresses one rather narrow aspect of this whole picture.

Please let me know if I have not provided adequate answers to these questions or if I can provide other information for you or your committee.

Sincerely,

ROLF P. SLETTEN
Executive Secretary
and Treasurer

RPS/ll

36-4-41. Practice of medicine or osteopathy in South Dakota while located outside of state. Any nonresident physician or osteopath who, while located outside this state, provides diagnostic or treatment services through electronic means to a person located in this state under a contract with a health care provider licensed under Title 36, a clinic located in this state that provides health services, or a health care facility licensed under chapter 34-12, is engaged in the practice of medicine or osteopathy in this state. No nonresident physician or osteopath who, while located outside this state, consults on an irregular basis with a licensee under this chapter who is located in this state, is engaged in the practice of medicine or osteopathy in this state.

South Dakota Laws relating to telemedicine

-SMH

36-4-40. Supervision and discipline of holder of permanent, unrestricted license to practice medicine or osteopathy. Any physician practicing medicine or osteopathy under the circumstances permitted by § 36-4-39 shall be subject to supervision and discipline by the Board of Medical and Osteopathic Examiners under this chapter in the same manner as any other licensee under this chapter and practice by a nonresident physician under the terms of § 36-4-39 is considered to constitute submission by such physician to jurisdiction by the board.

36-4-39. Practice of medicine or osteopathy by holder of permanent, unrestricted license. 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 Province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the Board of Medical and Osteopathic Examiners under one or more of the following circumstances:

(1) As a member of an organ harvesting team;

(2) On board an air ambulance and as a part of its treatment team;

(3) To provide one time consultation or teaching assistance for a period of not more than twenty-four hours; or

(4) To provide consultation or teaching assistance previously approved by the Board of Medical and Osteopathic Examiners for charitable organizations.

North Dakota State
Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

TO: CHAIRMAN THANE AND THE MEMBERS OF THE SENATE HUMAN SERVICES COMMITTEE

FROM: JOHN M. OLSON
SPECIAL ASSISTANT ATTORNEY GENERAL

RE: HOUSE BILL NO. 1158

DATE: MARCH 8, 1999

House Bill No. 1158 addresses a number of issues pertaining to the operation of the State Board of Medical Examiners. The Board offers the following explanation and information in support of this bill:

PAGE 2, LINE 6 - TELEMEDICINE. This language must be read in conjunction with the language at Line 1 of Page 7 of the engrossed bill. This amendment arises out of the debate which was conducted during the 1997 legislative session. At that time the Board was promoting a telemedicine licensure bill which would have authorized the Board to issue a limited license to those out of state physicians who practice telemedicine in North Dakota. That bill failed. This language is not an attempt to revisit that debate. It is also important to understand that this language does not establish a licensure requirement for any individual who is not required to have a license under current North Dakota law.

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that equipment. That out of state physician could then sit on a sailboat in Florida, or almost any other remote location, and practice medicine on patients in North Dakota. The patients would never actually see a physician. We believe it is fair to say that almost everyone agreed that that is not a desirable scenario. This language is intended to provide a definition of "telemedicine" and to prevent that type of practice from evolving. You will note that this language will require the out of state physician to act in consultation with another licensed physician who is physically located in this state and is primarily responsible for the care of the patient.

PAGE 2, LINE 16 - LICENSURE OF MEDICAL RESIDENTS. Under current North Dakota law, medical school graduates who are enrolled in postgraduate training programs are not required to hold a license to practice medicine in this state. As a matter of fact, most residents have been very quick to obtain or apply for a license immediately upon becoming eligible to do so (generally after completing one year of postgraduate training), however, there has been no requirement that they do so and, consequently, a few individuals have continued to work through the second and third year of their postgraduate training without any license from the Board of Medical Examiners.

North Dakota has become one of the very few states where a resident can still complete the entire residency training process without obtaining a license to practice medicine.

It is important to understand that when medical residents enroll in postgraduate training programs (residency training) they are very closely mentored during the early stages of their training, however, as they progress through the programs, they are granted more and more autonomy. There can be no dispute about the fact that these people are practicing medicine. They do so on a fairly large scale. For example, the residents enrolled in the Minot Family

Practice Program see approximately 10,000 patients per year including about 200 obstetric cases per year. The Minot Program is just one of four such sites located around the state. There are, of course, a number of programs in various other specialties as well.

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PAGE 3, LINE 12 - PHYSICIAN ASSISTANTS. The Board of Medical Examiners has regulated PA practice in this state for many years. Throughout that time we have collected registration fees, established qualifications for practice, defined and monitored the scope of PA practice, and closely monitored the supervision of physician assistants. The PAs recently came to the Board requesting that the administrative rules be amended to provide that they are "licensed" rather than "registered". This change in the rules was requested because many regulations, particularly those pertaining to reimbursement issues, now speak of "licensed providers". The Board agreed to the rule change requested by the PAs and subsequently

promulgated the necessary amendments to the administrative rules. When those rules reached the Attorney General's office we were advised that in the Attorney General's opinion, the enabling act was too restrictive to accommodate the administrative rule. Consequently, the Attorney General's office suggested that we go back to the Legislature seeking additional language in the enabling act. This is our attempt to do so. As a practical matter, the Board of Medical Examiners has regulated the licensure (registration), fees, qualifications and discipline of PAs for many years.

PAGE 3, LINE 25 - FLUOROSCOPY TECHNOLOGISTS. This is very similar to the situation involving the physician assistants. During the last legislative session we came to you seeking legislation which would permit us to develop administrative rules pertaining to the conduct and supervision of fluoroscopy technologists. That legislation was passed into law and we subsequently developed the administrative rules. Once again, the Attorney General's office told us that the enabling act is too restrictive to permit approval of the rules and, consequently, we are back seeking to insert the "magic words" which will finally permit the long awaited rules to be adopted.

PAGE 4, LINE 13 and LINE 15 - FORMS OF DISCIPLINARY ACTION. Sec. 43-17-30.1, NDCC, sets out the various forms of disciplinary action which the Board of Medical Examiners is authorized to take against North Dakota physicians who have violated the Medical Practice Act. We find that there is no meaningful distinction to be made between "reprimand", "letter of censure" and "letter of concern". The Code is, therefore, somewhat confusing, and we are asking the Legislature to remove "reprimand" and "letter of concern" from the list of possible actions.

PAGE 4, LINE 19 - FINES. - Over time, the Board has found that there are a few situations when physician misconduct warrants some punitive measure which does not seem to be appropriately addressed by revocation or suspension of the physician's license or by any of the rehabilitative measures which the Board may impose. The Board feels that in a few such cases, it would be appropriate to assess a fine against the offending physician. Please note that this language provides that any fines so collected would be deposited in the State General Fund. This is not an attempt to collect money for the Board of Medical Examiners.

PAGE 7, LINE 7. - The Board finds that there are a few special circumstances when it is desirable to permit an out of state physician to work in North Dakota without requiring that physician to first submit to the rigors of the licensure process. Those circumstances are specified in Section 6 of this bill.

SUMMARY - It is the opinion of the members of the North Dakota State Board of Medical Examiners that the various measures specified in this bill will enable the Board to more effectively meet its obligation to protect the health and safety of the citizens of this state. Thank you for your consideration.

UNIVERSITY OF UND NORTH DAKOTA

HB 1158

MAR 0 1 1999

SCHOOL OF MEDICINE & HEALTH SCIENCES
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TELEHEALTH UPDATE

This service is provided by the UND Center for Rural Health, UND School of Medicine and Health Sciences and is supported by funds from the Telehealth Rural Outreach and Marketing (ROM) Grant Program, Rural Health Care Corporation. For more information on the Telehealth Update contact Brad Gibbens (701) 777-3848 or bgibbens@mail.med.und.nodak.edu.

Number 1

WHAT IS TELEMEDICINE ?

February 24, 1999

As the health care system continues to change and adapt to the new realities associated with finance and management restructuring, the technological side of patient care also has changed. Telemedicine is a new word found in the constantly changing vocabulary of the American health care system. But what is telemedicine? Telemedicine is the use of electronic information and communication technologies to provide and support health care when distance separates the participants. It is a system that connects primary care physicians, providers, specialists and patients. Telemedicine is not a new concept. It has existed for a number of years in the form of the telephone and fax machines. In recent years, with the improvements made in access, technology, and communications systems, telemedicine has expanded and, in a time of limited resources, has become a feasible alternative for smaller and rural medical facilities to provide routine and specialized services. Particularly in rural areas, it offers the potential of both improved access to care and improved quality of care.

Applications of Telemedicine

The primary applications of telemedicine are clinical, educational, administrative, and research. Clinical applications include initial patient evaluations, diagnosis (telediagnosis), and consultation (teleconsultation). Physician supervision of non- physicians and monitoring of patient status are possible. Continuing education for professionals is available, as is patient and community education (tele-education). Administrative uses, such as conferences, scheduling, and utilization and quality review may be provided. Research is enhanced by aggregation of data from multiple sources and coordination.

Telemedicine allows access to the wealth of information available on the Internet. This allows information to be at the touch of a finger. The availability of e-mail allows an efficient mechanism of communication between consulting and primary physicians. Communication between facilities is enhanced.

Transmission and Equipment

Text, images, and sound are transmitted. Text includes EKG results (heart tracings), lab results and patient records. Images range from still photographs to full motion imagery. Radiological images, slides and graphics may be transmitted, as well as voice and chest sounds. Transmission may be done in one of two methods: Real-time or Store and Forward. Real-time transmission is utilized when immediate feedback is essential. Emergency triage, interactive treating situations and meetings are a few examples. When immediate feedback is not required, store and forward may be implemented. Data is stored, forwarded and accessed at the hub at a scheduled time or at the convenience of the hub personnel. This is less costly as data can be compressed and batched for transmission. Transmission equipment varies according to the transmission mode, analog or digital, and the means of transporting the mode, satellite or terrestrial. There are two transmission modes. The first is analog, which is the transmitting of waves, similar to television broadcasts. Its advantages include high resolution and familiarity. The high expense associated with transmission, large size, and complexity of required hardware are disadvantages. The digital mode utilizes the transmission in the form of "bits". Transmission costs, smaller equipment, simplicity of operation, ease of interface, (including the storage and revival systems for image and data) are several benefits of this mode. The digital mode is preferred due to cost, usability, and expansion potential.

The transmission mode may be transported via satellite or terrestrial media. Terrestrial modes include microwave, fiber-optic, and conditioned copper cables. Satellite transmission allows a full motion broadcast quality picture. Most satellites transmit analog signals. Signals may be transported on C-Band or KU-Band. The C-Band is often utilized by local telephone companies, requiring coordination of availability. The KU-Band, utilized by television stations, is more widely available.

Satellite transmissions have no boundary restrictions. It allows transmission of large amounts of information. It is ideal for sending visual information to multiple locations. The disadvantage is the cost. It is approximately eight times as expensive as terrestrial transmission. The cost may be as high as $450 per hour for prime time use to $250 per hour for non-prime time.

Terrestrial transmission is less expensive to operate on an hourly basis but is limited to areas that are linked to the appropriate line. Video transmission normally requires a bandwidth (carrying capacity) of 90 million bits per second (Mbps). A telephone call requires 64 thousand bits per second. The fastest speed available with current digital technology is 1.54 Mbps. This requires a bandwidth commonly referred to as T1. T1 consists of 24 voice channels which may be combined with higher bandwidth as needed. The higher the bandwidth, the better the image quality. Higher cost is the trade off for better image quality.

Fiber-optics are available from long distance and local telephone companies. Optical fibers consist of strands of hair-thin glass and uses light to transmit telecommunication signals. They may be leased as a dedicated line or on-demand basis. Optical-fiber has a wide bandwidth allowing for choices of transmission speed. Due to cost constraints, T1 line is not available in all areas. Satellite transmission requires an up-link to the satellite and a down- link to the location. The KU-Band satellite dish is relatively small and portable on a truck. The C-Band satellite dish is large and not very portable. If the satellite transmission is digital, equipment is needed at each site to translate analog signal to digital.

The CODEC (Coder,DECoder) is the heart of the system. The CODEC transforms the analog signal (the picture) picked up by the video camera to a digital signal and compresses it from transmission to the distant site. Another CODEC, at the distant site, transforms the digital signal for viewing on the video monitor. The CODEC, a computer, needs enough memory to transmit and store text and images, such as patient records and educational material.

Each site requires a camera to transmit live images. At each site a speaker and monitor are required so users can see and hear each other. In addition, a site requires a multiplexer, a device that allows two or more signals to be sent over the same path. A CSU/DSU (Channel Services Unit/Data Services Unit) converter is needed to interface to the T1 service. A wide variety of medical devices (e.g. cardiac monitors) are available for the remote sites.

Benefits of Telemedicine

Telemedicine allows patients to receive medical care in their own community. This increases the financial viability of rural medical facilities and strengthens the rural economy by keeping the flow of resources in local communities. Telemedicine assists in providing specialty care services to rural areas and provides more efficient use of medical resources which may lessen the amount of travel time for both patients and the specialist. Continuity of patient care is enhanced when the patient, primary care physician, specialist and family members are involved during a consultation.

Physicians and on-site care providers benefit as they receive quick and efficient consultations. The sense of isolation experienced by rural physicians is also reduced. The formation of health care networks between rural and urban facilities provide benefits to both. Urban based facilities provide accessability of health care to rural areas. However, there are telemedicine networks where the excess capacity of rural facilities can be tapped into to benefit urban patients. It is possible that during peak times rural physicians may be accessed via telemedicine to provide more timely care to patients waiting in congested urban emergency rooms.

Challenges of Telemedicine

Several obstacles remain with regard to the effectiveness of telemedicine. Legal issues regarding physician licensing, liability, and patient confidentiality exist. As physicians are licensed by states, this presents a legal problem when physician consults cross state lines. It is necessary in order to fully benefit from telemedicine that states engage in interstate provision of service. Currently, interstate agreements vary greatly. Several states maintain that physicians must be licensed in both the sending and receiving states. Other states have entered reciprocity agreements with neighbors.

Liability is an obstacle in providing telemedicine. There is debate related to which physician would be liable for a poor patient outcome, the primary care or the consulting physician. In the case of a poor outcome, it is not clear if the patient should file suit in the residing state or in the state the practitioner is located.

Cost is a significant barrier to access. It has been estimated that the startup cost for a rural facility can be $100,000. In addition to start up costs, consideration must be given to the charge by the consultation team. This may range from $75-250 per hour, depending on the type and number of consultants involved. Transmission charges can be costly. Some progress has been made in this area with the passage of federal legislation. As of January 1, 1998, the Federal Communications Commission (FCC) and states can require affordable, quality communication services. Included is an amendment requiring public and non-profit rural health care providers access to telecommunication service at prices comparable to those paid by urban customers. The rules specifically authorizes discounted rates for telecommunication distant charges, toll-free access to the Internet, and telecommunication services of bandwidth up to and including Mbps (T-1).

Reimbursement has been another obstacle in providing telemedicine services. Medicaid covers telemedicine consultation in only ten states. Medicare will reimburse for telemedicine services provided in rural counties that are designated as health professional shortage areas. This Medicare provision, authored by North Dakota Senator Kent Conrad, was part of the Balanced Budget Act of 1997. Most commercial payers do not cover routine telemedicine consultation.

Physician reluctance and patient apprehension are also obstacles. Some rural physicians fear the loss of patients to urban facilities. The public and physicians worry about the impersonality of telemedicine.

This document was written by Deb Moreno, Research Analyst. Please contact the UND Center for Rural Healt for a reference list.

info only

BlueCard PPO Enrollment Growing

If your facility or office is not part of the nationwide BlueCard PPO network, you may want to join. Blue Cross and Blue Shield Plans administer over 429 nationwide [illegible]s with PPO benefits. Other Blue Cross Blue Shield Plan members (i.e., small site workers, sales people, students and travelers) are being directed to BlueCard PPO locations for medical services.

BCBSND is processing over 350 PPO claims per month for other plans, with an enormous expansion expected next year. Our Marketing area replies to three or four nationwide PPO Request For Proposal's per week as a participating plan. Recent PPO awards to other Blue Cross Blue Shield plans include employers such as United Airlines - 68,000 contracts, Johnson Controls - 15,000 contracts, Willamette - 10,000 contracts, and Williams Company - 14,000 contracts. BCBSND serves 30 to 40 contracts in the state for these accounts, but members will likely go to BlueCard PPO providers for maximum benefits.

If you would like to learn more about the BlueCard PPO and participation within the network please contact:

Ms. Jody Coste, Provider Networks
Blue Cross Blue Shield of North Dakota
4510 13th Avenue S.W.
[illegible]go, ND 58121
([illegible]1) 282-1113 or
1-800-368-2312

Documentation Required for 90846 and 90847

CPT 90846 (family therapy without the patient present) and 90847 (family therapy conjoint psycho-therapy) require submission of medical documentation for the session in which it occurs. When these codes are billed, we will request the medical record. You may expedite payment by submitting the documentation at the time of the claim submission. With paper billing, you may attach the documentation to the HCFA 1500. If using electronic billing, indicate that an attachment is forthcoming, and mail a copy of the note attn: Claims Department. (With MedTrac, use the EDI attachment procedure.)

Telemedicine

Update to HealthCare News #158, February 1997

Revised information in ***bold italics.***

Effective January 1, 1998, the modifier ZU will be required to identify a service as being performed via telemedicine. This is for data reporting purposes only so outcome studies can be performed in the future on members that received consultative services or treatment by telemedicine. The use of the modifier will not effect reimbursement.

Telemedicine is the use of interactive video equipment to link practitioners and patients in different locations.

1. To qualify as a professional service, actual visual contact (face to face) must be maintained between physician and patient. No Provider to Provider consultations, such as telephone consultations, will be reimbursed.
2. Reimbursable services are those professional Evaluation and Management services ***and individual psychotherapy (90842 - 90844, 90862)*** listed in the Current Procedural Terminology (CPT) of the American Medical Association. Only those services currently reimbursable in an office or outpatient setting will be allowed for payment. Reimbursement will be based on the current fee schedule for E/M services ***or individual psychotherapy.***
3. There will be no additional reimbursement for equipment, technicians or other technology or personnel utilized in the performance of the telemedicine service.
4. Reimbursement will be provided only to the consulting physician during the telemedicine session. No benefits will be available to a provider if his/her sole function is presentation of the patient to the consultant via telemedicine.
5. All services provided must be medically appropriate and necessary. Documentation to support the service shall be included in the clinical record.
6. A designated room with appropriate equipment, including camera(s), lighting, transmission and other needed electronics and the appropriate medical office amenities, shall be established in both the consultant and the distant site. An on-site visit may be made to the primary telemedicine facility to address quality issues.
7. Primary and secondary sites of telemedicine services shall not be in the same facility or community, and the secondary location shall be of a sufficient distance from the primary site to provide services to patients who do not have readily available access to such specialty services.

<u>Modifier</u>
-ZU Service performed via telemedicine

AB 1158

HB1158
Amendments

Insert on page 2 line 6. Delete lines 6 through 9

4. "Telemedicine" means the practice of medicine by means of interactive audio, video, or data communications.

insert on page 7 line 4.

The practice of Telemedicine without acting under supervision of another licensed physician who is physically located in the state.