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2001 HOUSE HUMAN SERVICES

HB 1262

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1262

House Human Services Committee

Conference Committee

Hearing Date January 23, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		0 to End
Tape 1		X	0 to End
Committee Clerk Signature <i>Connie Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Opened hearing on HB 1262.

Rep. Porter: This bill would remove the State Board of Podiatry and place the Podiatrists under the authority of the State Board of Medical Examiners. The bill may not be in perfect form but it would accomplish a couple of things. First it would bring strength by numbers to the Podiatrists in North Dakota and after their debt is paid off, potentially reduce license fees. I did not include membership on the State Board of Medical Examiners. I felt that if the membership of this committee was compelled to include a Podiatrist on the board we should first hear arguments from both sides regarding that issue. (See written testimony.)

Dr. Brian Gale: I am here to support HB 1262. I believe that there is a need for change in the Board system in North Dakota. There have been many instances of abuse of power and conflict of interest involving board members in this state. I'm sure you have hear the stories of the doctors, attorneys, police offeers, cosmetologists, architects and other professionals. Some of them have been kept out of North Dakota. Others have been forced out of this state. And others have had their careers and lives ruined. There are way to many conflicts of interest and coincidences for so many people to be so unlucky. The way to fix the podiatry board is to enforce the term limits. I would like to see an amendment of this bill that would allow for immediate replacement of any members of the current podiatry board who have been on it for more than 4 years in succession. (See written testimony.)

Rep. Galvin: The paragraph you refer to, the terms of the board members? Usually on most boards the four year term merely means that one of them is up for reelection every four years so that the terms are staggered. Isn't that true also of this board?

Dr. Brian Gale: This would be a sentence in the statute, and how it is interpreted I don't know. I have asked several people about what this sentence means, and the only interpretation that I've gotten is that the purpose of this four year term and one term expiring is to allow other Podiatrists of the state to be on the board, so there aren't the same people on the board year after year.

Rep. Galvin: I don't agree with you, most boards operate this way. There are four members and there is a member elected every year, so this gives an opening every four years. I really think that is the purpose of this paragraph in the statute.

Rep. Weiler: I believe in that same paragraph you go on to say about the problems that you've had with this board for the last eight years. Is the Board of Podiatry the only board or agency that you've had problems with in your twenty years?

Dr. Brian Gale: Yes. This is where all my problems have started.

Rep. Metcalf: Going back to Rep. Galvin's question, are these board members appointed or are they elected?

Dr. Brian Gale: These board members, I believe on all of the boards in the state, are nominated by someone in the state. From what I've been told it usually comes from the state association president. That is why I nominated several members a few years ago.

Gary Thune: Special Assistant Attorney General and retained to represent the North Dakota Board of Podiatric Medicine. I appear in opposition to HB 1262. The history of the board is relevant to this consideration. The board was formed by legislative enactment in 1929. Two basic purposes are to license Podiatrists, and to discipline Podiatrists. That summarizes the essence of the statute. The discipline process has been in two stages. For 65 years the average has been one complaint per year and held no formal hearings. Not a single formal administrative hearing involving the discipline of a Podiatrist. Since 1994, one single Podiatrist has had 25 complaints received against him resulting in two formal hearings and two court cases appealing the decision of the Board of Podiatrists. We are about to start a third round of formal hearings involving additional complaints by a patient against Dr. Gale. The current financial status of the board was accurately stated by Rep. Porter, we are indebted approximately \$30,000. This board has 18 instate Podiatrists, and 4 out-of-state Podiatrists at the present time; generating \$500 per year in license fees per Podiatrist. In the first 68 years of this board there was no debt. Dr. Gale stated that he is at war with the Board of Podiatry and has been for eight years. He has stated

that he has spent \$500,000 fighting this board. This is the third bill Dr. Gale has presented and they were unsuccessful. Rep. Calvin is right with the fact that while the board is a four-year term, there are no term limits. The legislative branch should not undercut a board that is doing its job, especially when the judicial branch is repeatedly determined it is doing its job properly. This bill is opposed by the Board of Podiatric Medicine. It is my understanding that the North Dakota Association of Podiatrists oppose this bill. The solution is not to abolish the Board of Podiatry that is assigned the responsibility to discipline its own members. The solution is really two fold. Give this bill a DO NOT PASS recommendation. Do not set the precedence that if a Doctor is disciplined, then the board that disciplines him should be disciplined. Second, support the pending legislation HB 1377 that authorizes the existing board of Podiatrists to borrow money to get out of this financial problem and pay it back. They are willing to pay maximum dues and increased dues, if that is necessary, to pay back their debts, retain their autonomy, and do their job.

Rep. Cleary: How were those malpractice claims resolved?

Gary Thune: The two that we have as public record in the current mitigation were resolved with settlements of \$65,000 and \$75,000. Settled by the Podiatry Insurance of America. In the neighborhood of a total of \$150,000 for the two claims.

Rep. Cleary: It wasn't the court case that was just settled?

Gary Thune: That is correct. The thing that went to court was the challenge by Dr. Gale to the right of the Podiatry Insurance Company of America to not renew his license. The settlements were in 1996 or 1997, and the litigation was over the non-renewal of his insurance was in 1995.

Rep. Weisz: Aside from the whole issue with Dr. Gale, do you see a potential conflict because of a small group, almost 25% of your total members are made up of the board, does that open itself up to potential conflict in the future?

Gary Thune: For 70 years it hasn't been a problem.

Chairman Price: Can you provide us with a list of the board members, when their current terms expire and how long they've been on the board?

Gary Thune: I don't have that with me, but I certainly can submit it.

Rep. Cleary: How often are malpractice charges brought against other Podiatrists?

Gary Thune: I don't recall in the six or seven years that I have been in Legal Council approximately two or three times.

Vice Chairman Devlin: Can you refresh our memory what statute identifies the term limits for the Board of Podiatry?

Gary Thune: The statute is Sec. 43-05-03 North Dakota Century Code, that provides that appointments are for four year terms. One appointment comes up annually in their four year terms. That same statute provides that four to be Podiatrists, and one a medical doctor.

Rolf Sletten: Executive Secretary and Treasurer of the North Dakota State Board of Medical Examiners. We strongly oppose this bill. One of the long-standing cornerstones of professional regulation in North Dakota is the fact that the professions who practice in this state have regulated themselves. The Board of Medical Examiners is more than 110 years old. The State Board of Podiatric Medicine was created in 1928. It seems to us that you would not want to tamper with that arrangement unless it is possible to clearly articulate some very compelling reason why you need to do so. We recognized long ago that if the State Boards of Medical Examiners don't do an adequate job of regulating medicine then someone else (presumably the

Feds) will eventually do it for us. It seems reasonable to expect that if we do a good job of regulating medicine, then there is little reason to contemplate a change. If we don't do a good job, then it is logical to consider some other regulatory scheme. The same is true of any of the other licensing boards including the State Board of Podiatric Medicine. As far as I know, there is no evidence that suggests that they haven't done a competent job of regulating their profession. It appears they are in a very tough spot right now because of this prolonged series of disciplinary actions against one individual, but that is always a difficult spot for any Board to be in. It appears that much of this debate has been spawned by the complaints of one licensee who has had disciplinary action taken against him by the Podiatry Board. It certainly isn't unusual to find that the respondent is upset with the board, in fact, it is naive to expect otherwise. If you lined up all of the doctors who have been disciplined by the Board of Medical Examiners, you would find some unhappy campers in the group. If this bill is premised on the Podiatry Board's difficulty with this one series of cases, then we strongly urge you to take a much longer view of that board's work. We offer the following comments regarding the specific language of this bill. The last paragraph of the bill would required the Board of Medical Examiners to absorb the debts of the Podiatry Board. The bill expects the M.D.'s and D.O.'s who are licensed to practice in North Dakota to subsidize or actually to fund the regulation of podiatry. The cost of regulating podiatry is very substantial. Over the past several years the State Board of Podiatry has accrued a very significant debt. We are told that the debt is approximately \$30,000. Worse than that it appears the podiatrists are facing another Supreme Court Appeal and that they are starting a whole new disciplinary action against the same man they have been dealing with for the last several years. It seems reasonable to assume that all of these legal proceedings will greatly increase the already large debt. These legal proceedings appear to be a very long ongoing

process that won't end any time soon. Under the Administrative Rules of the Board of Medical Examiners, the annual renewal fee for a physician's license is \$150. There are about 20 licensed podiatrists in North Dakota. If those numbers remain constant, the total amount of licensing fees paid to the Board of Medical Examiners by the podiatrists will be only about \$3,000 per year. At that rate it will be a very long time before the podiatrist's licensure fees can retire the current debt, much less pay any of the expenses which accrue in the meantime. If this bill passes the Board of Medical Examiners will be required to regulate podiatry in spite of the fact that many years will elapse before the podiatrists contribute a single dollar to the cost of that process. In other words, the regulation of podiatry will be funded by the board's other licensees, i.e., M.D.'s, D.O.'s and P.A.'s. Abolishing a licensing board that has served the state well for 70 years simply because one person who is being prosecuted by that board is unhappy with the process would be an extreme, unnecessary, and unfair measure.

Rep. Porter: Can a board in North Dakota declare bankruptcy?

Rolf Sletten: I would suspect that the answer is no.

Rep. Porter: The reason I bring up that question because I was looking at this piece of legislation and I asked the Legislative Council what would happen if a board dissolved and the response back to me was that it would be the burden of the tax payers to pay off whatever debt is left from that board.

Vice Chairman Devlin: There were other states that went to sharing a board, I'll call it a Super Medical Board. Do you want to share your thoughts on that?

Rolf Sletten: There are all kinds of licensing schemes, there are huge umbrella boards, there are some where the boards are essentially autonomous and there are all kinds of arrangements in between where there might be a few professions that share a board. The conclusion that is

reached by the Federation of State Medical Boards when they have studied the efficiency of the various boards, was that the boards that are the most autonomous are the most effective.

Chairman Price: In going through the Century Code for example the Board of Nursing may be appointed for no more than two consecutive terms, and we had one yesterday that a board member may not be reappointed until four years has passed without service on the board. Have there ever been any problem with yours?

Rolf Sletten: No.

Rep. Porter: One of the issues brought up was the board's structure and size, and on your board you have lay persons assigned to your board, can you enlighten us on how that works? Can the Board of Podiatry be enhanced by adding a lay person?

Rolf Sletten: We have 11 members on board, 9 are doctors, 2 are lay members.

Rep. Weisz: Can you explain why you feel that the specialty of podiatry should not be under your board?

Rolf Sletten: Podiatry is recognized as a separate discipline, different education, and different curriculum.

Rep. Galvin: If the Medical Board absorbs the Podiatry Board, would the debt still be the responsibility of the existing podiatrists?

Rolf Sletten: Yes, in the last paragraph of HB 1262.

Dr. Aaron Olson: President of the Board of Podiatry. Submitted two letters that the individuals asked I present at this hearing. One is from the President of the Podiatry Association, Dr. Bradley McCusker. He had polled 18 members of our association, they all reiterated they were not in favor of this HB 1262. I have spoken individually to all of my five board members, and we all stand opposed to HB 1262. I do would like to clear up a bit of fuzzy math by Dr. Gale.

