

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1517

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1517
1/31/2023

Relating to disciplinary proceedings of the state board of chiropractic examiners.

Vice Chairman Ostlie called to order 9:04 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Medical release
- Executive board session
- Legislative intent

In favor:

Representative Dan Ruby, District 38, Primary bill sponsor (no written testimony)

Dr. Jake Schmitz, Licensed Chiropractor in ND, #18006

Vice Chairman Ostlie adjourned the meeting 9:35 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1517
2/6/2023

Relating to disciplinary proceedings of the state board of chiropractic examiners.

Vice Chairman Ostlie called to order 3:15 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Members Absent- Representative Kasper

Discussion Topics:

- Board continuity
- Executive session

Representative Ruby presented an amendment #19577 and moved to adopt.

Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	AB
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion 13-0-1

Representative Tveit moved a do pass as amended.

Representative Dekane seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	AB
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion 12-1-1 Representative Christy shall carry the bill.

Chairman Louser adjourned the meeting 3:45 PM

Diane Lillis, Committee Clerk

24
2-6-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1517

Page 1, line 10, replace "for which the licensee has a medical release" with "affecting the licensee"

Page 1, line 11, replace "which" with "that"

Page 1, line 14, remove "to the extent"

Page 1, remove line 15

Page 1, line 16, remove "release"

Page 1, line 24, remove the second "to"

Page 2, remove line 1

Page 2, line 2, remove "medical release"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1517: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1517 was placed
on the Sixth order on the calendar.

Page 1, line 10, replace "for which the licensee has a medical release" with "affecting the licensee"

Page 1, line 11, replace "which" with "that"

Page 1, line 14, remove "to the extent"

Page 1, remove line 15

Page 1, line 16, remove "release"

Page 1, line 24, remove the second "to"

Page 2, remove line 1

Page 2, line 2, remove "medical release"

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HB 1517

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1517
3/8/2023

A bill relating to disciplinary proceedings of the state board of chiropractic examiners.

2:17 PM Chairman D. Larsen called the meeting to order.

Members present Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Chiropractors' executive session
- Licensee records
- Amendments
- Transparency

2:17 PM Rep. Dan Ruby District 38. introduced HB 1517 and testified in favor. No written testimony.

2:29 PM Allyson Hicks, Assistant Attorney General in the Office of the Attorney General, provided an introduction on SB 1517 on behalf ND State Board of Chiropractic Examiner and provided testimony for Lisa Blanchard, the Executive Director for the ND State Board of Chiropractic Examiner, along with explanations for an amendment. The Board is neutral. #22941 and #22942

2:40 PM Dr. Jake Schmitz, Chiropractor, Online Testimony, testified in favor of HB 1517. #22974

2:46 PM Allyson Hicks answered questions from the committee.

2:52 PM Representative Ruby answered questions from the committee.

Additional written testimony:

Steve Nagel #22850

2:55 PM Chairman D. Larsen closed the hearing on HB 1517.

2:57 PM Senator Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1517
3/21/2023

A bill relating to disciplinary proceedings of the state board of chiropractic examiners.

3:27 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

3:27 PM Senator Barta moved to adopt an amendment LC 23.1060.02001.
Senator Klein seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote 5-0-0- Motion passed to ADOPT AN AMENDMENT TO HB 1517.

3:29 PM Senator Barta moved to DO PASS HB 1517 AS AMENDED.
Senator Boehm seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 2-3-0 MOTION FAILED

3:34 PM Chairman D Larsen closed the meeting.

Brenda Cook, Committee Clerk

March 22, 2023

DK
3-22-23
171

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1517

Page 1, line 10, replace "affecting the" with "related to a complaint against the"

Page 1, line 10, remove "that pertain to the"

Page 1, line 11, replace "complainant" with "related to a complaint filed by the complainant"

Page 1, line 23, replace "pertain to the complainant" with "are related to a complaint filed by the complainant"

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1517
3/22/2023

A bill relating to disciplinary proceedings of the state board of chiropractic examiners.

10:20 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

10:21 AM Senator Klein moved DO NOT PASS as Amended.
Senator Kessel seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote 5-0-0- Motion passed.

Senator Barta will carry the bill.

10:26 AM Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1517, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1517 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 10, replace "affecting the" with "related to a complaint against the"

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Page 1, line 23, replace "pertain to the complainant" with "are related to a complaint filed by the complainant"

Renumber accordingly

TESTIMONY

HB 1517

Dr. Jake Schmitz, DC, MS
4233 44th Avenue South, Fargo, ND 58104
701-770-0185
drjakedc4u@gmail.com

- Licensed Chiropractor in ND (and previously NC)
- Owner of Freedom Chiropractic Health Center in Fargo
- Founder and president of the Association of Wellness Chiropractors
- Business co-owner of several entities in ND involving land, minerals, water, and real estate
- Associates degree at Williston State College, BS in Chemistry at Dickinson State University, Doctor of Chiropractic at Northwestern Health Sciences University, Master's degree in Human Nutrition and Functional Medicine at University of Western States, and finishing Doctorate in Clinical Nutrition at University of Western States
- Married with 4 children

Chairman Louser, Representatives of the Industry, Business and Labor Committee,

Hello and thank you for the opportunity to speak to you today. My name is Dr. Jake Schmitz, and I am here today representing myself as a licensed chiropractor in the state of North Dakota (ND). I have been a practicing chiropractor in Fargo for around 11 years.

I am in favor of HB 1517. This bill allows for transparency with how the chiropractic board operates, in the spirit of ND open meeting/record laws. The intent of the Open Meeting/Record laws, implemented by the legislature, is for increased transparency by state agencies. Section 44-04 has exceptions for when it is appropriate to go to executive session by boards (attorney consultation, negotiation strategies, etc.) This bill still fits within the existing framework of 44-04 by allowing the chiropractor whose license is on the line to sit in on the meetings. If the chiropractic board wants to exclude the chiropractor, they will need to give a legal reason for doing so within the parameters of 44-04-19.1.

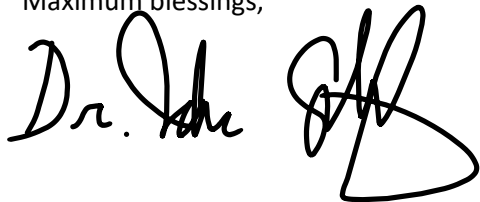
A common tactic this board uses to govern is to do so via executive sessions. This last year alone the board had 13 meetings and went to 22 executive sessions accounting for roughly 5.4 hours of cumulative time. This bill won't necessarily stop them from going to executive session, but it will at least allow the chiropractor in question to be able to sit in and listen to what is being said about him/her. That alone would increase the likelihood of the chiropractor understanding what the board is concerned with and changing his/her actions. Without that transparency, how can any chiropractor know what is expected of him/her when issues arise? The default action of the board should be to allow all chiropractors to be informed as to how to handle/prevent/avoid/remedy issues.

The Chiropractic board uses executive sessions to hide discussions which should be otherwise open to the public. When they return from executive session, they do not give any details as is required by 44-04. They instead have a canned response, which is "proceed as discussed in executive session." This proposed bill, at a minimum, allows the chiropractor to know what is expected and how to respond.

In the interest of public transparency for state agencies, I hope you vote a DO PASS on HB 1517 in protection of Open Meeting Laws.

Thank you for your time. I greatly appreciate the opportunity to speak here today. I will welcome any questions you may have.

Maximum blessings,

A handwritten signature in black ink, appearing to read "Dr. Jake Schmitz". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Dr. Jake Schmitz

Proposed Amendments to HB No. 1517

Page 1, line, 10, replace "for which the licensee has a medical release" with "affecting the licensee"

Page 1, line 11, replace "which" with "that"

Page 1, line 14, remove "to the extent"

Page 1, remove line 15

Page 1, line 16, remove "release"

Page 1, line 24, remove "to"

Page 2, remove line 1

Page 2, line 2, remove "medical release"

March 4, 2023

Senator Larsen and Industry and Business Committee,

I am asking you to give a “Do Pass” to HB 1517. I am a licensed Doctor of Chiropractic and have practiced in Bismarck-Mandan for almost 12 years now. HB 1517 deserves a bit of history. As I understand, State boards, including chiropractic boards, are to adhere to the rule of law (e.g. century code). The laws are not here to adhere to the actions of the board.

This bill is in front of you, quite simply, because this very board was requesting to change the law to fit how they currently operate (a prior bill, HB1105). They were caught by the highest court in our state, the ND Supreme Court, to be operating outside the law. The only way this was able to be proven was for the license holder to receive judgement from the board, then to appeal to district court, and next to the ND Supreme court.

If you are already familiar with this situation, (Dr. Jake Schmitz testimony) feel free to skip to the section; “My Personal Experience” below.

The board had acted illegally by whenever discussing a board complaint, would go to closed-door executive session. They used “Attorney consultation” as their reasoning for this, and they refused an official open records request for the “defendant” to know what was being said about his case. This appears to be standard for their procedures, even though not legal.

It turns out that this very board had a good reason to hide what they were saying. In listening to some of the meetings, the meetings were riddled with aggression towards this license holder, with the seeming intent to use him as an example and what clearly sounds to me like they wanted to target him and hurt him as much as possible.

The board meetings did get out. Only through this individual fighting to save his own license through district court all the way to the ND Supreme Court. I will take directly from the court ruling:

“...Accordingly, after an in-camera review, to the extent the district court determines on remand that the recordings of the executive sessions, or discussion therein, went beyond the scope of attorney consultation or attorney work product, we direct the court to require disclosure of the recordings or discussion to only those matters not exempt under the law...

<https://law.justia.com/cases/north-dakota/supreme-court/2021/20200310.html>

The testimony promoting 1105 made it clear the state board was trying to hide this fact in the wording of the bill avoided the true intent of their bill. They were evasive when this concern was questioned and deferred to “HIPPA” and other misdirection. Therefore, upon voting down hb 1105, HB 1517 came about to correct the wrongs of the board.

My personal experience.

I have had my own experience with the board discussing a frivolous complaint against my own licensure. The board did not pursue the complaint, but they did discuss the ENTIRE CASE under executive meetings. Sometime during that meeting one of the board members recused himself from the discussion/ruling. I have no idea why as no explanation was ever given under their veil of secrecy, or “attorney consultation”. I just know he was in the meeting and for some reason I’m assuming there was some conflict of interest. Yet he was still in the meeting, and I, the person “on trial”, was not allowed into the meeting. But someone with a conflict of interest was? I had formally requested the executive session recording but was told the entire meeting was client/lawyer consultation and so to this day I don’t know what happened in that meeting. None of my case was discussed with me. When I asked why, I was simply told I wasn’t allowed an explanation due to attorney consultation.

Remember, the board members in our profession are colleagues, but also competitors in the chiropractic marketplace with the very people they are making judgements upon. They may not like another practitioner, feel threatened by losing some of their “marketshare”, or be worried about evolving skillsets of their colleagues. They may just want to hurt or get rid of that doctor. We can hope that is not the case however all are prone to bias to some degree.

Even as I write this, I can’t help but worry that my own board will see this as an act of aggression towards them and put me “on their radar.” It is not. There’s no malice here. Just concern for current and future license holders. This letter shouldn’t have to instill fear. This very board was ruled by the supreme court (the highest court) to have acted outside the law. A license holder SHOULD have the right and ability to:

1. Be present for the discussion of our License/future/Career, and record it for potential litigation reasons, and therefore protect it. (e.g. the individual on “trial” to be present for their “trial”).
2. Identify and correct material facts, defend ourselves against mistruths, illegal actions, and discrimination (which we may not even know is happening if can’t access the discussions).
3. Hold the board accountable for their actions. If they have nothing to hide, they shouldn’t feel the need for secrecy of their meetings.

This bill benefits patients, license holders, and our profession. It benefits the spirit of transparency, communication, and truth. It prevents the board from avoiding public scrutiny for their own actions while acting as judge, jury, and executioner without representation by the license holder. Please, feel free to reach out with any questions.

Dr. Steve Nagel, DC, BSN
180 Health Solutions
Mandan, ND 58554

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1517

Page 1, line 10, remove “affecting the” and replace with “related to a complaint against the”

Page 1, lines 10 and 11, remove “that pertain to the complainant” and replace with “related to a complaint filed by the complainant”

Page 1, line 23, remove “pertain to the complainant” and replace with “are related to a complaint filed by the complainant”

Renumber accordingly



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

P.O. Box 185 · Grafton, ND 58237

Phone: (701) 213-0476 · Fax: (855) 450-2153 · Email: contact@ndsbce.org · Web: www.ndsbce.org

SENATE INDUSTRY AND BUSINESS COMMITTEE
WEDNESDAY, MARCH 8, 2023

TESTIMONY OF LISA BLANCHARD
NORTH DAKOTA STATE BOARD OF CHIROPRACTIC EXAMINERS
HOUSE BILL NO. 1517

Chairman Larsen, members of the Committee. I am Lisa Blanchard, Executive Director for the North Dakota State Board of Chiropractic Examiners. As representative for the Board, I am submitting language considerations for HB 1517, a bill relating to the disciplinary proceedings of the state board of chiropractic examiners.

Attached to this testimony are proposed amendments for the committee's consideration that include alternate language options or definitions.

The first amendment for consideration, on page 1, line 10, will more clearly define the specific records in relation to the licensee. We propose replacing "affecting the" with "related to a complaint against the."

The second amendment for consideration is also on page 1, lines 10 and 11. This would clearly define the records in relation to the complainant. We propose replacing "that pertain to the complainant" with "related to a complaint filed by the complainant."

The updated sentence would read (starting on line 9): "This subsection does not limit a licensee from accessing records related to a complaint against the licensee or limit a complainant from accessing records related to a complaint filed by the complainant."

The final amendment for consideration, on page 1, line 23, would update the language of the records related to a complainant to match our previous amendment.

Thank you for your time and the opportunity to share the proposed considerations for HB 1517. I am always available for any questions the committee may have.

Lisa Blanchard, Executive Director
North Dakota State Board of Chiropractic Examiners
(701) 213-0476
contact@ndsbce.org

Dr. Jake Schmitz, DC, MS
4233 44th Avenue South, Fargo, ND 58104
701-770-0185
drjakedc4u@gmail.com

- Owner of Freedom Chiropractic Health Center in Fargo
- Founder and president of the Association of Wellness Chiropractors

Chairman Larson, Senators of the Industry and Business Committee,

Hello and thank you for the opportunity to speak to you today. My name is Dr. Jake Schmitz, and I am here today representing myself as a licensed chiropractor in the state of North Dakota (ND). I have been a practicing chiropractor in Fargo for around 11 years.

I am testifying today in favor of HB 1517. This bill allows for transparency with how the chiropractic board operates, in the spirit of ND open meeting/record laws. The intent of the Open Meeting/Record laws, implemented by the legislature, is for increased transparency by state agencies when they are conducting board business. Section 44-04 has exceptions for when it is appropriate to go to executive session by boards (attorney consultation, negotiation strategies, etc.) This bill still fits within the existing framework of 44-04 by allowing the chiropractor whose license is on the line to sit in on the meetings. If the chiropractic board wants to exclude the chiropractor, they will need to give a legal reason for doing so within the parameters of 44-04-19.1.

Let me explain the process for how the ND state chiropractic board handles new complaints against license holders. The complaint gets sent to all board members, who first discuss it at the next available open meeting. Instead of having the conversation in the open, as is required by law, they go to executive session to discuss the complaint. They do not even allow the person whom the complaint is about to be in the executive session if requested. Once they come back into open session, they give no information or summary about what discussion transpired in the executive session, instead saying "proceed as discussed in executive session".

The board asks for a written response to a set of questions sent out through the mail, and once received, their next meeting they go back into executive session to discuss the answers. At no point does the chiropractor get to know what is happening, what is being discussed, and what, if any, are the concerns. Then a letter is sent with their decision (dismissal of complaint, punishment,

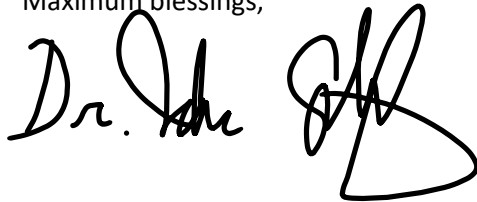
fees/fines/education, etc.) There's no back and forth, no discussion, no understanding, no real due process, or opportunity to face your accuser.

This last year alone the board had 13 meetings and went to 22 executive sessions accounting for roughly 5.4 hours of cumulative time. This bill won't necessarily stop them from going to executive session, but it will at least allow the chiropractor in question to be able to sit in and listen to what is being said. That alone would increase the likelihood of the chiropractor understanding what the board is concerned with and learning from the situation. Without that transparency, how can any chiropractor know what is expected?

In the interest of public transparency for state agencies, I hope you vote a DO PASS on HB 1517 in protection of Open Meeting Laws.

Thank you for your time. I greatly appreciate the opportunity to speak here today. I will welcome any questions you may have.

Maximum blessings,

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Dr. Jake Schmitz