

**2023 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1105**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1105  
1/4/2023

Relating to disciplinary records of the state board of chiropractic examiners; and to amend and reenact sections 43-06-14.1 and 43-06-15 of the North Dakota Century Code, relating to disciplinary records of the state board of chiropractic examiners.

Chairman Louser called the meeting to order 2:15 PM

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

### **Discussion Topics:**

- Written process of disciplinary action procedure
- Executive sessions
- Confidentiality
- Defense of the accused
- Internal workings of the board
- Board composition

Lisa Blanchard, Executive Director, ND Board of Chiropractic Examiners #12360

### **Additional written testimony:**

- Jake Schmitz, DC, MS Chiropractor, Freedom Chiropractic Health Center in Fargo #12296
- Dr. Steven Nagel, DC Chiropractor, 180 Healthnow.com #12298
- Dr. Kevin Paape, Chiropractor, Healing Arts Chiropractic #12305

Chairman Louser adjourned the meeting at 3:07 PM

*Diane Lillis, Committee Clerk By: Leah Kuball*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1105  
1/16/2023

Relating to disciplinary records of the state board of chiropractic examiners; and to amend and reenact sections 43-06-14.1 and 43-06-15 of the North Dakota Century Code, relating to disciplinary records of the state board of chiropractic examiners.

Chairman Louser called the meeting to order 3:19 PM

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

Member absent: Representative Warrey

### Discussion Topics:

- Problem boards

Representative Kasper Moved Do Not Pass.  
Representative Tveit seconded the motion.

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	Y
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	AB

Motion passes 13-0-1

Representative Wagner is the bill carrier

Chairman Louser adjourned the meeting 3:42 PM

*Diane Lillis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1105: Industry, Business and Labor Committee (Rep. Louser, Chairman)**  
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1105 was placed on the Eleventh order on the calendar.

**TESTIMONY**

**HB 1105**

Dr. Jake Schmitz, DC, MS  
4233 44<sup>th</sup> Avenue South, Fargo, ND 58104  
701-770-0185  
[drjakedc4u@gmail.com](mailto: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 just over 11 years.

I oppose the proposed bill HB 1105 for one main reason. This bill blatantly skirts open meeting/record laws. One of the most common tactics 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.

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 serves no purpose, other than to give the Chiropractic board the ability to hold private discussions about license holders without public being present. Passing this bill will remove the intent of the legislature regarding transparency.

Exactly who benefits from this bill? In no way does this protect the public, which is the stated mission of the chiropractic board. The mission of the chiropractic board is to "protect the public's health, welfare, and safety..." The board claims this bill will help protect HIPAA rights of patients, but that isn't accurate. Without this bill getting passed, HIPAA is still intact, which protects patient information. This bill

pretends like it is going to protect HIPAA rights of patients, but they are already under federal protection, regardless of whether this is a board or not. Why add this new portion to the law? The answer is simple....so the chiropractic board can hide their discussions and avoid the public.

This bill will counter the Open Meeting laws. That means license holders, constituents, public members, anyone, will get no information, and this board will be allowed to govern behind closed doors. What's the point to having an open meeting at all then?

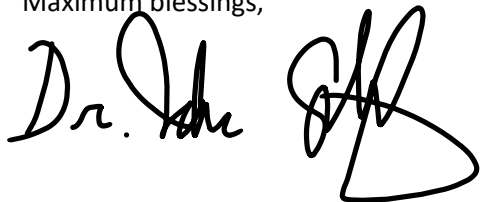
43-06-14.1.7 has a specific purpose, which is to protect any patient testimony and information from being made public. This has more to do with HIPAA than any additional need for confidentiality. This portion of law only pertains to peer review committee work, which is rare. There have been only three peer review committees created in the past 6+ years. The chiropractic board hopes you (the legislature) fix this for them so they can go to executive session for anything pertaining to a complaint.

This is problematic for obvious reasons. 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 prevents the public from having any ability to know how this board governs. If this bill passes, they will share no information with the public, because they will now have a carte blanche excuse to keep everything confidential.

In the interest of public transparency for state agencies, I hope you vote a DO NOT PASS on HB 1105 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 stylized and cursive, with a large, sweeping flourish at the end.

Dr. Jake Schmitz

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 Dr. Steve Nagel, DC



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 Cara Jahner, FNP

January 3, 2023

Representative Louser and Committee Members,

I urge you to give HB 1105 a firm “do not pass.” I am a licensed Doctor of Chiropractic and have practiced in Bismarck-Mandan for almost 12 years now. HB 1105 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 is requesting to change the law to fit how they currently operate. They were caught by the highest court in our state, the ND Supreme Court, to be operating illegally. 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.

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. How? Only through this individual fighting for his license through district court all the way to the ND Supreme Court. The highest court in the land. 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>

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. Know that the board is saying and discussing about our LIFE/License/future, and
2. Defend ourselves against mistruths, illegal actions, and malice (which we may not even know is happening).

This law would remove that ability.



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The board should be held accountable for their actions as well. They should not be exempt from accountability. If they have nothing to hide, they shouldn't feel the need for secrecy of their meetings.

This law would remove that accountability.

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. I 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.

Please give this a do-not-pass recommendation or alter it so that the individual whose license is on the line could sit in on all the discussion about his/her licensure, to have it recorded for potential litigation reasons, and to ultimately protect their licensure upon which today is 7 years and a quarter million dollars invested. They are leveraging HIPAA, which is already protected elsewhere in century code, as an excuse to keep the practitioner out of the conversation being had.

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.

I pray that you do not allow this board to change the laws the fit the moral compass upon which they choose to act. (By the way, if you'd read our rules, you would be astonished the amount of power and intrusiveness they have given themselves, but that is another story for another day). 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. But knowing our board's history, unfortunately it does.

Who does a bill like this benefit? Not the patient nor the license holder. What this does is it allows the board to avoid public scrutiny for their own actions while acting as judge, jury, and executioner without representation by the license holder.

Dr. Steve Nagel, DC, BSN

180 Health Solutions

Mandan, ND 58554



**3240 15th Street South, Suite C • Fargo, ND 58104 • 701.451.9070**

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

Hello my name is Dr. Kevin Paape, a chiropractor of 22 years practicing in Fargo ND. I am the owner of Healing Arts Chiropractic, PC in which we have three locations, Fargo, West Fargo, and Wahpeton. Along with myself, there are 5 chiropractors that work within our company. I am writing in opposition to HB 1105.

There are many different reasons as to why this is a bill you should not support, here are a couple:

1. This is a blatant attempt to work around open meeting laws. By allowing the chiropractic board the ability to work in executive session, this does not allow the public to hear and understand the thought process and the decision making they are choosing with regards to the matters that are being addressed.
2. There has been discussion that this is being put in place to improve upon HIPAA. HIPAA is already a federal law and is already in place to protect patient information. If a patient were to file a complaint, the formal complaint file is not public record, therefore as long as during discussion of the case the board does not release the patient's name, HIPAA wouldn't be an issue. This is an excuse to be able to hide behind closed doors.
3. If this were to be passed, it would start the process for any board, (medical, dental, PT, and others that aren't tied to medical like realtors etc.) to enact the same closed-door meetings and limit the due process for its members of what the board of examiners is meant to serve and protect.
4. My biggest complaint as to why this should not be passed is that it blocks chiropractors from being present for discussions concerning their license. This is a direct conflict to due process. How is it fair for someone to file a complaint against someone, but the person has no ability to hear the discussion of their case, and provide their side of the story.

As someone who has had a complaint filed against them, I cannot imagine not being able to tell my side of the story and explain the situation. As it turned out from my case, because I was present during the discussion of the case, I was able to shed some insight and defend my actions, to which the board then changed part of their recommendations. This would not have taken place had I not been able to be present. This is our life and our livelihood. I had some difficult days prior to that meeting day, and it would have been worse to have it drug out over multiple meetings. Passing this bill is a reduction in personal freedom. It is my personal opinion that this requested legislation is being brought forth as a result of the Board of Examiners being found to be in violation of open meeting laws by the North Dakota Supreme Court. Rather than admit their errors and proceed with transparency, they prefer to

continue along their path and have chosen to change the law to their will instead. I strongly encourage you to give HB 1105 a Do Not Pass recommendation.

Thank you for your time and consideration.

A handwritten signature in blue ink, appearing to read "K. Paape". The signature is fluid and cursive, with the first name "Kevin" and last name "Paape" clearly distinguishable.

Dr. Kevin Paape



# NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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## **HB 1105**

### **House Industry, Business, and Labor Committee**

**January 4, 2023 2:15 PM**

Good afternoon, Chairman Louser and members of the House Industry, Business, and Labor Committee. My name is Lisa Blanchard, I am the Executive Director of the North Dakota Board of Chiropractic Examiners and am here presenting the Board's testimony for HB 1105. This is a clean-up bill. The Board's intent is to consolidate and clarify the language for the Board's disciplinary records. This bill has no fiscal impact.

As you will note in the bill, there is one subsection and two independent sentences in chapter 43-06 involving public records regarding complaints and discipline. The Board is proposing to remove these from their current locations and consolidate them into a new section 43-06-15.1 – Disciplinary Records.

Section 1 of the bill removes subsection 7 from 43-06-14.1. This describes that all data and information, including patient records acquired by the board or a peer review committee, in the exercise of its duties and functions, are confidential and closed to the public.

Section 2 of the bill removes two sentences included in 43-06-15. The first to be removed is the final sentence in subsection 2, found on page 3 of the bill. This sentence states that the reports are not public records. Reports, as defined in that subsection, are signed written statements and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations. The second sentence to be removed can be found under subsection 6, found on page 4. This concerns medical or psychological information of a licensee.

All three of these portions of Century Code have been subject to challenges through the open records and meetings complaints process. The Attorney General's opinions have affirmed the Board's action and interpretations for the sentences in Section 2 of the bill. The opinion for Section 1 is currently pending. Additionally, the Board was a party to litigation regarding the open records and meetings law and found

in violation of the law. However, that litigation was not based upon any of the items in this bill. The litigation concerned North Dakota Century Code Chapter 44-04, specifically Attorney Consultation.

Section 3 of the bill is the new section, 43-06-15.1, with the consolidated language concerning the disciplinary records of the Board. We reviewed equivalent laws of other North Dakota regulatory boards regarding their disciplinary records. Our proposal in this bill is not unique, it mirrors the language of the North Dakota Board of Medicine. The Board selected this process to mirror because similar to the Board of Medicine, the majority of complaints before the Board of Chiropractic Examiners deals with patient records and billing records, both of which are protected under HIPAA. Based upon the number of open records and meetings complaints filed regarding these provisions, the Board felt it necessary to clarify the law, for both the Board and the public's benefit.

The disciplinary process can be complicated, and the information received varies with each complaint. Items currently protected, such as patient records, billing records, and the complaints, will remain protected. We believe that many complaints would not be filed if this were to change. The Board's duty is to protect the public. If they do not receive the information that a licensee may be in violation of the law or harming the public, they cannot perform their duties. When a complaint results in dismissal, for no violation of law or that the evidence does not support disciplinary action, the licensee's reputation is protected. When a violation of law occurs, resulting in a disciplinary action, that information has been and will remain public, as indicated by the proposed language in section 3.

This bill simply combines and creates one section for the disciplinary records of the Board. The existing verbiage does change, but the current, closed public record status, that already exists in the law, is maintained.

I would like to thank you for your time. This concludes my testimony and I would stand for any questions.

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*If the committee members have any additional questions or would like any additional information from the Board, please contact our Executive Director:  
Lisa Blanchard, Executive Director  
ND Board of Chiropractic Examiners  
(701) 213-0476  
contact@ndsbce.org*