

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2094

Introduced by

Human Services Committee

(At the request of the North Dakota Board of Medicine)

1 A BILL for an Act to create and enact sections 43-17-44 and 43-17-45 of the North Dakota
2 Century Code, relating to the practice of telemedicine; and to amend and reenact sections
3 43-17-01 and 43-17-02.3 of the North Dakota Century Code, relating to the definitions of the
4 practice of medicine and telemedicine and the practice of medicine.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-17-01. Definitions.**

9 1. "Board" means the North Dakota board of medicine.

10 2. "Licensee" means a physician or physician assistant licensed to practice in North
11 Dakota.

12 3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and
13 surgeon (D.O.).

14 ~~3.4.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The
15 following persons must be regarded as practicing medicine:

16 a. One who holds out to the public as being engaged within this state in the
17 diagnosis or treatment of diseases or injuries of human beings.

18 b. One who suggests, recommends, or prescribes any form of treatment for the
19 intended relief or cure of any physical or mental ailment of any person, with the
20 intention of receiving, directly or indirectly, any fee, gift, or compensation.

21 c. One who maintains an office for the examination or treatment of persons afflicted
22 with disease or injury of the body or mind.

23 d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician
24 and surgeon, or any other similar word or words or abbreviation to the person's

1 name, indicating that the person is engaged in the treatment or diagnosis of the
2 diseases or injuries of human beings ~~must~~shall be held to be engaged in the
3 practice of medicine.

4 5. "Telemedicine" means the practice of medicine using electronic communication,
5 information technologies, or other means between a licensee in one location and a
6 patient in another location, with or without an intervening health care provider.
7 "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-
8 forward technologies, and remote monitoring.

9 **SECTION 2. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted**
12 **license - Exceptions.**

13 The practice of medicine is deemed to occur in the state the patient is located. A practitioner
14 providing medical care to a patient located in this state is subject to the licensing and
15 disciplinary laws of this state and shall possess an active North Dakota license for the
16 practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician
17 who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any
18 state or territory of the United States, the District of Columbia, or a province of Canada may
19 practice medicine or osteopathy in this state without first obtaining a license from the North
20 Dakota board of medicine under one or more of the following circumstances:

- 21 1. As a member of an organ harvest team;
- 22 2. On board an air ambulance and as a part of its treatment team;
- 23 3. To provide one-time consultation or teaching assistance for a period of not more than
24 ~~twenty-four hours~~seven days; or
- 25 4. To provide consultation or teaching assistance previously approved by the board for
26 charitable organizations.

27 **SECTION 3.** Section 43-17-44 of the North Dakota Century Code is created and enacted as
28 follows:

1 **43-17-44. Standard of care and professional ethics.**

2 A licensee is held to the same standard of care and same ethical standards, whether
3 practicing traditional in-person medicine or telemedicine. The following apply in the context of
4 telemedicine:

5 1. Professional ethical standards require a practitioner to practice only in areas in which
6 the practitioner has demonstrated competence, based on the practitioner's training,
7 ability, and experience. In assessing a licensee's compliance with this ethical
8 requirement, the board shall give consideration to board certifications and specialty
9 groups' telemedicine standards.

10 2. A licensee practicing telemedicine shall establish a valid relationship with the patient
11 before the diagnosis or treatment of a patient. A licensee practicing telemedicine shall
12 verify the identity of the patient seeking care and shall disclose, and ensure the patient
13 has the ability to verify, the identity and licensure status of any licensee providing
14 medical services to the patient.

15 3. Before initially diagnosing or treating a patient for a specific illness or condition, an
16 examination or evaluation must be performed. An examination or evaluation may be
17 performed entirely through telemedicine, if the examination or evaluation is equivalent
18 to an in-person examination.

19 a. An examination utilizing secure videoconferencing or store-and-forward
20 technology for appropriate diagnostic testing and use of peripherals that would be
21 deemed necessary in a like in-person examination or evaluation meets this
22 standard, as does an examination conducted with an appropriately licensed
23 intervening health care provider, practicing within the scope of the provider's
24 profession, providing necessary physical findings to the licensee. An examination
25 or evaluation consisting only of a static online questionnaire or an audio
26 conversation does not meet the standard of care.

27 b. Once a licensee conducts an acceptable examination or evaluation, whether
28 in-person or by telemedicine, and establishes a patient-licensee relationship,
29 subsequent followup care may be provided as deemed appropriate by the
30 licensee, or by a provider designated by the licensee to act temporarily in the
31 licensee's absence. In certain types of telemedicine utilizing asynchronous store-

1 and-forward technology or electronic monitoring, such as teleradiology or
2 intensive care unit monitoring, it is not medically necessary for an independent
3 examination of the patient to be performed.

4 4. A licensee practicing telemedicine is subject to all North Dakota laws governing the
5 adequacy of medical records and the provision of medical records to the patient and
6 other medical providers treating the patient.

7 5. A licensee must have the ability to make appropriate referrals of patients not amenable
8 to diagnosis or complete treatment through a telemedicine encounter, including a
9 patient in need of emergent care or complementary in-person care.

10 **SECTION 4.** Section 43-17-45 of the North Dakota Century Code is created and enacted as
11 follows:

12 **43-17-45. Prescribing - Controlled substances.**

13 1. A licensee who has performed a telemedicine examination or evaluation meeting the
14 requirements of this chapter may prescribe medications according to the licensee's
15 professional discretion and judgment. Opioids may only be prescribed through
16 telemedicine if prescribed as a federal food and drug administration approved
17 medication assisted treatment for opioid use disorder or to a patient in a hospital or
18 long-term care facility. Opioids may not be prescribed through a telemedicine
19 encounter for any other purpose.

20 2. A licensee who, pursuant to this chapter, prescribes a controlled substance, as defined
21 by North Dakota law, shall comply with all state and federal laws regarding the
22 prescribing of a controlled substance, and shall participate in the North Dakota
23 prescription drug monitoring program.