

CHAPTER 43-17.1

BOARD OF MEDICAL EXAMINERS INVESTIGATIVE PANELS

43-17.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of medical examiners.
2. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

43-17.1-02. Investigative panels of the board.

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of six members of the board. Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board.
2. Each investigative panel shall select a chairman and a vice chairman from its own members and a secretary who may or may not be a member of the panel and who shall keep minutes of all meetings thereof.
3. Each investigative panel may engage investigators, medical experts, and such other experts as the panel in its discretion determines to be necessary to accomplish its purposes. The attorney general shall provide counsel to the investigative panels, but an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable.
4. Cases for investigation must be assigned to each investigative panel by the president of the board.

43-17.1-03. Compensation. Repealed by S.L. 1999, ch. 381, § 11.

43-17.1-04. Meetings of investigative panels. Meetings of the investigative panels must be held at least once annually in Bismarck, North Dakota, and at such other place or places within the state and at such times as each investigative panel may determine. A majority of the members of an investigative panel constitutes a quorum, and no action of an investigative panel is effective without the concurrence therein of a majority of the members present at the time of the decision. Special meetings of an investigative panel may be called at any time by the chairman or vice chairman of an investigative panel or upon the written request of any three members of an investigative panel.

43-17.1-05. Complaints.

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as it deems necessary to determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law. Upon completion of its

investigation, the investigative panel shall make a finding that the investigation discloses that:

- a. There is insufficient evidence to warrant further action;
 - b. The conduct of the physician, physician assistant, or fluoroscopy technologist does not warrant further proceedings but the investigative panel determines that possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the physician, physician assistant, or fluoroscopy technologist; or
 - c. The conduct of the physician, physician assistant, or fluoroscopy technologist indicates that the physician, physician assistant, or fluoroscopy technologist may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.
2. If the investigative panel determines that a formal hearing should be held to determine whether any licensed physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law, it shall inform the respondent physician, physician assistant, or fluoroscopy technologist involved of the specific charges to be considered by serving upon that person a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.
 3. If an investigative panel finds that there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The investigative panel shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

43-17.1-05.1. Reporting requirements. A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal

observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or fluoroscopy technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.

43-17.1-06. Powers of the board's investigative panels. The board's investigative panels may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician, physician assistant, or fluoroscopy technologist under investigation. The confidentiality of the records by any other statute or law does not affect the validity of an investigative panel's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Upon probable cause, require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators when necessary.
6. Hold confidential conferences with any complainant or any physician, physician assistant, or fluoroscopy technologist with respect to any complaint.
7. File a formal complaint against any licensed physician, physician assistant, or fluoroscopy technologist with the state board of medical examiners.

43-17.1-07. Expanded jurisdiction of the board. Repealed by S.L. 1987, ch. 525, § 13.

43-17.1-08. Communication to investigative panel privileged. Communications to the investigative panels and their agents are privileged, and no member of the investigative panels nor any of their agents may be compelled to testify with respect thereto in any proceedings except in formal proceedings conducted before the board of medical examiners. All records of the investigative panels, except their financial records, are confidential. Notwithstanding the provisions of this section, if an investigative panel determines that the records of the investigative panel disclose a possible violation of state or federal criminal law, the investigative panel may provide the records to the appropriate law enforcement agency.

43-17.1-09. Immunity. Members of the investigative panels, special masters appointed by an investigative panel, and agents of an investigative panel, are immune from any liability of any kind based upon any acts or omissions in the course of the performance of responsibilities in an official capacity except liability for bodily injury arising out of accidents caused, or contributed to, by the negligence of the member or agent.