

**NORTH DAKOTA BOARD OF MEDICAL IMAGING AND RADIATION THERAPY
BOARD OF EXAMINATIONINERS**

HEARING SUMMARY

June 21, 2016 at 11:00 AM in the Brynhild Haugland Room at the North Dakota State Capitol, West Entrance, 600 East Boulevard Ave, Bismarck, ND.

The proposed rules are North Dakota Administrative Code Title 114, North Dakota Medical Imaging & Radiation Therapy Board of Examiners and include the following:

- **Article 114-01 General Administration**
- **Article 114-02 License Requirements**
- **Article 114-03 Disciplinary Process**
- **Article 114-04 Standards of Practice**

SUMMARY of HEARING

HEARING	June 21, 2016
Signed attendance roster	16
Attended by teleconference	1
Oral testimony	10
Written testimony	29
Board Staff present	Jacinda Simmons Edward Erickson, Legal Counsel, Assistant Attorney General Constance B. Kalanek, RN, Consultant
Board Members Present	Shirley Porter, President Donna Newman, Vice President Cynthia Milkey, Secretary/Treasurer Stanley "Brent" Colby Edward "Ted" Fogarty (Teleconference) Aaron Garman Ryan Hestbeck Kathleen Jalbert Diane Nelson

The following individuals testified at the public hearing and their written testimony is attached:

Dr. Richard Johnson, Radiologist in Devils Lake:

- Concerned about currently licensed technicians having to go back to school.
- Concerned about the hospital losing services such as CT and ultrasound.
- Believes that current standards show competency

Andrew Lankowicz, President at CHI St. Alexius Hospital in Devils Lake:

- Concerned about the impact the new rules will have on critical access hospitals and the communities they serve.

Greg LaFrancois, CEO of St. Aloisius Medical Center in Harvey:

- Concerned about staff needing to go elsewhere to gain clinical experience.

Patrick Branco, CEO of Heart of America Medical Center in Rugby:

- Commented that military-trained staff are essential to rural hospitals.

Janell Anderson, RT(R)(CT), representing self:

- Commented that the law has 5 modalities but the Rules draft includes several more.
- Commented that some of the modalities have stricter requirements than the federal regulations.
- Concerned that terminology may limit the employment of radiographers who do not hold an associate's or bachelor's degree.
- Concerned small facilities may not have staff with the appropriate training in the modalities they practice.
- Requests clarification about "phased in terminology" in sonography section but not in the other modalities.

Colleen Learned, CHI St. Alexius in Devils Lake:

- Commented that every RT complete and pass a certification examination in all imaging modalities is unreasonable and unacceptable.
- Commented that the proposed rules will not make it possible or feasible to continue a radiology practice in a critical access hospital and does not protect patients in ND.

Michael Gross, CHI St. Alexius in Bismarck

- Commented that if his three uncertified Nuclear Medicine Technologists were accepted by ACR, they should meet the requirements for ND.

Jerry Jurena, President of the ND Hospital Association:

- Encouraged the Board to consider the impact the current rules draft will have on rural hospitals.
- Commented that those in the military or another certification method are being properly trained.

Melissa Klein, Bismarck Cancer Center:

- Requested that the Board not require cross-training in the modalities as it will affect the hospitals.

Kim Kakela, Presentation Medical Center in Rugby:

- Read comments and questions as written by Chris Albertson, RRT and HR Administrative Assistant at Presentation Medical Center
- Commented that proposed rules will harm the patient.
- Concerns that there will be great impact on rural hospital.
- Concerns that rural hospitals will lose Trauma Certification without staff able to perform scans.

SUMMARY OF COMMENTS

THE PUBLIC HEARING

Ten persons appeared and provided oral testimony at the public hearing. Twenty nine individuals and organizations provided written testimony. An additional eight individuals or organizations provided written testimony prior to July 1, 2016.

Organizations represented either by written testimony or oral testimony were the following:

- American Society of Radiologic Technologists;
- American College of Radiology;
- ND Society of Radiologic Technologists;
- ND Cares, ND Hospital Association;
- ND Department of Health Radioactive Materials, Asbestos and Indoor Air quality;
- Cardiovascular Credentialing International;

- CHI Devils Lake (2) and Harvey;
- Heart of America Rugby;
- St. Andrew's Health Center in Bottineau;
- one individual representing herself;
- Cavalier County Memorial Hospitals and Clinics;
- First Care Health Center Park River;
- Pembina County Memorial Hospital Wedgewood Manor, Society of Diagnostic Medical Sonography and
- Two individuals who had been unsuccessful in maintaining or receiving certification.

Several individuals associated with rural hospitals and Critical Access Hospitals are concerned about the impact of the proposed rules on the rural health hospitals and communities and the ability to gain clinical experience during the cross training authorization and become certified in a specialty most notably computed tomography technologist, nuclear medicine, ultrasound and magnetic resonance imaging. Also, they are very concerned about individual's ability to complete the requirements and pass a certification examination. They were supportive of military or another certification method to verify training.

The North Dakota chapter of the American College of Radiology is in support of the proposed rules. The chapter supports the cross training opportunities provided in the rules. Another individual representing CHI St. Alexius indicated the uncertified Nuclear Medicine Technologists were accepted by American College of Radiology.

The North Dakota Society of Radiologic Technologists (NDSRT) provided testimony in support of the draft administrative rules and offered suggestions and questions for the board. Many of the suggested revisions were incorporated into the rules.

The Society of Diagnostic Medical Sonography submitted a detailed document with comments and suggested edits of the proposed rules. Many of the suggested revisions were incorporated into the rules.

An employee of the ND Department of Health provided seven pages of very detailed written testimony. Based on the document the board reviewed all the suggestions and adopted many of the proposed revisions.

Some individuals questioned the authority of the board to draft proposed rules for all of the modalities and requested clarification on the sonography licensure requirements.

The following clarification was provided by legal counsel:

Several commenters questioned the legal basis for the Board to license many different modalities of medical imaging and radiation therapy because N.D.C.C. § 43-62-15(1) specifies that the Board shall establish licensure standards for five specifically-named modalities: nuclear medicine technologists, radiation therapists, radiographers, radiologist assistants, and sonographers. However,

this section does not establish or limit the Board's jurisdiction, it just requires the Board to establish standards for the named modalities as a legal minimum. Instead, other sections of chapter 43-62 define the Board's jurisdiction and regulatory authority.

N.D.C.C. § 43-62-02 states that "an individual may not perform or offer to perform medical imaging or radiation therapy procedures on humans ... unless that individual is licensed under this chapter." And under this chapter, medical imaging "means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays." N.D.C.C. § 43-62-01(5). Similarly, radiation therapy "means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings." N.D.C.C. § 43-62-01(7). Thus, a license from the Board is required in order to perform any medical imaging or any radiation therapy, not just those modalities of medical imaging or radiation therapy listed in N.D.C.C. § 43-62-15(1).

Further, the general powers of the Board include the powers to adopt rules as may be necessary to carry out chapter 43-62, and to develop standards and adopt rules for the improvement of the administration of medical imaging or radiation therapy procedures. N.D.C.C. § 43-62-09(3) & (8). These general powers supply the Board with legal jurisdiction and authority to establish licensure standards for medical imaging and radiation therapies beyond only those five named in N.D.C.C. § 43-62-15(1). Otherwise, if the Board did not have this authority, all modalities of medical imaging and radiation therapy that are not listed in N.D.C.C. § 43-62-15(1) would be prohibited by N.D.C.C. § 43-62-02 and those individuals who provide such services would be guilty of a class B misdemeanor under N.D.C.C. § 43-62-21. We believe that this result would not be the public policy that the Legislature has intended for North Dakota.

A majority of the testimony was in support of the proposed rules however stakeholders and licensees offered numerous suggestions for revision. One individual provided written testimony in opposition to the proposed rules in its entirety and another stated there "should be no provisions for non-registered techs" and another asked for no modality regulation. During the open comment period eight letters/emails were received.

The proposed rules are North Dakota Administrative Code Title 114, North Dakota Medical Imaging & Radiation Therapy Board of Examiners and include the following:

- **Article 114-01 General Administration**
- **Article 114-02 License Requirements**
- **Article 114-03 Disciplinary Process**
- **Article 114-04 Standards of Practice.**

Based on the testimony received the following revisions were made to the proposed rules:

Article 114-01 General Administration

Chapter 114-01-02 Definitions

□ The Cardiovascular Credentialing International suggested the addition of registered cardiac electrophysiology specialist and added a statement related to “on the job training prior to January 1, 2016”.

Response: The Board considered the suggested revisions and added the definition of the registered cardiac electrophysiology specialist. The “on the job training prior to January 1, 2016” was added in Article 114-02 Licensure Requirements and clarified the requirements for sonography.

□ The American Society of Radiologic Technologists (ASRT) suggested revisions to three definitions and the addition of one definition, a citation be added to the definition of “medically underserved areas”, a limitation be set for the definition of “licensed practitioner” and requested the board have a discussion on the use of the term “modality”. The Society of Diagnostic Medical Sonography (SDMS) provided numerous editorial comments and proposed revisions to the rules which included additional definitions including general diagnostic operator and revisions to supervision and supervision for cross training. SDMS also included testimony to revise the requirements for most modalities. One individual questioned the repetition of definitions in rules that were also defined in N.D.C.C.

Response: The Board considered the suggested revisions and revised and added the definitions and added the CFR citation. The clarification of scope of practice for cardiac, cardiovascular, and vascular technologist was incorporated into the current definitions. The suggestion to change term modality to discipline was not considered at this time as it would require a law change to N.D.C.C. § 43-62. The suggested revisions from SDMS were discussed and many were adopted including the definition of general diagnostic operator and requirements for differentiation of supervision and supervision for cross training. All definitions repeated from N.D.C.C. § 43-62 were deleted.

The following clarification was provided by legal counsel related to quality management technologist:

Some commentators questioned the requirement for quality management technologists to be licensed. A quality management technologist is an individual holding the proper credentials in radiography, nuclear medicine or radiation therapy with advanced level certification and who is responsible, with a medical physicist, for the proper performance of medical imaging or radiation therapy services. While a quality management technologist does not personally practice on an individual patient, a quality management technologist controls the actual performance of those tasks by instructing those who are doing so in a meaningful and direct way. Thus, a quality management technologist is performing medical imaging or radiation therapy procedures through subordinates who are using equipment under parameters set by the quality management technologist. This brings a quality management technologist under the Boards jurisdiction through the requirements for licensure in N.D.C.C. § 43-62-02 and the definitions of medical imaging and radiation therapy in N.D.C.C. § 43-62-01(5) & (7). Further, quality management technologists fall under the Board's general powers at N.D.C.C. § 43-62-09(3) & (8).

CHAPTER 114-01-03 FEES

ASRT also asked for clarification for the fee for licensee information.

Response: The \$25.00 fee is for multiple licensee information. The term "multiple" was added to the explanation of the fee for licensee information. See #12.

Article 114-02 License Requirements

Testimony related to the ability of current licensees to maintain licensure was a theme expressed by the rural hospitals in ND along with the proposed cross training requirements. Another area of concern was the need for rural hospitals to remain a designated stroke ready hospital and a Level IV Trauma Center due to the requirements for the Computed tomography technologist. Several individuals and organizations asked about the board's ability to "grandfather" individuals who do not meet requirements for licensure.

Some representatives of the ND Department of Health and an employee of the department representing himself offered numerous suggestion for revisions to NDAC 114 to license requirements along with suggested revisions for "supervision" and use of the term "authorized user".

Testimony from ASRT and an employee of the ND Department of Health suggested the deletion of the term "professional" from bone densitometry requirements for licensure Section 114-02-01-01. ASRT also suggested revisions and additions to licensure for

#12. The NDSRT suggested revision to the “Registered cardiovascular invasive specialist” and the requirements.

Written testimony was provided from an individual representing Sanford questioning the definition for “Quality Management Technologist”. The definition was revised, however the specific modalities were not included due to the need to remain broad in context.

The suggested revisions from SDMS were discussed and many were adopted

Response: Chapter 114-02-01-01. Requirements for licensure of specific modalities was revised to include the following language to provide for continued employment:

“Holds a current certificate and is registered by a nationally accredited organization prior to January 1, 2016”.

The term “professional” was deleted from Section 114-02-01-01. #1 Bone densitometry.

Two individuals have been issued a conditional license to allow them to retake certification examination. The conditional license is issued for a two year time frame and may be extended as “individually approved by the board”. See section 114-02-01-04.

The requirements for the RCIS specialist were revised to include “performance of fluoroscopy”. However due to the NDCC 43-62 definition of licensed practitioner, it was retained rather than listing “physician”. Also, the specialist must be current with continuing education (CE) to remain certified. Therefore a specific number of CEs were not added to the rules.

The suggested revisions from SDMS were discussed and many were adopted. Also, many of the suggested revisions from the employee of the ND Department of Health were adopted.

The following clarification was provided by legal counsel related to quality management technologist:

Some commentators questioned the requirement for quality management technologists to be licensed. A quality management technologist is an individual holding the proper credentials in radiography, nuclear medicine or radiation therapy with advanced level certification and who is responsible, with a medical physicist, for the proper performance of medical imaging or radiation therapy services. While a quality management technologist does not personally practice on an individual patient, a quality management technologist controls the actual performance of those tasks by instructing those who are doing so in a meaningful and direct way. Thus, a quality management technologist is performing medical imaging or radiation therapy procedures through subordinates who are using equipment under parameters set by the quality management technologist. This brings a quality management technologist under the Boards

jurisdiction through the requirements for licensure in N.D.C.C. § 43-62-02 and the definitions of medical imaging and radiation therapy in N.D.C.C. § 43-62-01(5) & (7). Further, quality management technologists fall under the Board's general powers at N.D.C.C. § 43-62-09(3) & (8).

The following clarification was provided by legal counsel related to a standard known as grandfathering:

Several commentators have asked if the Board may license people who are presently practicing a medical imaging or radiation therapy modality without requiring them to meet current professional standards, which is known as grandfathering. The medical imaging and radiation therapy practice act, N.D.C.C. chapter 43-62, does not contain any authorization for grandfathering current practitioners. Therefore, the Board may not grandfather current practitioners. However, based on information provided to us during initial licensure, the Board believes that the total number of existing practitioners who will not be able to meet the licensing standards set out in these rules will be very small, perhaps less than ten.

The Board has means to address this issue other than through grandfathering. The Board is authorized to issue a conditional, restricted, or otherwise circumscribed license as it determines necessary under N.D.C.C. § 43-62-09(15). The Board has already used this authority to craft an agreement whereby two current practitioners who do not presently meet licensure standards have been provided time allowing them to earn their credentials while still practicing safely on the public at their employer's facility. Any individual practitioner or employing facility in this situation should contact the Board's office immediately so we can develop a plan that will allow the practitioner to continue working while earning full credentials for regular licensure.

Section 114-02-01-02. Qualification of applicants for initial licensure.

SDMS suggested several revisions for clarification to this section. A number of individuals and organization spoke in support of the military.

Response:

The board adopted the proposed revisions to this section as the new language added clarification and readability.

Section 114-02-01-03. Requirements for temporary license.

SDMS suggested one revision for clarification to this section.

Response:

The board adopted the proposed revision to this section as the new language added clarification and readability.

Section 114-02-01-04. Requirements for conditional license.

- SDMS suggested several revisions for clarification to this section

Response:

The board adopted the proposed revisions to this section as the new language added clarification and readability.

Section 114-02-01-05. Requirements for cross training authorization. Several individuals and organizations expressed concern about the short time frame allowed for cross training and the ability to be employed while cross training. The suggested revisions from SDMS were discussed and many were adopted including the requirements for differentiation of supervision and supervision for cross training.

Response: The board extended the time frame for cross training to 6 years and can be renewed for one-time for an additional two years and added the following statements to this section:

A cross training authorization will be valid for six years and a renewed one-time for an additional two years.

“A licensee may be employed within the modality for which they are authorized to cross-train.”

The board issued over 1100 licenses based on an individual holding a certificate for education in various modalities, current certification and on the job training. There is no effort on the part of the board to remove anyone from practice and will work with individuals on a case-by-case basis.

Chapter 114-02-02 Renewal of license

Section 114-02-02-01. Requirements for license renewal & Section 114-02-02-02. Reinstatement of a license.

- SDMS suggested several revisions for clarification to this section.

Response:

The board adopted three of the proposed revisions to this section as the new language added clarification and readability and retained current verbiage for one other.

Chapter 11-02-03 Licensure by endorsement

Section 114-02-03-02. Military spouses-licensure.

A number of individuals and organizations spoke about the military and their support of the training received in the armed forces.

Response:

The military spouse section was added as directed by the legislature in N.D.C.C. § 43-51. The board must follow statute and requirements for individuals practicing off the military base.

Chapter 114-02-04 Recognition of Educational Programs and Student Supervision

SDMS suggested several revisions for clarification to this chapter.

Response:

This section had been studied and reviewed by various individuals and programs. The board declined to revise the section 114-02-04-02. Student supervision and Section 114-02-05-01. Recognized certification organizations and credentials. The board “recognizes” approved programs but does not conduct reviews of programs for approval or accreditation.

Article 114-03 Disciplinary Action.

Testimony related to Section 114-03-01-10. Practice without a current license action was received from ASRT. They questioned the time limitations.

Response: Retain the proposed language.

SDMS suggested several revisions for clarification to Chapter 114-03-01.

Response:

The board adopted the proposed revisions to this chapter as the new language added clarification and readability.

Section 114-03-02-01 Criminal History Record Checks.

The authority of the board to conduct Criminal History Record Checks (CHRC) for licensure was questioned by several individuals and applicants.

Response:

The board is conducting CHRC on initial applicants, temporary or conditional licensure, endorsement and relicensure. This authority was granted by the N.D.C.C. § section 12-60-24. At this time the board is not conducting CHRCs for renewal of license.

Article 114-04 Standards of Practice

□ Testimony received from SDMS suggesting removal of paragraphs three and four. Also a number of individuals and organizations questioned the need for regulation and licensure of the Medical Imaging and Radiation Therapy professionals just for the ability to receive verbal orders.

Response: Retain the proposed language. A number of ND Board were queried by the ND Department of Health in 2008 regarding the ability of an unlicensed individual to receive verbal orders. The organizations at the time did not support the provision of a waiver by the health department so the unlicensed practitioners could receive verbal orders.

Shirley Porter, Board President
North Dakota Medical Imaging & Radiation Therapy Board of Examiners
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