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HOUSE BILL 886
Committee Substitute Favorable 4/28/03
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Senate Rules and Operations of the Senate Committee Substitute Adopted 6/25/03

Short Title: Due Process for Physicians. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN PROVISIONS OF ARTICLE 1, CHAPTER 90 OF
THE GENERAL STATUTES RELATING TO THE NORTH CAROLINA
MEDICAL BOARD AND THE PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-2 reads as rewritten:

"§ 90-2. Medical Board.

(a) ~~In order to properly regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina, there is established the North Carolina Medical Board.~~ There is established the North Carolina Medical Board to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina. The Board shall consist of 12 members.

(1) Seven of the members shall be duly licensed physicians elected and nominated to the Governor by the North Carolina Medical Society.

(2) Of the remaining five members, all to be appointed by the Governor, one shall be a duly licensed physician who is a doctor of osteopathy or a full-time faculty member of one of the medical schools in North Carolina who utilizes integrative medicine in that person's clinical practice or a member of The Old North State Medical Society, ~~at least~~ three shall be public members and ~~at least~~ one shall be a physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S. 90-18.2. A public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person

1 enrolled in a program to prepare him to be a licensed health care
2 professional or an allied health professional shall be deemed a health
3 care provider. For purposes of this section, any person with significant
4 financial interest in a health service or profession is not a public
5 member.

6 (a1) Each appointing and nominating authority shall endeavor to see, insofar as
7 possible, that its appointees and nominees to the Board reflect the composition of the
8 State with regard to gender, ethnic, racial, and age composition.

9 (b) No member ~~appointed to the Board on or after November 1, 1981,~~ shall serve
10 more than two complete consecutive three-year terms, except that each member shall
11 serve until ~~his~~ a successor is chosen and qualifies.

12 ~~(c) In order to establish regularly overlapping terms, the terms of office of the~~
13 ~~members shall expire as follows: two on October 31, 1993; four on October 31, 1994;~~
14 ~~four on October 31, 1995; and two on October 31, 1996.~~

15 (d) Any member of the Board may be removed from office by the Governor for
16 good cause shown. Any vacancy in the physician membership of the Board shall be
17 filled for the period of the unexpired term by the Governor from a list of physicians
18 submitted by the North Carolina Medical Society Executive Council. Any vacancy in
19 the public, physician assistant, or nurse practitioner membership of the Board shall be
20 filled by the Governor for the unexpired term.

21 (e) The North Carolina Medical Board shall have the power to acquire, hold,
22 rent, encumber, alienate, and otherwise deal with real property in the same manner as
23 any private person or corporation, subject only to approval of the Governor and the
24 Council of State as to the acquisition, rental, encumbering, leasing, and sale of real
25 property. Collateral pledged by the Board for an encumbrance is limited to the assets,
26 income, and revenues of the Board."

27 **SECTION 2.** Article 1 of Chapter 90 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 90-2.1. Integrative medicine defined.**

30 For purposes of this Article, the term "integrative medicine" means a diagnostic or
31 therapeutic treatment that may not be considered a conventionally accepted medical
32 treatment and that a licensed physician in the physician's professional opinion believes
33 may be of potential benefit to the patient, so long as the treatment poses no greater risk
34 of harm to the patient than the comparable conventional treatments."

35 **SECTION 3.** G.S. 90-14(a)(11) reads as rewritten:

36 "...

37 (11) Lack of professional competence to practice medicine with a
38 reasonable degree of skill and safety for patients. In this connection the
39 Board may consider repeated acts of a physician indicating the
40 physician's failure to properly treat a patient. The Board may, upon
41 reasonable grounds, require a physician to submit to inquiries or
42 examinations, written or oral, by members of the Board or by other
43 physicians licensed to practice medicine in this State, as the Board
44 deems necessary to determine the professional qualifications of such

1 licensee. In order to annul, suspend, deny, or revoke a license of an
2 accused person, the Board shall find by the greater weight of the
3 evidence that the care provided was not in accordance with the
4 standards of practice for the procedures or treatments administered."

5 **SECTION 4.** G.S. 90-14 is amended by adding a new subsection to read:

6 "(g) Prior to taking action against any licensee who practices integrative medicine
7 for providing care not in accordance with the standards of practice for the procedures or
8 treatments administered, the Board shall consult with a licensee who practices
9 integrative medicine."

10 **SECTION 5.** G.S. 90-14.6 reads as rewritten:

11 "**§ 90-14.6. Evidence admissible.**

12 (a) In proceedings held pursuant to this Article the Board shall admit and hear
13 evidence in the same manner and form as prescribed by law for civil actions. A
14 complete record of such evidence shall be made, together with the other proceedings
15 incident to such hearing.

16 (b) Subject to the North Carolina Rules of Civil Procedure and Rules of
17 Evidence, in proceedings held pursuant to this Article, the licensee under investigation
18 may call witnesses, including medical practitioners licensed in the United States, with
19 expertise in the same field of practice as the licensee under investigation, and the Board
20 shall consider this testimony. Witnesses shall not be restricted to experts certified by the
21 American Board of Medical Specialties.

22 (c) Subject to the North Carolina Rules of Civil Procedure and Rules of
23 Evidence, statements contained in medical or scientific literature shall be competent
24 evidence in proceedings held pursuant to this Article."

25 **SECTION 6.** Section 1 becomes effective October 1, 2003. The remainder
26 of this act is effective when it becomes law.