

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 882

Short Title: Due Process for Physicians. (Public)

Sponsors: Senators Hartsell; Clodfelter and Rand.

Referred to: Judiciary II.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS PROVISIONS RELATING TO THE NORTH
3 CAROLINA MEDICAL BOARD UNDER THE LAWS REGULATING THE
4 PRACTICE OF MEDICINE.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 90-2. Medical Board.**

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

11 (1) Seven of the members shall be duly licensed physicians elected and
12 nominated to ~~by the Governor by the North Carolina Medical Society.~~
13 Governor. Of the seven members appointed by the Governor, one
14 member shall be a faculty member at one of the medical schools in
15 North Carolina.

16 (2) Of the remaining five members, all to be appointed by the Governor, at
17 least three shall be public members and at least one shall be a
18 physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as
19 defined in G.S. 90-18.2. A public member shall not be a health care
20 provider nor the spouse of a health care provider. For purposes of
21 board membership, "health care provider" means any licensed health
22 care professional and any agent or employee of any health care
23 institution, health care insurer, health care professional school, or a
24 member of any allied health profession. For purposes of this section, a
25 person enrolled in a program to prepare him to be a licensed health
26 care professional or an allied health professional shall be deemed a
27 health care provider. For purposes of this section, any person with
28 significant financial interest in a health service or profession is not a
29 public member.

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

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

7 (d) ~~Any~~A member of the Board ~~may~~shall be removed from office by the
8 Governor for good cause ~~shown~~shown, including malicious prosecution or abuse of
9 power. Any vacancy in the physician membership of the Board shall be filled for the
10 period of the unexpired term by the ~~Governor from a list of physicians submitted by the~~
11 ~~North Carolina Medical Society Executive Council~~Governor. Any vacancy in the
12 public, physician assistant, or nurse practitioner membership of the Board shall be filled
13 by the Governor for the unexpired term.

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

20 **SECTION 2.** G.S. 90-8 reads as rewritten:

21 "**§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other**
22 **materials.**

23 The president and secretary of the Board may administer oaths to all persons
24 appearing before it as the Board may deem necessary to perform its duties, and may
25 summon and issue subpoenas for the appearance of any witnesses deemed necessary to
26 testify concerning any matter to be heard before or inquired into by the Board. The
27 power of the Board to subpoena is limited to persons with knowledge related to a matter
28 before the Board. Medical expert witnesses, including medical practitioners licensed in
29 the United States, must routinely and actively practice in the specialty that is under
30 investigation by the Board. Each party must disclose the identity of an expert, the
31 subjects on which the expert is expected to testify, the substance of the facts and
32 opinions on which the expert is expected to rely, and the qualifications of the expert.
33 Statements contained in medical or scientific literature may be relied upon in direct and
34 cross-examination and admitted into evidence. The Board may order that any patient
35 records, documents or other material concerning any matter to be heard before or
36 inquired into by the Board shall be produced before the Board or made available for
37 inspection, notwithstanding any other provisions of law providing for the application of
38 any physician-patient privilege with respect to such records, documents or other
39 material. All records, documents, or other material compiled by the Board are subject to
40 the provisions of G.S. 90-16. Notwithstanding the provisions of G.S. 90-16, in any
41 proceeding before the Board, in any record of any hearing before the Board, and in the
42 notice of charges against any licensee, the Board shall withhold from public disclosure
43 the identity of a patient including information relating to dates and places of treatment,
44 or any other information that would tend to identify the patient, unless the patient or the

1 representative of the patient expressly consents to the disclosure. Upon written request,
2 the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the
3 production of which is required does not relate to a matter in issue, or if the subpoena
4 does not describe with sufficient particularity the evidence the production of which is
5 required, or if for any other reason in law the subpoena is invalid."

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

7 "(a) The Board shall have the power to deny, annul, suspend, or revoke a license,
8 or other authority to practice medicine in this State, issued by the Board to any person
9 who has been found by the Board to have committed any of the following acts or
10 conduct, or for any of the following reasons:

- 11 (1) Immoral or dishonorable conduct.
- 12 (2) Producing or attempting to produce an abortion contrary to law.
- 13 (3) Made false statements or representations to the Board, or who has
14 willfully concealed from the Board material information in connection
15 with an application for a license.
- 16 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 17 (5) Being unable to practice medicine with reasonable skill and safety to
18 patients by reason of illness, drunkenness, excessive use of alcohol,
19 drugs, chemicals, or any other type of material or by reason of any
20 physical or mental abnormality. The Board is empowered and
21 authorized to require a physician licensed by it to submit to a mental or
22 physical examination by physicians designated by the Board before or
23 after charges may be presented against the physician, and the results of
24 the examination shall be admissible in evidence in a hearing before the
25 Board.
- 26 (6) Unprofessional conduct, including, but not limited to, departure from,
27 or the failure to conform to, the standards of acceptable and prevailing
28 medical practice, or the ethics of the medical profession, irrespective
29 of whether or not a patient is injured thereby, or the committing of any
30 act contrary to honesty, justice, or good morals, whether the same is
31 committed in the course of the physician's practice or otherwise, and
32 whether committed within or without North Carolina. The standards of
33 practice in any specialty, including complementary treatments, shall be
34 defined by specialists in that field. The Board shall not annul, suspend,
35 revoke the license of or deny a license to a ~~person~~ person, harass, or
36 initiate an investigation solely because of that person's practice of a
37 therapy that is experimental, nontraditional, or that departs from
38 acceptable and prevailing medical practices unless, by ~~competent~~ a
39 preponderance of the evidence, the Board can establish that the
40 treatment has a safety risk of harm to the patient greater than the
41 prevailing treatment or that the treatment is generally not ~~effective-as~~
42 effective in comparison to the effective rates of other prevailing
43 treatments.

- 1 (7) Conviction in any court of a crime involving moral turpitude, or the
2 violation of a law involving the practice of medicine, or a conviction
3 of a felony; provided that a felony conviction shall be treated as
4 provided in subsection (c) of this section.
- 5 (8) By false representations has obtained or attempted to obtain practice,
6 money or anything of value.
- 7 (9) Has advertised or publicly professed to treat human ailments under a
8 system or school of treatment or practice other than that for which the
9 physician has been educated. A duly licensed physician shall not be
10 prohibited from displaying all of his or her certifications in public
11 documents.
- 12 (10) Adjudication of mental incompetency, which shall automatically
13 suspend a license unless the Board orders otherwise.
- 14 (11) Lack of professional competence to practice medicine with a
15 reasonable degree of skill and safety for patients. In this connection the
16 Board may consider repeated acts of a physician indicating the
17 physician's failure to properly treat a patient. The Board may, upon
18 reasonable grounds, require a physician to submit to inquiries or
19 examinations, written or oral, by members of the Board or by other
20 physicians licensed to practice medicine in this State, as the Board
21 deems necessary to determine the professional qualifications of such
22 licensee.
- 23 (12) Promotion of the sale of drugs, devices, appliances or goods for a
24 patient, or providing services to a patient, in such a manner as to
25 exploit the patient, and upon a finding of the exploitation, the Board
26 may order restitution be made to the payer of the bill, whether the
27 patient or the insurer, by the physician; provided that a determination
28 of the amount of restitution shall be based on credible testimony in the
29 record. Selling nutritional supplements or vitamins shall have the same
30 financial disclosures as those required with drugs, devices, appliances,
31 or goods. Nothing in this subdivision shall restrain free trade or limit
32 the legitimate trade activities involved in the course of the practice of
33 medicine.
- 34 (13) Having a license to practice medicine or the authority to practice
35 medicine revoked, suspended, restricted, or acted against or having a
36 license to practice medicine denied by the licensing authority of any
37 jurisdiction. For purposes of this subdivision, the licensing authority's
38 acceptance of a license to practice medicine voluntarily relinquished
39 by a physician or relinquished by stipulation, consent order, or other
40 settlement in response to or in anticipation of the filing of
41 administrative charges against the physician's license, is an action
42 against a license to practice medicine.
- 43 (14) The failure to respond, within a reasonable period of time and in a
44 reasonable manner as determined by the Board, to inquiries from the

1 Board concerning any matter affecting the license to practice
2 medicine. However, the Board shall conclude an investigation
3 pursuant to a violation of this subdivision within 18 months from the
4 date the incident was initially reported.

- 5 (15) The failure to complete an amount not to exceed 150 hours of
6 continuing medical education during any three consecutive calendar
7 years pursuant to rules adopted by the Board.

8 For any of the foregoing reasons, the Board may deny the issuance of a license to an
9 applicant or revoke a license issued to a physician, may suspend such a license for a
10 period of time, and may impose conditions upon the continued practice after such period
11 of suspension as the Board may deem advisable, may limit the accused physician's
12 practice of medicine with respect to the extent, nature or location of the physician's
13 practice as the Board deems advisable. The Board may, in its discretion and upon such
14 terms and conditions and for such period of time as it may prescribe, restore a license so
15 revoked or rescinded, except that no license that has been revoked shall be restored for a
16 period of two years following the date of revocation."

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

18 "(g) In order to annul, suspend, deny, or revoke a license of an accused physician,
19 the Board must find that the facts satisfy, by the greater weight of the evidence, that
20 there is a pattern of incompetence and that the care provided was not in accordance with
21 the standards of practice for the procedures or treatments administered."

22 **SECTION 5.** G.S. 90-14.2 reads as rewritten:

23 "**§ 90-14.2. Hearing before revocation or suspension of a license.**

24 Before the Board shall revoke, restrict or suspend any license granted by it, the
25 licensee shall be given a written notice indicating the general nature of the charges,
26 accusation, or complaint made against him, which notice may be prepared by a
27 committee or one or more members of the Board designated by the Board, and stating
28 that such licensee will be given an opportunity to be heard concerning such charges or
29 complaint at a time and place stated in such notice, or at a time and place to be
30 thereafter designated by the Board, and the Board shall hold a public hearing not less
31 than 30 days from the date of the service of such notice upon such licensee, at which
32 such licensee may appear personally and through counsel, may cross examine witnesses
33 and present evidence in his own behalf. A physician who is mentally incompetent shall
34 be represented at such hearing and shall be served with notice as herein provided by and
35 through a guardian ad litem appointed by the clerk of the court of the county in which
36 the physician has his residence. Such licensee or physician may, if he desires, file
37 written answers to the charges or complaints preferred against him within 30 days after
38 the service of such notice, which answer shall become a part of the record but shall not
39 constitute evidence in the case. Members of the Board participating on the hearing
40 committee shall not have been involved in any part of the investigation."

41 **SECTION 6.** G.S. 90-14.5 reads as rewritten:

42 "**§ 90-14.5. Use of trial examiner or depositions.**

43 ~~Where the licensee requests~~ The licensee may request that the hearing herein
44 provided for be held by the Board in a county other than the county designated for the

1 holding of the meeting of the Board at which the matter is to be heard, the Board may
2 designate in writing one or more of its members to conduct the hearing as a trial
3 examiner or trial committee, to take evidence and report a written transcript thereof to
4 the Board at a meeting where a majority of the members are present and participating in
5 the decision. Evidence and testimony may also be presented at such hearings and to the
6 Board in the form of depositions taken before any person designated in writing by the
7 Board for such purpose or before any person authorized to administer oaths, in
8 accordance with the procedure for the taking of depositions in civil actions in the
9 superior court. When a trial examiner or trial committee recommends license
10 revocation, suspension, or retraction, the licensee shall be granted a full Board hearing
11 at the licensee's request, if the request is made in a timely manner as determined by the
12 Board."

13 **SECTION 7.** G.S. 90-14.6 reads as rewritten:

14 **"§ 90-14.6. Evidence admissible.**

15 In proceedings held pursuant to this Article the Board shall admit and hear evidence
16 in the same manner and form as prescribed by law for civil actions. A complete record
17 of such evidence shall be made, together with the other proceedings incident to such
18 hearing. The physician under investigation may call witnesses including medical
19 practitioners licensed in the United States with expertise in the same field of practice as
20 the physician under investigation. Witnesses shall not be restricted to experts certified
21 by the American Board of Medical Specialties. In an investigative meeting, the
22 physician being investigated may present testimony from medical practitioners licensed
23 in the United States with expertise in the same field of practice as the physician under
24 investigation. Members of the Board shall not be immune from civil or criminal liability
25 for failing to exercise, in good faith, its powers and duties authorized by law."

26 **SECTION 8.** This act is effective when it becomes law.