

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1229

Short Title: Elect Medical Board/Fees/Report Misconduct. (Public)

Sponsors: Representatives Faison; and Wright.

Referred to: Rules, Calendar, and Operations of the House.

April 14, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE ELECTION OF PHYSICIAN MEMBERS OF THE
2 NORTH CAROLINA MEDICAL BOARD, TO AUTHORIZE THE MEDICAL
3 BOARD TO COLLECT REASONABLE FEES TO COVER THE COSTS OF THIS
4 ELECTION, TO PROVIDE INFORMATION TO THE PUBLIC REGARDING
5 CERTAIN DAMAGE AWARDS OR SETTLEMENTS OF MEDICAL
6 MALPRACTICE ACTIONS AND CLAIMS, AND TO REQUIRE THE
7 REPORTING OF SEXUAL MISCONDUCT BY A PHYSICIAN OR A
8 PHYSICIAN ASSISTANT TO THE MEDICAL BOARD WHEN THE CONDUCT
9 WAS SUBJECT TO PEER REVIEW.
10

11 The General Assembly of North Carolina enacts:

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

13 **"§ 90-2. Medical Board.**

14 (a) There is established the North Carolina Medical Board to regulate the
15 practice of medicine and surgery for the benefit and protection of the people of North
16 Carolina. The Board shall consist of 12 members.

17 (1) Seven of the members shall be duly licensed physicians elected ~~and~~
18 ~~nominated to the Governor by the North Carolina Medical Society as~~
19 ~~provided in G.S. 90-3.1.~~

20 (2) Of the remaining five members, all to be appointed by the Governor,
21 one shall be a duly licensed physician who is a doctor of osteopathy or
22 a full-time faculty member of one of the medical schools in North
23 Carolina who utilizes integrative medicine in that person's clinical
24 practice or a member of The Old North State Medical Society, three
25 shall be public members and one shall be a physician assistant as
26 defined in G.S. 90-18.1 or a nurse practitioner as defined in
27 G.S. 90-18.2. A public member shall not be a health care provider nor
28 the spouse of a health care provider. For purposes of board
29 membership, "health care provider" means any licensed health care

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

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

12 (b) No member shall serve more than two complete consecutive three-year terms,
13 except that each member shall serve until a successor is chosen or elected and qualifies.

14 (c) Repealed by Session Laws 2003-366, s. 1, effective October 1, 2003.

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, as provided in~~
19 G.S. 90-3.1. Any vacancy in the public, physician assistant, or nurse practitioner
20 membership of the Board shall be filled by the Governor for the unexpired term.

21 (e) The North Carolina Medical Board ~~shall have the power to~~ may 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.** G.S. 90-3 is repealed.

28 **SECTION 3.** Article 1 of Chapter 90 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 90-3.1. Election of physician members of the Medical Board.**

31 (a) Physician members of the North Carolina Medical Board shall be elected in
32 accordance with this section. Every person licensed to practice medicine in this State
33 and either residing or practicing in this State is entitled to vote in this election. Any
34 vacancy of a physician member occurring on the Board shall be filled by a majority vote
35 of the remaining physician members of the Board, and this member shall serve until the
36 next regular election conducted by the Board, at which time the vacancy shall be filled
37 by the election process under this section. No physician shall be nominated for or
38 elected to membership on the Board unless, at the time of the nomination and at the
39 time of the election, that person is licensed to practice medicine in this State and is
40 actually engaged in the practice of medicine.

41 (b) Nominations and elections of physician members of the Board shall be as
42 follows:

43 (1) An election shall be held each year to elect successors to those
44 members whose terms are expiring in the year of the election, each

1 successor to take office on the first day of August following the
2 election and to hold office for a term of three years or until his or her
3 successor has been elected and qualified, whichever occurs later.
4 However, if in any year the election of the members of the Board for
5 that year shall not have been completed by August 1 of that year, then
6 those members elected that year shall take office immediately after the
7 completion of the election and shall hold office until the first of
8 August of the third year thereafter or until their successors are elected
9 and qualified, whichever occurs later.

10 (2) Every physician with a current North Carolina license residing or
11 practicing in North Carolina shall be eligible to vote in elections of
12 physicians to the Board. Holding a license to practice medicine in
13 North Carolina constitutes registration to vote in the elections. The list
14 of licensed physicians is the registration list for elections to the
15 appropriate seats on the Board.

16 (3) All elections shall be conducted by the Medical Board, which is
17 hereby established as the Board of Physician Elections. If a member of
18 the Medical Board whose position is to be filled at any election is
19 nominated to succeed himself or herself, and the member does not
20 withdraw his or her name, the member shall be disqualified to serve as
21 a member of the Board of Physician Elections for that election and the
22 remaining members of the Board of Physician Elections shall proceed
23 and function without his or her participation.

24 (4) Nomination of physicians for election shall be made to the Board of
25 Physician Elections by a written petition signed by not less than 10
26 physicians licensed to practice medicine in North Carolina and
27 residing or practicing in North Carolina. The petitions shall be filed
28 with the Board of Physician Elections after January 1 of the year in
29 which the election is to be held and on or before midnight of May 20
30 of that year or an earlier date as may be set by the Board of Physician
31 Elections. However, at least 10 days' notice of the earlier date shall be
32 given to all physicians qualified to sign a petition of nomination. The
33 Board of Physician Elections shall, before preparing ballots, notify all
34 persons who have been nominated under this subdivision of their
35 nomination.

36 (5) Any person who is nominated as provided in subdivision (4) of this
37 subsection may withdraw his or her name by written notice delivered
38 to the Board of Physician Elections or its designated secretary at any
39 time prior to the closing of the polls in any election.

40 (6) Following the close of nominations, ballots shall be prepared in
41 accordance with rules adopted by the Board of Physician Elections,
42 containing the names of all nominees in alphabetical order. Each ballot
43 shall have the method of identification and instructions and
44 requirements printed on the ballot, as prescribed by the Board of

1 Physician Elections. At a time fixed by the Board of Physician
2 Elections, a ballot and an official return envelope addressed to the
3 Board shall be mailed to each person entitled to vote in the election.
4 The envelope shall also contain notice by the Board designating the
5 latest date and hour by which the envelope must be returned and any
6 other items the Board deems necessary. The envelope shall bear a
7 serial number and shall have printed on the left portion of its face the
8 following:

9 'Serial No. of Envelope _____

10 Signature of Voter _____

11 Address of Voter _____

12 (Note: The enclosed ballot is not valid unless the signature of the
13 voter is on this envelope.)'

14 The Board of Physician Elections may print, stamp, or write any
15 additional notice on the envelope, as it deems necessary. No ballot
16 shall be valid or shall be counted in an election unless, within the time
17 provided in subdivision (7) of this subsection, the ballot has been
18 delivered sealed to the Board by hand or by mail. The Board may, by
19 rule, make provision for replacement of lost or destroyed envelopes or
20 ballots upon making proper provisions to safeguard against abuse.

21 (7) The date and hour fixed by the Board of Physician Elections as the
22 latest time for delivery by hand or mailing of the return ballots shall be
23 on or after the tenth day following the mailing of the envelopes and
24 ballots to the voters.

25 (8) The ballots shall be canvassed by the Board of Physician Elections
26 beginning at noon on a day and at a place set by the Board of
27 Physician Elections and announced by the Board of Physician
28 Elections in the notice accompanying the ballots and envelopes sent to
29 the voters. The date canvassing the ballots shall be no later than four
30 days after the date fixed by the Board of Physician Elections for
31 closing the ballots. The canvassing shall be made publicly and any
32 licensed physicians may be present. Once the Board of Physician
33 Elections is ready to count the ballots, the envelopes shall be displayed
34 to the persons present and an opportunity shall be given to any person
35 present to challenge the qualification of the voter whose signature
36 appears on the envelope or to challenge the validity of the envelope.
37 Any envelope containing a ballot that is being challenged shall be set
38 aside, and the challenge shall be heard at a time to be determined by
39 the Board of Physician Elections. After the envelopes have been
40 displayed, those not challenged shall be opened and the ballots

1 extracted in a manner that does not show the marking on the ballots,
2 and each ballot shall be separated from its envelope. Each ballot shall
3 be presented for counting, displayed, and, if not challenged, counted.
4 No ballot shall be valid if it is marked for more nominees than there
5 are positions to be filled in that election. No ballot shall be rejected for
6 any technical error unless it is impossible to determine the voter's
7 choice on the ballot. During the counting, challenge may be made to
8 any ballot only if defects appear on the face of the ballot. The Board of
9 Physician Elections may review the challenge when it is made or it
10 may place the ballot aside and determine the challenge after all the
11 other ballots have been counted.

12 (9) After the ballots have been counted, results of the voting shall be
13 handled in the following manner:

14 a. Where there is more than one nominee eligible for election to a
15 single seat:

16 1. The nominee receiving a majority of the votes cast shall
17 be declared elected.

18 2. In the event that no nominee receives a majority, a
19 second election shall be conducted between the two
20 nominees who receive the highest number of votes.

21 b. Where there are more than two nominees eligible for election to
22 either of two seats at issue in the same election:

23 1. A majority shall be any excess of the sum ascertained by
24 dividing the total number of votes cast for all nominees
25 by four.

26 2. If more than two nominees receive a majority of the
27 votes cast, the two receiving the highest number of votes
28 shall be declared elected.

29 3. If only one of the nominees receives a majority, he or
30 she shall be declared elected, and the Board of Physician
31 Elections shall order a second election to be conducted
32 between the two nominees receiving the next highest
33 number of votes.

34 4. If no nominee receives a majority, a second election
35 shall be conducted among the four candidates receiving
36 the highest number of votes. At the second election, the
37 two nominees receiving the highest number of votes
38 shall be declared elected.

39 c. In any election, if there is a tie between candidates, the tie shall
40 be resolved by the vote of the Board of Physician Elections.
41 However, if a member of the Board of Physician Elections is
42 one of the candidates in the tie, he or she may not participate in
43 the vote.

- 1 (10) If a second election is required under this section, the same procedure
2 shall be followed as provided in subdivision (9) of this subsection, and
3 the election shall be subject to the same limitations and requirements,
4 except that if the second election is between four candidates, then the
5 two receiving the highest number of votes shall be declared elected.
- 6 (11) In the event of death or withdrawal of a candidate prior to the closing
7 of the polls in any election, he or she shall be eliminated from the
8 contest and any votes cast for the candidate shall be disregarded. If, at
9 any time after the closing of the period for nominations because of
10 lack of plural or proper nominations, death, withdrawal,
11 disqualification, or any other reason, there are only two candidates for
12 two positions, they shall be declared elected by the Board of Physician
13 Elections. If there is only one candidate for one position, he or she
14 shall be declared elected by the Board of Physician Elections. If there
15 are no candidates for two positions, the two positions shall be filled by
16 the Medical Board. If there is no candidate for one position, the
17 position shall be filled by the Medical Board. If there is one candidate
18 for two positions, the one candidate shall be declared elected by the
19 Board of Physician Elections and one qualified physician shall be
20 elected to the other position by the Medical Board. In the event of the
21 death or withdrawal of a candidate after election but prior to taking
22 office, the position to which he or she was elected shall be filled by the
23 Medical Board. In the event of the death or resignation of a physician
24 member of the Medical Board after taking office, the Medical Board
25 shall fill his or her position for the unexpired term.
- 26 (12) An official list of licensed physicians shall be kept at the office of the
27 Board of Physician Elections and shall be open for inspection by any
28 person at all times. Any licensed physician may make copies of the
29 list. As soon as the voting in any election begins, a list of the licensed
30 physicians shall be posted in the office of the Board of Physician
31 Elections, and the list shall be marked to show whether a
32 ballot-enclosing envelope has been returned.
- 33 (13) All envelopes enclosing ballots and all ballots shall be preserved and
34 held separately by the Board of Physician Elections for a period of six
35 months following the close of an election.
- 36 (14) A physician may appeal any decision of the Board of Physician
37 Elections relating to the conduct of the elections in accordance with
38 Chapter 150B of the General Statutes.
- 39 (15) The Board of Physician Elections may adopt rules regarding the
40 conduct of these elections, except that the rules shall not conflict with
41 the provisions of this section. The Board of Physician Elections shall
42 notify each licensed physician residing in this State of the rules
43 adopted by the Board of Physician Elections.

1 (c) In addition to the fees authorized by G.S. 90-15, the Medical Board may
2 collect reasonable charges under G.S. 90-15 to recover expenses and costs associated
3 with conducting the elections pursuant to this section."

4 **SECTION 4.** G.S. 90-14(b) reads as rewritten:

5 "(b) The Board ~~shall~~may refer to the State Medical Society Physician Health and
6 Effectiveness Committee all physicians whose health and effectiveness have been
7 significantly impaired by alcohol, drug ~~addiction~~addiction, or mental illness. As used in
8 this section, 'mental illness' shall not include sexual misconduct. A physician shall be
9 limited to two referrals to the State Medical Society Physician Health and Effectiveness
10 Committee, and, upon a third referral, the physician's license shall be suspended or
11 revoked."

12 **SECTION 5.** G.S. 90-14.13 reads as rewritten:

13 "**§ 90-14.13. Reports of disciplinary action by health care institutions; immunity**
14 **from liability.**

15 (a) The chief administrative officer of every licensed hospital or other health care
16 institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,
17 preferred providers, as defined in G.S. 58-50-56, and all other provider organizations
18 that issue credentials to physicians who practice medicine in the State, shall, after
19 consultation with the chief of staff of that institution, report to the Board any revocation,
20 suspension, or limitation of a physician's privileges to practice in that institution. A
21 hospital is not required to report the suspension of a physician's privileges for failure to
22 timely complete medical records unless the suspension is the third within the calendar
23 year for failure to timely complete medical records. Upon reporting the third
24 suspension, the hospital shall also report the previous two suspensions. The institution
25 shall also report to the Board resignations from practice in that institution by persons
26 licensed under this Article. The Board shall report all violations of this subsection
27 known to it to the licensing agency for the institution involved.

28 (b) Any licensed physician who does not possess professional liability insurance
29 shall report to the Board any award of damages or any settlement of any malpractice
30 complaint affecting his or her practice within 30 days of the award or settlement.

31 (c) The chief administrative officer of each insurance company providing
32 professional liability insurance for physicians who practice medicine in North Carolina,
33 the administrative officer of the Liability Insurance Trust Fund Council created by
34 G.S. 116-220, and the administrative officer of any trust fund operated by a hospital
35 authority, group, or provider shall report to the Board within 30 days:

36 (1) Any award of damages or settlement affecting or involving a physician
37 it insures, or

38 (2) Any cancellation or nonrenewal of its professional liability coverage of
39 a physician, if the cancellation or nonrenewal was for cause.

40 (d) The Board may request details about any action and the officers shall
41 promptly furnish the requested information. The reports required by this section are
42 privileged ~~and~~and, subject to subsection (f) and subsection (g) of this section, shall not
43 be open to the public. The Board shall report all violations of this paragraph to the
44 Commissioner of Insurance.

1 (e) Any person making a report required by this section shall be immune from
2 any criminal prosecution or civil liability resulting therefrom unless such person knew
3 the report was false or acted in reckless disregard of whether the report was false.

4 (f) The Board shall provide to the public information in a summary fashion by
5 individual physicians on all awards of damages in medical malpractice actions and all
6 settlements of medical malpractice claims whereby five payouts are made within a
7 10-year period, each of which is in excess of one hundred thousand dollars (\$100,000).

8 (g) Within 30 days of receiving a report of a settlement of a medical malpractice
9 claim affecting or involving a physician, the Medical Board shall publish on its public
10 access Web site, without identifying the physician by name, all of the following
11 information:

12 (1) A unique identifying number for the physician, to be used in all
13 subsequent reports under this section.

14 (2) The date of the settlement.

15 (3) The date the settlement was reported to the Medical Board."

16 **SECTION 6.** G.S. 90-15 reads as rewritten:

17 **"§ 90-15. License fee; salaries, fees, and expenses of Board.**

18 Each applicant for a license by examination shall pay to the North Carolina Medical
19 Board a fee which shall be prescribed by the Board in an amount not exceeding the sum
20 of four hundred dollars (\$400.00) plus the cost of test materials before being admitted to
21 the examination. Whenever a license is granted without examination, as authorized in
22 G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by
23 the Board not in excess of two hundred fifty dollars (\$250.00). Whenever a limited
24 license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee
25 not to exceed one hundred fifty dollars (\$150.00), except where a limited license to
26 practice in a medical education and training program approved by the Board for the
27 purpose of education or training is granted, the applicant shall pay a fee of twenty-five
28 dollars (\$25.00), and where a limited license to practice medicine and surgery only at
29 clinics that specialize in the treatment of indigent patients is granted, the applicant shall
30 not pay a fee. A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a
31 duplicate license. All fees shall be paid in advance to the North Carolina Medical Board,
32 to be held in a fund for the use of the Board. The compensation and expenses of the
33 members and officers of the Board and all expenses proper and necessary in the opinion
34 of the Board to the discharge of its duties under and to enforce the laws regulating the
35 practice of medicine or surgery shall be paid out of the fund, upon the warrant of the
36 Board. The per diem compensation of Board members shall not exceed two hundred
37 dollars (\$200.00) per day per member for time spent in the performance and discharge
38 of duties as a member. Any unexpended sum or sums of money remaining in the
39 treasury of the Board at the expiration of the terms of office of the members of the
40 Board shall be paid over to their successors in office.

41 For the initial and annual registration of an assistant to a physician, the Board may
42 require the payment of a fee not to exceed a reasonable amount. The Board may collect
43 reasonable charges associated with expenses and costs of elections pursuant to G.S.
44 90-3.1."

1 **SECTION 7.** G.S. 90-21.22 reads as rewritten:

2 "**§ 90-21.22. Peer review agreements.**

3 (a) The North Carolina Medical Board may, under rules adopted by the Board in
4 compliance with Chapter 150B of the General Statutes, enter into agreements with the
5 North Carolina Medical Society and its local medical society components, and with the
6 North Carolina Academy of Physician Assistants for the purpose of conducting peer
7 review activities. Peer review activities to be covered by such agreements shall include
8 investigation, review, and evaluation of records, reports, complaints, litigation and other
9 information about the practices and practice patterns of physicians licensed by the
10 Board, and of physician assistants approved by the Board, and shall include programs
11 for impaired physicians and impaired physician assistants. Agreements between the
12 Academy and the Board shall be limited to programs for impaired physicians and
13 physician assistants and shall not include any other peer review activities.

14 (b) Peer review agreements shall include provisions for the society and for the
15 Academy to receive relevant information from the Board and other sources, conduct the
16 investigation and review in an expeditious manner, provide assurance of confidentiality
17 of nonpublic information and of the review process, make reports of investigations and
18 evaluations to the Board, and to do other related activities for promoting a coordinated
19 and effective peer review process. Peer review agreements shall include provisions
20 assuring due process.

21 (c) Each society ~~which~~ that enters into a peer review agreement with the Board
22 shall establish and maintain a program for impaired physicians licensed by the Board.
23 The Academy, after entering a peer review agreement with the Board, shall either enter
24 an agreement with the North Carolina Medical Society for the inclusion of physician
25 assistants in the Society's program for impaired physicians, or shall establish and
26 maintain the Academy's own program for impaired physician assistants. The purpose of
27 the programs shall be to identify, review, and evaluate the ability of those physicians
28 and physician assistants to function in their professional capacity and to provide
29 programs for treatment and rehabilitation. The Board may provide funds for the
30 administration of impaired physician and impaired physician assistant programs and
31 shall adopt rules with provisions for definitions of impairment; guidelines for program
32 elements; procedures for receipt and use of information of suspected impairment;
33 procedures for intervention and referral; monitoring treatment, rehabilitation,
34 post-treatment support and performance; reports of individual cases to the Board;
35 periodic reporting of statistical information; assurance of confidentiality of nonpublic
36 information and of the review process. As used in this section, 'impairment' shall not
37 include sexual misconduct or harassment or sexual interaction with a patient.

38 (d) Upon investigation and review of a physician licensed by the Board, or a
39 physician assistant approved by the Board, or upon receipt of a complaint or other
40 information, a society ~~which~~ that enters a peer review agreement with the Board, or the
41 Academy if it has a peer review agreement with the Board, as appropriate, shall report
42 immediately to the Board detailed information about any physician or physician
43 assistant licensed or approved by the Board ~~if~~ if any one or more of the following apply:

- 1 (1) The physician or physician assistant constitutes an imminent danger to
2 the public or to ~~himself;~~himself or herself.
- 3 (2) The physician or physician assistant refuses to cooperate with the
4 program, refuses to submit to treatment, or is still impaired after
5 treatment and exhibits professional ~~incompetence;~~or incompetence.
- 6 (3) The physician or physician assistant has engaged in sexual
7 misconduct, sexual harassment, or sexual interaction with a patient.
- 8 (4) It reasonably appears that the physician or physician assistant has
9 committed a felony.
- 10 (5) The physician or physician assistant has participated in a program for
11 impaired physicians or impaired physician assistants on a previous
12 occasion.
- 13 ~~(3)~~(6) It reasonably appears that there are other grounds for disciplinary
14 action.

15 (e) Any confidential patient information and other nonpublic information
16 acquired, created, or used in good faith by the Academy or a society pursuant to this
17 section shall remain confidential and shall not be subject to discovery or subpoena in a
18 civil case. No person participating in good faith in the peer review or impaired
19 physician or impaired physician assistant programs of this section shall be required in a
20 civil case to disclose any information acquired or opinions, recommendations, or
21 evaluations acquired or developed solely in the course of participating in any
22 agreements pursuant to this section.

23 (f) Peer review activities conducted in good faith pursuant to any agreement
24 under this section shall not be grounds for civil action under the laws of this State and
25 are deemed to be State directed and sanctioned and shall constitute State action for the
26 purposes of application of antitrust laws."

27 **SECTION 8.** Notwithstanding G.S. 90-3.1, enacted by Section 3 of this act,
28 members serving on the North Carolina Medical Board on the effective date of this act
29 may complete the terms for which they were elected or appointed. When the terms of
30 any of the seven members appointed by the Governor, upon the recommendation of the
31 North Carolina Medical Society, are completed, the vacancies shall be filled by election
32 pursuant to G.S. 90-3.1, enacted by Section 3 of this act. Members described in this
33 section shall serve for the terms for which they were elected and until their successors
34 are elected and qualified.

35 **SECTION 9.** This act becomes effective January 1, 2006.