

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-346
HOUSE BILL 818**

AN ACT TO AMEND THE LAWS PERTAINING TO THE PRACTICE OF
MEDICINE AND TO AMEND THE LAWS PERTAINING TO THE PRACTICE
OF DENTISTRY.

The General Assembly of North Carolina enacts:

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

"§ 90-1A. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Medical Board.
- (2) Hearing officer. – Any current or past member of the Board who is a physician, physician assistant, or nurse practitioner and has an active license or approval to practice medical acts, tasks, or functions issued by the Board, or any current or retired judge of the Office of Administrative Hearings, a State district court, a State superior court, the North Carolina Court of Appeals, the North Carolina Supreme Court, or of the federal judiciary who has an active license to practice law in North Carolina and who is a member in good standing of the North Carolina State Bar.
- (3) Integrative medicine. – A diagnostic or therapeutic treatment that may not be considered a conventionally accepted medical treatment and that a licensed physician in the physician's professional opinion believes may be of potential benefit to the patient, so long as the treatment poses no greater risk of harm to the patient than the comparable conventional treatments.
- (4) License. – An authorization issued by the Board to a physician or physician assistant to practice medical acts, tasks, or functions.
- (5) The practice of medicine or surgery. – The practice of medicine or surgery, for purposes of this Article, includes any of the following acts:
 - a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.
 - b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.
 - c. Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.
 - d. Offering or undertaking to perform any surgical operation on any individual.
 - e. Using the designation 'Doctor,' 'Doctor of Medicine,' 'Doctor of Osteopathy,' 'Doctor of Osteopathic Medicine,' 'Physician,'

'Surgeon,' 'Physician and Surgeon,' 'Dr.,' 'M.D.,' 'D.O.,' or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of or reference to another branch of the healing arts for which the individual holds a valid license in this State or the use of the designation 'Doctor' or 'Physician' is otherwise specifically permitted by law.

f. The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone."

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

"§ 90-2. Medical Board.

(a) 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, recommended by the Review Panel and appointed by the Governor as set forth in G.S. 90-3.~~

(2) ~~Of the~~ The remaining five members, members shall all to be appointed by the Governor, Governor as follows:

a. ~~one~~ 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, Society. This Board position shall not be subject to recommendations of the Review Panel pursuant to G.S. 90-3.

b. ~~three~~ Three shall be public members and onemembers, and these Board positions shall not be subject to recommendations of the Review Panel pursuant to G.S. 90-3. A public member shall not be a health care provider nor the spouse of a health care provider. For the purpose of Board membership, "health care provider" means any licensed health care professional, agent or employee of a 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 enrolled in a program as preparation to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

c. 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, G.S. 90-18.2 as recommended by the Review Panel pursuant to G.S. 90-3. 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 enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For

~~purposes of this section, any person with significant financial interest in a health service or profession is not a public member.~~

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

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

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

(d) Any member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the ~~physician~~ physician, physician assistant, or nurse practitioner membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of ~~physicians~~ submitted by the ~~North Carolina Medical Society Executive Council~~ Review Panel pursuant to G.S. 90-3 except as provided in G.S. 90-2(a)(2)a. Any vacancy in the ~~public, physician assistant, or nurse practitioner~~ public membership of the Board shall be filled by the Governor for the unexpired term.

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

SECTION 3. G.S. 90-2.1 is repealed.

SECTION 4. G.S. 90-3 reads as rewritten:

"§ 90-3. Medical Society nominates Board. Review Panel recommends certain Board members; criteria for recommendations.

(a) ~~The Governor shall appoint as physician members of the Board physicians elected and nominated by the North Carolina Medical Society.~~ There is created a Review Panel to review all applicants for the physician positions and the physician assistant or nurse practitioner position on the Board except as provided in G.S. 90-2(a)(2)a. The Review Panel shall consist of nine members, including four from the Medical Society, one from the Old North State Medical Society, one from the North Carolina Osteopathic Medical Association, one from the North Carolina Academy of Physician Assistants, one from the North Carolina Nurses Association Council of Nurse Practitioners, and one public member currently serving on the Board. All physicians, physician assistants, and nurse practitioners serving on the Review Panel shall be actively practicing in North Carolina.

The Review Panel shall contract for the independent administrative services needed to complete its functions and duties. The Board shall provide funds to pay the reasonable cost for the administrative services of the Review Panel. The Board shall convene the initial meeting of the Review Panel. The Review Panel shall elect a chair, and all subsequent meetings shall be convened by the Review Panel.

The Governor shall appoint Board members as provided in G.S. 90-2. The Review Panel shall attempt to make its recommendations to the Governor reflect the composition of the State with regard to gender, ethnic, racial, and age composition.

The Review Panel and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law.

(b) To be considered qualified for a physician position or the physician assistant or nurse practitioner position on the Board, an applicant shall meet each of the following criteria:

(1) Hold an active, nonlimited license to practice medicine in North Carolina, or in the case of a physician assistant or nurse practitioner, hold an active license or approval to perform medical acts, tasks, and functions in North Carolina.

- (2) Have an active clinical or teaching practice. For purposes of this subdivision, the term "active" means patient care, or instruction of students in an accredited medical school or residency, or clinical research program, for 20 hours or more per week.
- (3) Have actively practiced in this State for at least five consecutive years immediately preceding the appointment.
- (4) Intend to remain in active practice in this State for the duration of the term on the Board.
- (5) Submit at least three letters of recommendation, either from individuals or from professional or other societies or organizations.
- (6) Have no public disciplinary history with the Board or any other licensing board in this State or another state over the past 10 years before applying for appointment to the Board.
- (7) Have no history of felony convictions of any kind.
- (8) Have no misdemeanor convictions related to the practice of medicine.
- (9) Indicate, in a manner prescribed by the Review Panel, that the applicant: (i) understands that the primary purpose of the Board is to protect the public; (ii) is willing to take appropriate disciplinary action against his or her peers for misconduct or violations of the standards of care or practice of medicine; and (iii) is aware of the time commitment needed to be a constructive member of the Board.

(c) The review panel shall recommend at least two qualified nominees for each open position on the Board. If the Governor chooses not to appoint either of the recommended nominees, the Review Panel shall recommend at least two new qualified nominees.

(d) Notice of open physician positions or the physician assistant or nurse practitioner position on the Board shall be sent to all physicians currently licensed to practice medicine in North Carolina and all physician assistants and nurse practitioners currently licensed or approved to perform medical acts, tasks, and functions in this State.

(e) Applicants for positions on the Board shall not be required to be members of any professional association or society, except as provided in G.S. 90-2(a)(2)a."

SECTION 5. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-5.1. Powers and duties of the Board.

(a) The Board shall:

- (1) Administer this Article.
- (2) Issue interpretations of this Article.
- (3) Adopt, amend, or repeal rules as may be necessary to carry out and enforce the provisions of this Article.
- (4) Require an applicant or licensee to submit to the Board evidence of the applicant's or licensee's continuing competence in the practice of medicine.
- (5) Regulate the retention and disposition of medical records, whether in the possession of a licensee or nonlicensee. In the case of the death of a licensee, the rules may provide for the disposition of the medical records by the estate of the licensee. This subsection shall not apply to records created or maintained by persons licensed under other Articles of this Chapter or to medical records maintained in the normal course of business by licensed health care institutions.
- (6) Appoint a temporary or permanent custodian for medical records abandoned by a licensee.
- (7) Develop educational programs to facilitate licensee awareness of provisions contained in this Article and public awareness of the role and function of the Board.

- (8) Develop and implement methods to identify dyscompetent physicians and physicians who fail to meet acceptable standards of care.
- (9) Develop and implement methods to assess and improve physician practice.
- (10) Develop and implement methods to ensure the ongoing competence of licensees.

(b) Nothing in subsection (a) of this section shall restrict or otherwise limit powers and duties conferred on the Board in other sections of this Article."

SECTION 6. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-5.2. Board to collect and publish certain data.

(a) The Board shall require all physicians and physician assistants to report to the Board certain information, including, but not limited to, the following:

- (1) The names of any schools of medicine or osteopathy attended and the year of graduation.
- (2) Any graduate medical or osteopathic education at any institution approved by the Accreditation Council of Graduate Medical Education, the Committee for the Accreditation of Canadian Medical Schools, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.
- (3) Any specialty board of certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.
- (4) Specialty area of practice.
- (5) Hospital affiliations.
- (6) Address and telephone number of the primary practice setting.
- (7) An e-mail address or facsimile number which shall not be made available to the public and shall be used for the purpose of expediting the dissemination of information about a public health emergency.
- (8) Any final disciplinary order or other action required to be reported to the Board pursuant to G.S. 90-14.13 that results in a suspension or revocation of privileges.
- (9) Any final disciplinary order or action of any regulatory board or agency including other state medical boards, the United States Food and Drug Administration, the United States Drug Enforcement Administration, Medicare, or the North Carolina Medicaid program.
- (10) Conviction of a felony.
- (11) Conviction of certain misdemeanors, occurring within the last 10 years, in accordance with rules adopted by the Board.
- (12) Any medical license, active or inactive, granted by another state or country.
- (13) Certain malpractice information received pursuant to G.S. 90-14.13 or from other sources in accordance with rules adopted by the Board.

(a1) Except as provided, the Board shall make information collected under G.S. 90-5.2(a) available to the public.

(b) The Board may adopt rules to implement this section.

(c) Failure to provide information as required by this section and in accordance with Board rules or knowingly providing false information may be considered unprofessional conduct as defined in G.S. 90-14(a)(6)."

SECTION 7. G.S. 90-6(a) is recodified as G.S. 90-8.1; G.S. 90-6(b) and (c), respectively, are recodified as G.S. 90-8.2(a) and (b), respectively; G.S. 90-12.1 is recodified as G.S. 90-12.4; G.S. 90-12.2 is recodified as G.S. 90-12.5; G.S. 90-15 is recodified as G.S. 90-13.1; and G.S. 90-15.1 is recodified as G.S. 90-13.2.

SECTION 8. G.S. 90-8.1, as recodified in Section 7 of this act, reads as rewritten:

"§ 90-8.1. Rules governing applicants for license, examinations, etc.; appointment of subcommittees. licensure.

(a) ~~The North Carolina Medical Board is empowered to prescribe such adopt rules as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper that~~ prescribe additional qualifications for an applicant, including education and examination requirements and application procedures."

SECTION 9. Article 1 of Chapter 90 of the General Statutes is amended by adding the following new sections to read:

"§ 90-9.1. Requirements for licensure as a physician under this Article.

(a) Except as provided in G.S. 90-9.2, to be eligible for licensure as a physician under this Article, an applicant shall submit proof satisfactory to the Board that the applicant:

- (1) Has passed each part of an examination described in G.S. 90-10.1;
- (2) Is a graduate of:
 - a. A medical college approved by the Liaison Commission on Medical Education, the Committee for the Accreditation of Canadian Medical Schools, or an osteopathic college approved by the American Osteopathic Association and has successfully completed one year of training in a medical education program approved by the Board after graduation from medical school; or
 - b. A medical college approved by the Liaison Commission on Medical Education, the Committee for the Accreditation of Canadian Medical Schools, or an osteopathic college approved by the American Osteopathic Association, is a dentist licensed to practice dentistry under Article 2 of Chapter 90 of the General Statutes, and has been certified by the American Board of Oral and Maxillofacial Surgery after having completed a residency in an Oral and Maxillofacial Surgery Residency program approved by the Board before completion of medical school; and
- (3) Is of good moral character.

(b) No license may be granted to any applicant who graduated from a medical or osteopathic college that has been disapproved by the Board pursuant to rules adopted by the Board.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate.

"§ 90-9.2. Requirements for graduates of foreign medical schools.

(a) To be eligible for licensure under this section, an applicant who is a graduate of a medical school not approved by the Liaison Commission on Medical Education, the Committee for the Accreditation of Canadian Medical Schools, or the American Osteopathic Association shall submit proof satisfactory to the Board that the applicant:

- (1) Has successfully completed three years of training in a medical education program approved by the Board after graduation from medical school;
- (2) Is of good moral character;
- (3) Has a currently valid standard certificate of Educational Commission for Foreign Medical Graduates (ECFMG); and
- (4) Is able to communicate in English.

(b) The Board may waive ECFMG certification if the applicant:

- (1) Has passed the ECFMG examination and successfully completed an approved Fifth Pathway Program. The applicant is required to provide the original ECFMG Certification Status Report from the ECFMG; or

(2) Has been licensed in another state on the basis of written examination before the establishment of ECFMG in 1958.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate.

"§ 90-9.3. Requirements for licensure as a physician assistant.

(a) To be eligible for licensure as a physician assistant, an applicant shall submit proof satisfactory to the Board that the applicant:

(1) Has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by the Committee's predecessor or successor entities;

(2) Holds or previously held a certificate issued by the National Commission on Certification of Physician Assistants; and

(3) Is of good moral character.

(b) Before initiating practice of medical acts, tasks, or functions as a physician assistant, the physician assistant shall provide the Board the name, address, and telephone number of the physician who will supervise the physician assistant in the relevant medical setting.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate. The Board may set fees for physician assistants pursuant to rules adopted by the Board.

"§ 90-9.4. Requirements for licensure as an anesthesiologist assistant.

Every applicant for licensure as an anesthesiologist assistant in the State shall meet the following criteria:

(1) Satisfy the North Carolina Medical Board that the applicant is of good moral character.

(2) Submit to the Board proof of completion of a graduate level training program accredited by the Commission of Accreditation of Allied Health Education Programs or its successor organization.

(3) Submit to the Board proof of current certification from the National Commission of Certification of Anesthesiologist Assistants (NCCAA) or its successor organization, including passage of a certification examination administered by the NCCAA. The applicant shall take the certification exam within 12 months after completing training.

(4) Meet any additional qualifications for licensure pursuant to rules adopted by the Board."

SECTION 9.1. Section 1 of S.L. 2007-146 is repealed.

SECTION 10. Article 1 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-10.1. Examinations accepted by the Board.

The Board may administer or accept the following examinations for licensure:

(1) A State Board licensing examination.

(2) The National Board of Medical Examiners (NBME) examination or its successor.

(3) The United States Medical Licensing Examination (USMLE) of this section or its successor.

(4) The Federation Licensing Examination (FLEX) or its successor.

(5) Other examinations the Board deems equivalent to the examinations described in subdivisions (1) through (3) of this section pursuant to rules adopted by the Board."

SECTION 11. G.S. 90-11 reads as rewritten:

"§ 90-11. Qualifications of applicant for license. Criminal background checks.

~~(a) Every applicant for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant in the State shall satisfy the North Carolina Medical Board that the applicant is of good moral character and meets the other~~

~~qualifications for the issuance of a license before any such license is granted by the Board to the applicant.~~

(b) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 12. G.S. 90-12 is repealed.

SECTION 13.(a) G.S. 90-13.1, as recodified in Section 7 of this act, reads as rewritten:

"§ 90-13.1. License fee; salaries, fees, and expenses of Board, fees.

Each applicant for a license to practice medicine and surgery in this State under either G.S. 90-9, 90-10, or 90-13 shall pay to the North Carolina Medical Board an application fee of three hundred fifty dollars (\$350.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars (\$150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of one hundred dollars (\$100.00), and where a limited license to practice medicine and surgery only at clinics that specialize in the treatment of indigent patients is granted, the applicant shall not pay a fee. A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board. ~~The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars (\$200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.~~

~~For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."~~

SECTION 13.(b) Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-13.3. Salaries, fees, expenses of the Board.

(a) The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board.

(b) The per diem compensation of Board members shall not exceed two hundred dollars (\$200.00) per member for time spent in the performance and discharge of duties as a member. Any unexpended sum of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office."

SECTION 14. G.S. 90-14 reads as rewritten:

"§ 90-14. ~~Revocation, suspension, annulment or denial of license~~Disciplinary Authority.

(a) The Board shall have the power to place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct.
- (2) Producing or attempting to produce an abortion contrary to law.
- (3) Made false statements or representations to the Board, or ~~who has~~ willfully concealed from the Board material information in connection with an application for a license, an application, request or petition for reinstatement or reactivation of a license, an annual registration of a license, or an investigation or inquiry by the Board.
- (4) Repealed by Session Laws 1977, c. 838, s. 3.
- (5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.
- (6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.
- (7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.
- (8) By false representations has obtained or attempted to obtain practice, money or anything of value.
- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which the physician has been educated.
- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for ~~patients~~ patients or failing to maintain acceptable standards of one or more areas of professional physician practice. In this connection the Board may consider repeated

acts of a physician indicating the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, as the Board deems necessary to determine the professional qualifications of such licensee. In order to annul, suspend, deny, or revoke a license of an accused person, the Board shall find by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered.

- (11a) Not actively practiced medicine or practiced as a physician assistant, or having not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for an initial license from the Board or a request, petition, motion, or application to reactivate an inactive, suspended, or revoked license previously issued by the Board. The Board is authorized to adopt any rules or regulations it deems necessary to carry out the provisions of this subdivision.
- (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.
- (13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.
- (14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.
- (15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or otherwise acted upon, except that no license that has been revoked shall be restored for a period of two years following the date of revocation.

...."

SECTION 15. G.S. 90-14.2 reads as rewritten:

"§ 90-14.2. **Hearing before disciplinary action, revocation or suspension of a license.**

Before the Board shall ~~revoke, restrict or suspend~~ take disciplinary action against any license granted by it, the licensee shall be given a written notice indicating the general nature of the charges, accusation, or complaint made against him, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that such licensee will be given an opportunity to be heard concerning such charges or complaint at a time and place stated in such notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of such notice upon such licensee, at which

such licensee may appear personally and through counsel, may cross examine witnesses and present evidence in his own behalf. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician has his residence. Such licensee or physician may, if he desires, file written answers to the charges or complaints preferred against him within 30 days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case."

SECTION 16. G.S. 90-14.3 reads as rewritten:

"§ 90-14.3. Service of notices.

Any notice required by this Chapter may be served either personally by an employee of the Board or by an officer authorized by law to serve process, or by registered or certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer or employee of the Board delivers the notice to the person ~~addressed~~ addressed or delivers the notice at the licensee's or applicant's last known address as shown by records of the Board with a person of suitable age and discretion then residing therein. Where notice is served by registered or certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addressee, ~~showing refusal of the addressee to accept the notice, or showing failure to locate the addressee at the last known address as shown by the records of the Board.~~ licensee's or applicant's last known address as shown by the records of the Board, regardless of whether the notice was actually received or whether the notice was unclaimed or undeliverable for any reason."

SECTION 17. G.S. 90-14.4 is repealed.

SECTION 18. G.S. 90-14.5 reads as rewritten:

"§ 90-14.5. Use of hearing committee and ~~depositions.~~ depositions; appointment of hearing officers.

(a) ~~The Board, in its discretion, may designate in writing three or more of its members~~ hearing officers to conduct hearings as a hearing committee to take evidence.

(b) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. A quorum of the Board will issue a final decision.

(d) Hearing officers are entitled to receive per diem compensation and reimbursement for expenses as authorized by the Board. The per diem compensation shall not exceed the amount allowed by G.S. 90-13.3."

SECTION 19. G.S. 90-14.6 reads as rewritten:

"§ 90-14.6. Evidence admissible.

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

(b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in proceedings held pursuant to this Article, the ~~licensee individual~~ individual under investigation may call witnesses, including medical practitioners licensed in the United States, ~~with expertise in the same field of practice as the licensee under investigation,~~ with training and experience in the same field of practice as the individual under investigation and familiar with the standard of care among members of the same health care profession in North Carolina.

Witnesses shall not be restricted to experts certified by the American Board of Medical Specialties.

(c) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, statements contained in medical or scientific literature shall be competent evidence in proceedings held pursuant to this Article. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(d) When evidence is not reasonably available under the Rules of Civil Procedure and Rules of Evidence to show relevant facts, then the most reliable and substantial evidence available shall be admitted."

SECTION 20. G.S. 90-14.8 reads as rewritten:

"§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license, revoking or suspending a license.

A physician whose license is revoked or suspended by the Board may obtain a review of the decision of the Board in the Superior Court of Wake County ~~or in the superior court in the county in which the hearing was held or upon agreement of the parties to the appeal in any other superior court of the State,~~ upon filing with the secretary of the Board a written notice of appeal within 20 days after the date of the service of the decision of the Board, stating all exceptions taken to the decision of the Board and indicating the court in which the appeal is to be heard.

Within 30 days after the receipt of a notice of appeal as herein provided, the Board shall prepare, certify and file with the clerk of ~~the superior court in the county to which the appeal is directed~~ the Superior Court of Wake County the record of the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of documents or other written evidence produced at the hearing, decision of the Board, and notice of appeal containing exceptions to the decision of the Board."

SECTION 21. G.S. 90-14.10 reads as rewritten:

"§ 90-14.10. Scope of review.

Upon the review of the Board's decision ~~revoking or suspending~~ taking disciplinary action on a license, the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the accused physician have been prejudiced because the findings or decisions of the Board are in violation of substantive or procedural law, or are not supported by competent, material, and substantial evidence admissible under this Article, or are arbitrary or capricious. At any time after the notice of appeal has been filed, the court may remand the case to the Board for the hearing of any additional evidence which is material and is not cumulative and which could not reasonably have been presented at the hearing before the Board."

SECTION 22. G.S. 90-16 reads as rewritten:

"§ 90-16. Self-reporting requirements; confidentiality of Board investigative information; cooperation with law enforcement; patient protection; Board to keep public records.

(a) The North Carolina Medical Board shall keep a regular record of its proceedings ~~in a book kept for that purpose, together~~ with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. ~~The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name~~

~~and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent license.~~

(b) The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence.

(c) All records, papers, investigative files, investigative reports, other investigative information and other documents containing information in the possession of or received or gathered by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing, complaint or, disciplinary matter, or report of professional liability insurance awards or settlements pursuant to G.S. 90-14.13, shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board, its employees or agents involved in the application for license or discipline of a license holder, except as provided in ~~subsection~~ subsections (d) and (e1) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician or other person performing an expert review for the ~~Board~~ Board and transcripts of any deposition taken by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(d) The Board shall provide the licensee or applicant with access to all information in its possession that the Board intends to offer into evidence in presenting its case in chief at the contested hearing on the matter, subject to any privilege or restriction set forth by rule, statute, or legal precedent, upon written request from a licensee or applicant who is the subject of a complaint or investigation, or from the licensee's or applicant's counsel, unless good cause is shown for delay. The Board is not required to provide any of the following:

- (1) A Board investigative report.
- (2) The identity of a non-testifying complainant.
- (3) Attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Rules of Civil Procedure or the Rules of Evidence.

(e) Information furnished to a licensee or applicant, or counsel for a licensee or applicant, under subsection (d) of this section shall be subject to discovery or subpoena between and among the parties in a civil case in which the licensee is a party.

(e1) When the Board receives a complaint regarding the care of a patient, the Board shall inform the complainant of the disposition of the Board's inquiry into the complaint and the Board's basis for that disposition. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care. Any information furnished to the patient or complainant pursuant to this subsection shall be inadmissible in evidence in any civil proceeding. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were included in the Board's review or were the subject of information furnished to the patient or complainant pursuant to this subsection.

(f) Any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information

collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

(g) In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician.

(h) If investigative information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board ~~shall~~ may report the information to the appropriate law enforcement ~~agency~~ agency or district attorney of the district in which the offense was committed.

(i) The Board shall cooperate with and assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the investigating ~~agency~~ agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(j) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

- (1) Any felony arrest or indictment.
- (2) Any arrest for driving while impaired or driving under the influence.
- (3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(k) The Board, its members and staff, may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about the issuance, denial, annulment, suspension, or revocation of a license, or the voluntary surrender of a license by a licensee of the Board, including the reasons for the action, or an investigative report made by the Board. The Board shall notify the licensee within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information so transmitted. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities."

SECTION 23. G.S. 90-18 reads as rewritten:

"§ 90-18. Practicing without license; ~~practicing defined;~~ penalties.

(a) No person shall perform any act constituting the practice of medicine or surgery, as defined in this Article, or any of the branches thereof, ~~nor in any case prescribe for the cure of diseases~~ unless the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor, except that if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this State, the person shall be guilty of a Class I felony.

~~(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to~~

~~treat any human ailment, physical or mental, or any physical injury to or deformity of another person. A person who resides in any state or foreign country and who, by use of any electronic or other mediums, performs any of the acts described in this subsection, including prescribing medication by use of the Internet or a toll free telephone number, shall be regarded as practicing medicine or surgery and shall be subject to the provisions of this Article and appropriate regulation by the North Carolina Medical Board.~~

(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:this Article:

- (1) The administration of domestic or family ~~remedies in cases of~~ emergency remedies.
- (2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.
- (3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.
- (3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific.
- (4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.
- (5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.
- (6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.
- (7) The practice of midwifery as defined in G.S. 90-178.2.
- (8) The practice of chiroprodypodiatic medicine and surgery by any legally licensed chiroprdistpodiatic physician when engaged in the practice of chiroprody, and ~~without the use of any drug-podiatry as defined in Article 12A of this Chapter.~~
- (9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.
- (10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.
- (11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon who comes into this State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.
- (11a) The practice of medicine or surgery by any physician who comes into this State to practice medicine or surgery so long as:
 - a. The physician or surgeon has an oral or written agreement with a sports team to provide general or emergency medical care to

the team members, coaching staff, or families traveling with the team for a specific sporting event taking place in this State; and

b. The physician or surgeon does not provide care or consultation to any person residing in this State other than an individual described in sub-subdivision a. of this subdivision.

The exemption shall remain in force while the physician or surgeon is traveling with the team. The exemption shall not exceed 10 days per individual sporting event. However, the executive director of the Board may grant a physician or surgeon additional time for exemption of up to 20 additional days per individual sporting event.

- (12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.
- (13) The performance of any medical acts, tasks, and functions by a licensed physician assistant at the direction or under the supervision of a physician in accordance with rules adopted by the Board. This subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks, and functions that are otherwise permitted by law or established by custom. The Board shall authorize physician assistants licensed in this State or another state to perform specific medical acts, tasks, and functions during a disaster.
- (14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.
- (15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.
- (16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter.
- (17) The use of an automated external defibrillator as provided in G.S. 90-21.15.
- (18) The practice of medicine by any nonregistered physician residing in another state or foreign country who is contacted by one of the physician's regular patients for treatment by use of the Internet or a toll-free telephone number while the physician's patient is temporarily in this State.
- (19) The practice of medicine or surgery by any physician who comes into this State to practice medicine or surgery at a camp that specializes in

providing therapeutic recreation for individuals with chronic illnesses, as long as all the following conditions are satisfied:

- a. The physician provides documentation to the medical director of the camp that the physician is licensed and in good standing to practice medicine in another state.
- b. The physician provides services only at the camp or in connection with camp events or camp activities that occur off the grounds of the camp.
- c. The physician receives no compensation for the services.
- d. The physician provides those services within this State for no more than 30 days per calendar year.
- e. The camp has a medical director who holds an unrestricted license to practice medicine and surgery issued under this Article."

SECTION 24. G.S. 90-18.1(a) reads as rewritten:

"(a) Any person who is licensed under the provisions of G.S. ~~90-1490-9.3~~ to perform medical acts, tasks, and functions as an assistant to a physician may use the title "physician assistant". Any other person who uses the title in any form or holds out to be a physician assistant or to be so licensed, shall be deemed to be in violation of this Article."

SECTION 25. G.S. 90-18.1 is amended by adding the following new subsections to read:

"(g) Any person who is licensed under G.S. 90-9.3 to perform medical acts, tasks, and functions as an assistant to a physician shall comply with each of the following:

- (1) Maintain a current and active license to practice in this State.
- (2) Maintain an active registration with the Board.
- (3) Have a current Intent to Practice form filed with the Board.

(h) A physician assistant serving active duty in the United States military is exempt from the requirements of subdivision (g)(3) of this section.

(i) A physician assistant's license shall become inactive any time the holder fails to comply with the requirements of subsection (g) of this section. A physician assistant with an inactive license shall not practice medical acts, tasks, or functions. The Board shall retain jurisdiction over the holder of the inactive license."

SECTION 26. G.S. 90-21 is repealed.

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

"§ 90-37.2. Temporary permits for volunteer dentists.

(a) The North Carolina State Board of Dental Examiners may issue to a person who is not licensed to practice dentistry in this State and who is a graduate of a Board-approved dental school, college, or institution a temporary volunteer permit authorizing such person to practice dentistry under the supervision or direction of a dentist duly licensed in this State. A temporary volunteer permit shall be issued only to those dentists who are licensed in another Board-approved state or jurisdiction, have never been subject to discipline, and have passed a patient-based clinical examination substantially similar to the clinical examination offered in this State. The issuance of a temporary volunteer permit is subject to the following conditions:

- (1) A temporary volunteer permit shall be valid no more than one year from the date of issue; provided, however, that the Board may renew the permit for additional one-year periods.
- (2) The holder of a temporary volunteer permit may practice only under the supervision or direction of one or more dentists duly licensed to practice in this State.
- (3) The holder of a temporary volunteer permit may practice dentistry only: (i) as a volunteer in a hospital, sanatorium, temporary clinic, or like institution which is licensed or approved by the State of North

Carolina and approved by the Board; (ii) as a volunteer for a nonprofit health care facility serving low-income populations and approved by the State Health Director or his designee or approved by the Board; or (iii) as a volunteer for the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when such service is approved by the Board.

- (4) The holder of a temporary volunteer permit shall receive no fee or monetary compensation of any kind or nature for any dental service performed.
- (5) The practice of dentistry by the holder of a temporary volunteer permit shall be strictly limited to the confines of and to the registered patients of the hospital, sanatorium, temporary clinic, or approved nonprofit health care facilities for which he is working or to the patients officially served by the governmental entity to which he is offering his volunteer services.
- (6) The holder of a temporary volunteer permit shall be subject to discipline by the Board for those actions constituting the practice of dentistry by G.S. 90-29 occurring while practicing in this State.
- (7) Any person seeking a temporary volunteer permit must file with the Board such proof as is required by the Board to determine if the applicant has a valid unrestricted dental license in another state or jurisdiction, has not been subject to discipline by any licensing board, has a proven record of clinical safety and is otherwise qualified to practice dentistry in this State.
- (8) There shall be no fee associated with the issuance of a temporary volunteer permit for the practice of dentistry.

(b) The Board is authorized to make rules consistent with this section to regulate the practice of dentistry for those issued a temporary volunteer permit.

SECTION 28. Sections 2 and 4 of this act become effective January 1, 2008. The remainder of this act becomes effective October 1, 2007.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 6:35 p.m. this 7th day of August, 2007