

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 543
Committee Substitute Favorable 4/15/15

Short Title: Amend Laws Pertaining to NC Medical Board.

(Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING LAWS PERTAINING TO THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

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

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

SECTION 2. G.S. 90-3(b) reads as rewritten:

"(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:

...

(10) Have not served more than 72 months as a member of the Board."

SECTION 3. G.S. 90-3(c) reads as rewritten:

"(c) The ~~review panel~~ 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."

SECTION 4. G.S. 90-3 is amended by adding new subsections to read:

"(f) Notwithstanding any provision of G.S. 90-16, the Board may provide confidential and nonpublic licensing and investigative information in its possession to the Review Panel.

(g) All applications, records, papers, files, reports, and all investigative and licensing information received by the Review Panel from the Board and other documents received or gathered by the Review Panel, its members, employees, agents, and consultants as a result of soliciting, receiving, and reviewing applications and making recommendations as required in this section shall not be considered public records within the meaning of Chapter 132 of the General Statutes. All such information shall be privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Review Panel, the Board, and their employees, agents, or consultants, except as provided in this section. The Review Panel shall publish on its Internet Web site the names and practice addresses of all applicants within 10 days after the application deadline. The Review Panel shall publish on its Internet Web site the names and practice addresses of the nominees recommended to the Governor within 10 days after notifying the Governor of those recommendations and not less than 30 days prior to the expiration of the open position on the Board.

(h) The Review Panel is a public body within the meaning of Article 33C of Chapter 143 of the General Statutes. In addition to the provisions contained in Article 33C of Chapter



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1 143 of the General Statutes permitting a public body to conduct business in a closed session,
2 the Review Panel shall meet in closed session to review applications; interview applicants;
3 review and discuss information received from the Board; and discuss, debate, and vote on
4 recommendations to the Governor."

5 **SECTION 5.** G.S. 90-5.2(7) reads as rewritten:

6 "(7) ~~An A current, active e-mail address or facsimile number address, which shall~~
7 ~~not be made available to the public and shall~~considered a public record
8 within the meaning of Chapter 132 of the General Statutes. This information
9 may be used or made available by the Board for the purpose of expediting
10 ~~the dissemination of disseminating or soliciting information about affecting~~
11 public health emergency or the practice of medicine."

12 **SECTION 6.** G.S. 90-5.2(a1) reads as rewritten:

13 "(a1) The Board shall make e-mail addresses ~~and facsimile numbers~~ reported pursuant to
14 G.S. 90-5.2(a)(7) available to the Department of Health and Human Services for use in the
15 North Carolina Controlled Substance Reporting System established by Article 5E of this
16 Chapter."

17 **SECTION 7.** G.S. 90-8.1 reads as rewritten:

18 **"§ 90-8.1. Rules governing applicants for licensure.**

19 (a) The North Carolina Medical Board is empowered to adopt rules that prescribe
20 additional qualifications for an applicant, including education and examination requirements
21 and application procedures.

22 (b) The Board shall not deny an application for licensure based solely on the applicant's
23 failure to become board certified."

24 **SECTION 8.** G.S. 90-13.1(a) reads as rewritten:

25 "(a) Each applicant for a license to practice medicine and surgery in this State under
26 either G.S. 90-9.1 or G.S. 90-9.2 shall pay to the North Carolina Medical Board an application
27 fee of ~~three four hundred fifty dollars (\$350.00);~~(\$400.00)."

28 **SECTION 9.** G.S. 90-13.2 reads as rewritten:

29 **"§ 90-13.2. Registration every year with Board.**

30 (a) Every person licensed to practice medicine by the North Carolina Medical Board
31 shall register annually with the Board within 30 days of the person's birthday.

32 (b) A person who registers with the Board shall report to the Board the person's name
33 and office and residence address and any other information required by the Board, and shall
34 pay an annual registration fee of ~~one hundred seventy five~~two hundred fifty
35 ~~(\$175.00);~~(\$250.00), except those who have a limited license to practice in a medical education
36 and training program approved by the Board for the purpose of education or training shall pay a
37 registration fee of one hundred twenty-five dollars ~~(\$125.00);~~(\$125.00) and those who have a
38 retired limited volunteer license pursuant to G.S. 90-12.1B ~~shall pay an annual registration fee~~
39 ~~of twenty five dollars (\$25.00), and those who have~~or a limited volunteer license pursuant to
40 G.S. 90-12.1A shall pay no annual registration fee. However, licensees who have a limited
41 license to practice for the purpose of education and training under G.S. 90-12.01 shall not be
42 required to pay more than one annual registration fee for each year of training.

43 (c) ~~A physician who is not actively engaged in the practice of medicine in North~~
44 ~~Carolina and who does not wish to register the license may direct the Board to place the license~~
45 ~~on inactive status.~~

46 (d) A physician who is not actively engaged in the practice of medicine in North
47 Carolina and who does not wish to register the license may direct the Board to place the license
48 on inactive status.

49 (e) A physician who fails to register as required by this section shall pay an additional
50 fee of fifty dollars (\$50.00) to the Board. The license of any physician who fails to register and
51 who remains unregistered for a period of 30 days after certified notice of the failure is

1 automatically inactive. The Board shall retain jurisdiction over the holder of the inactive
2 license.

3 (f) Except as provided in G.S. 90-12.1B, a person whose license is inactive shall not
4 practice medicine in North Carolina nor be required to pay the annual registration fee.

5 (g) Upon payment of all accumulated fees and penalties, the license of the physician
6 may be reinstated, subject to the Board requiring the physician to appear before the Board for
7 an interview and to comply with other licensing requirements. The penalty may not exceed the
8 maximum fee for a license under G.S. 90-13.1.

9 (h) The Board shall not deny a licensee's annual registration based solely on the
10 licensee's failure to become board certified."

11 **SECTION 10.** G.S. 90-14(n) reads as rewritten:

12 "(n) Notwithstanding subsection (m) of this section, if the licensee has retained ~~counsel~~
13 ~~and the Board has not made a nonpublic determination to initiate disciplinary~~
14 ~~proceedings,~~counsel, the Board may serve to both the licensee and the licensee's counsel orders
15 to produce, orders to appear, or submit to assessment or examination or orders following a
16 hearing, or provide notice that the Board will not be taking any further action against a licensee
17 to both the licensee and the licensee's counsel, licensee."

18 **SECTION 11.** G.S. 90-14.2 is amended by adding a new subsection to read:

19 "(c) Once charges have been issued, the parties may engage in discovery as provided in
20 G.S. 1A-1, the North Carolina Rules of Civil Procedure. Additionally, the Board shall provide
21 the respondent or respondent's counsel with all exculpatory evidence in its possession, except
22 for the following:

23 (1) Information that is subject to attorney-client privilege.

24 (2) Information that would identify an anonymous complainant.

25 (3) Information related to advisory opinions, recommendations, or deliberations
26 by the Board, its staff, and its consultants that will not be entered into
27 evidence."

28 **SECTION 12.** G.S. 90-14.13(a1)(1) reads as rewritten:

29 "(a1) A hospital is not required to report:

30 (1) The suspension or limitation of a physician's privileges for failure to timely
31 complete medical records ~~unless the suspension or limitation is the third~~
32 ~~within the calendar year for failure to timely complete medical records.~~
33 ~~Upon reporting the third suspension or limitation, the hospital shall also~~
34 ~~report the previous two suspensions or limitations records."~~

35 **SECTION 13.** Article 1D of Chapter 90 of the General Statutes is renamed as
36 follows:

37 "Article 1D.

38 Peer Review Health Program for Medical Professionals."

39 **SECTION 14.** G.S. 90-21.22 reads as rewritten:

40 "**§ 90-21.22. ~~Peer review agreements.~~ Health program for medical professionals.**

41 (a) The North Carolina Medical Board ~~may, under rules adopted by the Board in~~
42 ~~compliance with Chapter 150B of the General Statutes,~~(Board) may enter into agreements with
43 the North Carolina Medical Society (Society), and its local medical society components, and
44 with the North Carolina Academy of Physician Assistants (Academy), and the North Carolina
45 Physicians Health Program (Program) for the purpose purposes of conducting peer review
46 activities identifying, reviewing, and evaluating the ability of licensees of the Board who have
47 been referred to the Program to function in their professional capacity and to coordinate
48 regimens for treatment and rehabilitation. Peer review activities to be covered by such
49 agreements shall include investigation, review, and evaluation of records, reports, complaints,
50 litigation and other information about the practices and practice patterns of physicians licensed
51 by the Board, and of physician assistants approved by the Board, and shall include programs

1 for impaired physicians and impaired physician assistants. Agreements between the Academy
2 and the Board shall be limited to programs for impaired physicians and physician assistants and
3 shall not include any other peer review activities. The agreement shall include guidelines for all
4 items outlined below.

5 (1) The assessment, referral, monitoring, support, and education of licensees of
6 the Board by reason of a physical or mental illness, a substance use disorder,
7 or professional sexual misconduct.

8 (2) Procedures for the Board to refer licensees to the Program.

9 (3) Criteria for the Program to report licensees to the Board.

10 (4) A procedure by which licensees may obtain review of recommendations by
11 the Program regarding assessment or treatment.

12 (5) Periodic reporting of statistical information by the Program to the Board, the
13 Society, and the Academy.

14 (6) Maintaining the confidentiality of nonpublic information.

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

22 (c) ~~Each society which enters a peer review agreement with the Board shall establish~~
23 ~~and maintain a program for impaired physicians licensed by the Board. The Academy, after~~
24 ~~entering a peer review agreement with the Board, shall either enter an agreement with the North~~
25 ~~Carolina Medical Society for the inclusion of physician assistants in the Society's program for~~
26 ~~impaired physicians, or shall establish and maintain the Academy's own program for impaired~~
27 ~~physician assistants. The purpose of the programs shall be to identify, review, and evaluate the~~
28 ~~ability of those physicians and physician assistants to function in their professional capacity~~
29 ~~and to provide programs for treatment and rehabilitation. The North Carolina Physicians Health~~
30 ~~Program (Program) is an independent organization for medical professionals that provides~~
31 ~~screening, referral, monitoring, educational, and support services. The Board, Society,~~
32 ~~and the Academy may provide funds for the administration of impaired physician and impaired~~
33 ~~physician assistant programs and shall adopt rules with provisions for definitions of~~
34 ~~impairment; guidelines for program elements; procedures for receipt and use of information of~~
35 ~~suspected impairment; procedures for intervention and referral; monitoring treatment,~~
36 ~~rehabilitation, post-treatment support and performance; reports of individual cases to the Board;~~
37 ~~periodic reporting of statistical information; assurance of confidentiality of nonpublic~~
38 ~~information and of the review process.the Program.~~

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

45 (1) ~~The physician or physician assistant constitutes~~ The licensee constitutes an
46 imminent danger to the public or to himself patient care by reason of
47 impairment, mental illness, physical illness, the commission of substance use
48 disorder, professional sexual boundary violations, misconduct, or any other
49 reason; reason.

50 (2) ~~The physician or physician assistant~~ The licensee refuses to cooperate with
51 the program, refuses to submit to treatment, or is still impaired after

1 ~~treatment and exhibits professional incompetence; or submit to an~~
2 ~~assessment as ordered by the Board, has entered into a monitoring contract~~
3 ~~and fails to comply with the terms of the Program's monitoring contract, or is~~
4 ~~still unsafe to practice medicine after treatment.~~

5 (3) ~~It reasonably appears that there are other grounds for disciplinary action.~~

6 (e) ~~Any confidential patient information and other nonpublic information acquired,~~
7 ~~created, or used in good faith by the Academy or a societyProgram pursuant to this section is~~
8 ~~privileged, confidential, and not subject to discovery, subpoena, shall remain confidential and~~
9 ~~shall not be subject to discovery or subpoena in a civil case, or other means of legal compulsion~~
10 ~~for release to any person other than to the Board, the Program, or their employees or~~
11 ~~consultants. No person participating in good faith in the peer review or impaired physician or~~
12 ~~impaired physician assistant programsProgram of this section shall be required in a civil case to~~
13 ~~disclose the fact of participation in the Program or any information acquired or opinions,~~
14 ~~recommendations, or evaluations acquired or developed solely in the course of participating in~~
15 ~~any agreements the Program pursuant to this section.~~

16 (f) ~~Peer review activities Activities conducted in good faith pursuant to any the~~
17 ~~agreement authorized by subsection (a) of under this section shall not be grounds for civil~~
18 ~~action under the laws of this State and are deemed to be State directed and sanctioned and shall~~
19 ~~constitute State action for the purposes of application of antitrust laws.State.~~

20 (g) ~~Upon the written request of a licensee, the Program shall provide the licensee and~~
21 ~~the licensee's legal counsel with a copy of a written assessment of the licensee prepared as part~~
22 ~~of the licensee's participation in the Program. In addition, the licensee shall be entitled to a copy~~
23 ~~of any written assessment created by a treatment provider or facility at the recommendation of~~
24 ~~the Program, to the extent permitted by State and federal laws and regulations. Any information~~
25 ~~furnished to a licensee pursuant to this subsection shall be inadmissible in evidence and shall~~
26 ~~not be subject to discovery in any civil proceeding. However, this subsection shall not be~~
27 ~~construed to make information, documents, or records otherwise available for discovery or use~~
28 ~~in a civil action immune from discovery or use in a civil action merely because the information,~~
29 ~~documents, or records were included as part of the Program's assessment of the licensee or~~
30 ~~were the subject of information furnished to the licensee pursuant to this subsection. For~~
31 ~~purposes of this subsection, a civil action or proceeding shall not include administrative actions~~
32 ~~or proceedings conducted in accordance with Article 1 of Chapter 90 and Chapter 150B of the~~
33 ~~General Statutes.~~

34 (h) ~~The Board has authority to adopt, amend, or repeal rules as may be necessary to~~
35 ~~carry out and enforce the provisions of this section."~~

36 **SECTION 15.** G.S. 90-16(d) is repealed.

37 **SECTION 16.** This act becomes effective October 1, 2015.