

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 653
House Committee Substitute Favorable 6/5/95

Short Title: Amend Medical Practice Act.

(Public)

Sponsors:

Referred to:

April 11, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE MEDICAL PRACTICE ACT.

The General Assembly of North Carolina enacts:

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

"§ 90-2. Board of Examiners.

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

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

(2) Of the remaining five members, all to be appointed by the Governor, at least three shall be public members and at least one shall be a physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S. 90-18.2. A public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, 'health care provider' means any licensed health care professional and any agent or employee of any health care institution,

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

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

10 (c) In order to establish regularly overlapping terms, the terms of office of the
11 members shall expire as follows: two on October 31, 1993; four on October 31, 1994;
12 four on October 31, 1995; and two on October 31, 1996. ~~No initial physician member of the
13 Board may serve another term until at least three years from the date of expiration of his current
14 term.~~

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

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

27 Sec. 2. G.S. 90-6 reads as rewritten:

28 "**§ 90-6. Regulations governing applicants for license, examinations, etc.;**
29 **appointment of subcommittee.**

30 The Board of Medical Examiners is empowered to prescribe such regulations as it
31 may deem proper, governing applicants for license, admission to examinations, the
32 conduct of applicants during examinations, and the conduct of examinations proper.

33 The Board of Medical Examiners shall appoint and maintain a subcommittee to work
34 jointly with a subcommittee of the Board of Nursing to develop rules and regulations to
35 govern the performance of medical acts by registered nurses, including the determination
36 of reasonable fees to accompany an application for approval not to exceed one hundred
37 dollars (\$100.00) and for renewal of ~~such~~ approval not to exceed fifty dollars (\$50.00).
38 The fee for reactivation of an inactive incomplete application shall be five dollars
39 (\$5.00). Rules and regulations developed by this subcommittee from time to time shall
40 govern the performance of medical acts by registered nurses and shall become effective
41 when adopted by both the Board of Medical Examiners and the Board of Nursing. The
42 Board of Medical Examiners shall have responsibility for securing compliance with these
43 regulations."

1 Sec. 3. G.S. 90-12 reads as rewritten:

2 **"§ 90-12. Limited license.**

3 (a) The Board may, whenever in its opinion the conditions of the locality where
4 the applicant resides are such as to render it advisable, make ~~such any~~ modifications of
5 the requirements of G.S. 90-9, 90-10, and 90-11 as in its judgment the interests of the
6 people living in that locality may demand, and may issue to ~~such the~~ applicant a special
7 license, to be entitled a 'Limited License,' authorizing the holder ~~thereof of the limited~~
8 license to practice medicine and surgery within the limits only of the districts specifically
9 described therein. A resident's training license shall expire at the time its holder ceases to
10 be a resident in the training program or obtains any other license to practice medicine
11 issued by the Board. The holder of the limited license practicing medicine or surgery
12 beyond the boundaries of the districts as laid down in said license shall be guilty of a
13 Class 3 misdemeanor, and upon conviction shall only be fined not less than twenty-five
14 dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; and the
15 Board ~~is empowered to may~~ revoke such the limited license, in its discretion, after due
16 notice.

17 (b) As used in this section:

18 (1) 'Limited license' includes a resident's training license.

19 (2) 'Resident training license' means a license to practice in a medical
20 education and training program, approved by the Board, for the purpose
21 of education or training."

22 Sec. 4. G.S. 90-14(a) reads as rewritten:

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

27 (1) Immoral or dishonorable conduct.

28 (2) Producing or attempting to produce an abortion contrary to law.

29 (3) Made false statements or representations to the Board, or who has
30 willfully concealed from the Board material information in connection
31 with his application for a license.

32 (4) Repealed by Session Laws 1977, c. 838, s. 3.

33 (5) Being unable to practice medicine with reasonable skill and safety to
34 patients by reason of illness, drunkenness, excessive use of alcohol,
35 drugs, chemicals, or any other type of material or by reason of any
36 physical or mental abnormality. The Board is empowered and
37 authorized to require a physician licensed by it to submit to a mental or
38 physical examination by physicians designated by the Board before or
39 after charges may be presented against him, and the results of
40 examination shall be admissible in evidence in a hearing before the
41 Board.

42 (6) Unprofessional conduct, including, but not limited to, departure from, or
43 the failure to conform to, the standards of acceptable and prevailing

1 medical practice, or the ethics of the medical profession, irrespective of
2 whether or not a patient is injured thereby, or the committing of any act
3 contrary to honesty, justice, or good morals, whether the same is
4 committed in the course of his practice or otherwise, and whether
5 committed within or without North Carolina. The Board shall not
6 revoke the license of or deny a license to a person solely because of that
7 person's practice of a therapy that is experimental, nontraditional, or that
8 departs from acceptable and prevailing medical practices unless, by
9 competent evidence, the Board can establish that the treatment has a
10 safety risk greater than the prevailing treatment or that the treatment is
11 generally not effective.

12 (7) Conviction in any court of a crime involving moral turpitude, or the
13 violation of a law involving the practice of medicine, or a conviction of
14 a felony; provided that a felony conviction shall be treated as provided
15 in subsection (c) of this section.

16 (8) By false representations has obtained or attempted to obtain practice,
17 money or anything of value.

18 (9) Has advertised or publicly professed to treat human ailments under a
19 system or school of treatment or practice other than that for which he
20 has been educated.

21 (10) Adjudication of mental incompetency, which shall automatically
22 suspend a license unless the Board orders otherwise.

23 (11) Lack of professional competence to practice medicine with a reasonable
24 degree of skill and safety for patients. In this connection the Board may
25 consider repeated acts of a physician indicating his failure to properly
26 treat a ~~patient and may patient.~~ The Board may, upon reasonable
27 grounds, require such a physician to submit to inquiries or examinations,
28 written or oral, by members of the Board or by other physicians licensed
29 to practice medicine in this State, as the Board deems necessary to
30 determine the professional qualifications of such licensee.

31 (12) Promotion of the sale of drugs, devices, appliances or goods for a
32 patient, or providing services to a patient, in such a manner as to exploit
33 the ~~patient for financial gain of the physician,~~ and upon a finding of the
34 ~~exploitation for financial gain,~~ the Board may order restitution be made to
35 the payer of the bill, whether the patient or the insurer, by the physician;
36 provided that a determination of the amount of restitution shall be based
37 on credible testimony in the record.

38 (13) ~~Suspension or revocation of a license to practice medicine in any other~~
39 ~~state, or territory of the United States, or other country.~~ Having a license
40 to practice medicine or the authority to practice medicine revoked,
41 suspended, restricted, or acted against or having a license to practice
42 medicine denied by the licensing authority of any jurisdiction. For
43 purposes of this subdivision, the licensing authority's acceptance of a

1 license to practice medicine voluntarily relinquished by a physician or
2 relinquished by stipulation, consent order, or other settlement in
3 response to or in anticipation of the filing of administrative charges
4 against the physician's license, is an action against a license to practice
5 medicine.

- 6 (14) The failure to respond, within a reasonable period of time and in a
7 reasonable manner as determined by the Board, to inquiries from the
8 Board concerning any matter affecting the license to practice medicine.

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

18 Sec. 5. G.S. 90-14.3 reads as rewritten:

19 "**§ 90-14.3. Service of notices.**

20 Any notice required by this Chapter may be served either personally or by an officer
21 authorized by law to serve process, or by registered or certified mail, return receipt
22 requested, directed to the licensee or applicant at his last known address as shown by the
23 records of the Board. If notice is served personally, it shall be deemed to have been
24 served at the time when the officer delivers the notice to the person addressed. Where
25 notice is served by registered or certified mail, it shall be deemed to have been served on
26 the date borne by the return receipt showing delivery of the notice to ~~addressee or the~~
27 addressee, showing refusal of the addressee to accept the notice, or showing
28 failure to locate the addressee at the last known address as shown by the records of the
29 Board."

30 Sec. 6. G.S. 90-14.9 reads as rewritten:

31 "**§ 90-14.9. Appeal bond; stay of Board order.**

32 (a) The person seeking the review shall file with the clerk of the reviewing court a
33 copy of the notice of appeal and an appeal bond of two hundred dollars (\$200.00) at the
34 same time the notice of appeal is filed with the Board. ~~At~~ Subject to subsection (b) of this
35 section, at any time before or during the review proceeding the aggrieved person may
36 apply to the reviewing court for an order staying the operation of the Board decision
37 pending the outcome of the review, which the court may grant or deny in its discretion.

38 (b) No stay shall be granted under this section unless the Board is given prior
39 notice and an opportunity to be heard in response to the application for an order staying
40 the operation of the Board decision."

41 Sec. 7. G.S. 90-14.11 reads as rewritten:

42 "**§ 90-14.11. Appeal; appeal bond.**

1 (a) Any party to the review proceeding, including the Board, may appeal from the
2 decision of the superior court under rules of procedure applicable in other civil cases. No
3 appeal bond shall be required of the Board. ~~The Subject to subsection (b) of this section,~~
4 the appealing party may apply to the superior court for a stay of that court's decision or a
5 stay of the Board's decision, whichever shall be appropriate, pending the outcome of the
6 appeal.

7 (b) No stay shall be granted unless all parties are given prior notice and an
8 opportunity to be heard in response to the application for an order staying the operation
9 of the Board decision."

10 Sec. 8. G.S. 90-14.13 reads as rewritten:

11 **"§ 90-14.13. Reports of disciplinary action by health care institutions; immunity**
12 **from liability.**

13 The chief administrative officer of every licensed hospital or other health care
14 ~~institution-institution, including Health Maintenance Organizations, as defined in G.S. 58-~~
15 ~~67-5, preferred providers, as defined in G.S. 58-50-50, and all other provider~~
16 ~~organizations that issue credentials to physicians who practice medicine in the State-State,~~
17 shall, after consultation with the chief of staff of such institution, report to the Board any
18 revocation, suspension, or limitation of a physician's privileges to practice in that
19 institution. Each such institution shall also report to the Board resignations from practice
20 in that institution by persons licensed under this Article. The Board shall report all
21 violations of this subsection known to it to the licensing agency for the institution
22 involved.

23 Any licensed physician who does not possess professional liability insurance shall
24 report to the Board any award of damages or any settlement of any malpractice complaint
25 affecting his or her practice within 30 days of the award or settlement.

26 The chief administrative officer of each insurance company providing professional
27 liability insurance for physicians who practice medicine in North Carolina, the
28 administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-
29 220, and the administrative officer of any trust fund operated by a hospital authority,
30 group, or provider shall report to the Board within 30 days:

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

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

35 The Board may request details about any action and the officers shall promptly
36 furnish the requested information. The reports required by this section are privileged and
37 shall not be open to the public. The Board shall report all violations of this paragraph to
38 the Commissioner of Insurance.

39 Any person making a report required by this section shall be immune from any
40 criminal prosecution or civil liability resulting therefrom unless such person knew the
41 report was false or acted in reckless disregard of whether the report was false."

42 Sec. 9. This act becomes effective October 1, 1995.