

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 543
Committee Substitute Favorable 4/15/15
Committee Substitute #2 Favorable 4/21/15

Short Title: Amend Laws Pertaining to NC Medical Board.

(Public)

Sponsors:

Referred to:

April 6, 2015

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING LAWS PERTAINING TO THE NORTH CAROLINA MEDICAL
3 BOARD.

4 The General Assembly of North Carolina enacts:

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

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

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

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

11 ...

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

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

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

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

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

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



1 (h) The Review Panel is a public body within the meaning of Article 33C of Chapter
2 143 of the General Statutes. In addition to the provisions contained in Article 33C of Chapter
3 143 of the General Statutes permitting a public body to conduct business in a closed session,
4 the Review Panel shall meet in closed session to review applications; interview applicants;
5 review and discuss information received from the Board; and discuss, debate, and vote on
6 recommendations to the Governor."

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

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

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

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

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

20 "**§ 90-8.1. Rules governing applicants for licensure.**

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

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

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

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

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

31 "**§ 90-13.2. Registration every year with Board.**

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

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

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

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

1 (e) A physician who fails to register as required by this section shall pay an additional
2 fee of fifty dollars (\$50.00) to the Board. The license of any physician who fails to register and
3 who remains unregistered for a period of 30 days after certified notice of the failure is
4 automatically inactive. The Board shall retain jurisdiction over the holder of the inactive
5 license.

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

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

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

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

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

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

22 "(c) Once charges have been issued, the parties may engage in discovery as provided in
23 G.S. 1A-1, the North Carolina Rules of Civil Procedure. Additionally, pursuant to any written
24 request by the respondent or respondent's counsel, the Board shall provide information obtained
25 during an investigation, except for the following:

26 (1) Information that is subject to attorney-client privilege or is attorney work
27 product.

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

29 (3) Information generated during an investigation that will not be offered into
30 evidence by the Board and is related to:

31 a. Advice, opinions, or recommendations of the Board staff,
32 consultants, or agents.

33 b. Deliberations by the Board and its committees during an
34 investigation."

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

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

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

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

44 "Article 1D.

45 "~~Peer Review.~~"Health Program for Medical Professionals."

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

47 "**§ 90-21.22. ~~Peer review agreements.~~Health program for medical professionals.**

48 (a) The North Carolina Medical Board ~~may, under rules adopted by the Board in~~
49 ~~compliance with Chapter 150B of the General Statutes, (Board) may~~ enter into agreements with
50 the North Carolina Medical Society ~~and its local medical society components, and with~~
51 ~~(Society),~~ the North Carolina Academy of Physician Assistants (Academy), and the North

1 Carolina Physicians Health Program (Program) for the purpose purposes of conducting peer
2 review activities. Peer review activities to be covered by such agreements shall include
3 investigation, review, and evaluation of records, reports, complaints, litigation and other
4 information about the practices and practice patterns of physicians licensed by the Board, and
5 of physician assistants approved by the Board, and shall include programs for impaired
6 physicians and impaired physician assistants. Agreements between the Academy and the Board
7 shall be limited to programs for impaired physicians and physician assistants and shall not
8 include any other peer review activities:identifying, reviewing, and evaluating the ability of
9 licensees of the Board who have been referred to the Program to function in their professional
10 capacity and to coordinate regimens for treatment and rehabilitation. The agreement shall
11 include guidelines for all items outlined below:

- 12 (1) The assessment, referral, monitoring, support, and education of licensees of
13 the Board by reason of a physical or mental illness, a substance use disorder,
14 or professional sexual misconduct.
- 15 (2) Procedures for the Board to refer licensees to the Program.
- 16 (3) Criteria for the Program to report licensees to the Board.
- 17 (4) A procedure by which licensees may obtain review of recommendations by
18 the Program regarding assessment or treatment.
- 19 (5) Periodic reporting of statistical information by the Program to the Board, the
20 Society, and the Academy.
- 21 (6) Maintaining the confidentiality of nonpublic information.

22 (b) ~~Peer review agreements shall include provisions for the society and for the~~
23 ~~Academy to receive relevant information from the Board and other sources, conduct the~~
24 ~~investigation and review in an expeditious manner, provide assurance of confidentiality of~~
25 ~~nonpublic information and of the review process, make reports of investigations and~~
26 ~~evaluations to the Board, and to do other related activities for promoting a coordinated and~~
27 ~~effective peer review process. Peer review agreements shall include provisions assuring due~~
28 ~~process.~~

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

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

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

6 (2) ~~The physician or physician assistant~~ The licensee refuses to cooperate with
7 ~~the program, refuses to submit to treatment, or is still impaired after~~
8 ~~treatment and exhibits professional incompetence;~~ or submit to an assessment
9 as ordered by the Board, has entered into a monitoring contract and fails to
10 comply with the terms of the Program's monitoring contract, or is still unsafe
11 to practice medicine after treatment.

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

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

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

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

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

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

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