

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS85178-RUqq-10 (3/14)

Short Title: Reform Medical Board. (Public)

Sponsors: Senator Holloman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ELECTION OF PHYSICIAN MEMBERS OF THE
NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds and declares that:

- (1) Under Article 1 of Chapter 90 of the General Statutes, the North Carolina Medical Society, a voluntary, private trade association, directly selects the physician members of the North Carolina Medical Board, a public licensing board.
- (2) North Carolina has another general medical society, the Old North State Medical Society, a historically black organization, which has no input in the appointment of physician members of the North Carolina Medical Board.
- (3) The current method of appointment of Board members by the Medical Society is inherently unfair to many physicians practicing in this State. Even though every physician's livelihood is directly related to actions taken by the Board, the present system prohibits a significant number of physicians from participating in the process by which representatives are chosen to serve on their profession's licensing and regulatory board.
- (4) No other private association directly selects the professional members of a health-related licensing board. The most common means of choosing professional members of health-related licensing boards is by an election in which all licensed members of that profession practicing in North Carolina are eligible to vote, which constitutes 12 boards, by direct appointment by the Governor from candidates of the Governor's choice, which constitutes nine boards, or by the Governor after

1 consultation with interested parties and organizations, which
2 constitutes four boards.

3 (5) Close ties between the Medical Society, which advances the economic
4 interests of the profession, and the Board, which is charged with
5 advancing the interests of and protecting the public, create inherent
6 conflicts of interest.

7 (6) The legislative delegation of authority to a private nonprofit
8 professional association to effectively appoint members constituting a
9 controlling majority of a State occupational licensing board is
10 constitutionally suspect.

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

12 **"§ 90-2. Medical Board.**

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

16 (1) Seven of the members shall be duly licensed physicians elected ~~and~~
17 ~~nominated to the Governor by the North Carolina Medical Society as~~
18 provided in G.S. 90-3.

19 (2) Of the remaining five members, all to be appointed by the Governor, at
20 least three shall be public members and at least one shall be a
21 physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as
22 defined in G.S. 90-18.2. A public member shall not be a health care
23 provider or the spouse of a health care provider. For purposes of board
24 membership, "health care provider" means any licensed health care
25 professional and any agent or employee of any health care institution,
26 health care insurer, health care professional school, or a member of
27 any allied health profession. For purposes of this section, a person
28 enrolled in a program to prepare him to be a licensed health care
29 professional or an allied health professional shall be deemed a health
30 care provider. For purposes of this section, any person with significant
31 financial interest in a health service or profession is not a public
32 member.

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

36 (c) In order to establish regularly overlapping terms, the terms of office of the
37 members shall expire as follows: two on October 31, 1993; four on October 31, 1994;
38 four on October 31, 1995; and two on October 31, 1996.

39 (d) Any member of the Board may be removed from office by the Governor for
40 good cause shown. Any vacancy in the physician membership of the Board shall be
41 filled for the period of the unexpired term ~~by the Governor from a list of physicians~~
42 ~~submitted by the North Carolina Medical Society Executive Council as provided in G.S.~~
43 90-3. Any vacancy in the public, physician assistant, or nurse practitioner membership
44 of the Board shall be filled by the Governor for the unexpired term.

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

7 **SECTION 3.** G.S. 90-3 reads as rewritten:

8 "**§ 90-3. Medical Society nominates**Election of physician members of the Board.

9 ~~The Governor shall appoint as physician members of the Board physicians elected~~
10 ~~and nominated by the North Carolina Medical Society.~~

11 (a) Physician members of the North Carolina Medical Board shall be elected as
12 provided in this section in an election where every person licensed to practice medicine
13 in this State and residing or practicing in this State is entitled to vote. Any physician
14 member vacancy occurring on the Board shall be filled by a majority vote of the
15 remaining physician members of the Board to serve until the next regular election
16 conducted by the Board, at which time the vacancy shall be filled by the election
17 process provided for in this section. No physician shall be nominated for or elected to
18 membership on the Board unless, at the time of the nomination and election, that person
19 is licensed to practice medicine in this State and is actually engaged in the practice of
20 medicine.

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

23 (1) An election shall be held each year to elect successors to those
24 members whose terms are expiring in the year of the election, each
25 successor to take office on the first day of August following the
26 election and to hold office for a term of three years and until his or her
27 successor has been elected and qualified. However, if in any year the
28 election of the members of the Board for that year shall not have been
29 completed by August 1 of that year, then those members elected that
30 year shall take office immediately after the completion of the election
31 and shall hold office until the first of August of the third year
32 thereafter and until their successors are elected and qualified.

33 (2) Every physician with a current North Carolina license residing or
34 practicing in North Carolina shall be eligible to vote in elections of
35 physicians to the Board. Holding a license to practice medicine in
36 North Carolina shall constitute registration to vote in the elections. The
37 list of licensed physicians shall constitute the registration list for
38 elections to the appropriate seats on the Board.

39 (3) All elections shall be conducted by the Medical Board, which is
40 hereby constituted a Board of Physician Elections. If a member of the
41 Medical Board whose position is to be filled at any election is
42 nominated to succeed himself, and the member does not withdraw his
43 or her name, the member shall be disqualified to serve as a member of
44 the Board of Physician Elections for that election and the remaining

1 members of the Board of Physician Elections shall proceed and
2 function without his or her participation.

3 (4) Nomination of physicians for election shall be made to the Board of
4 Physician Elections by a written petition signed by not less than 10
5 physicians licensed to practice medicine in North Carolina and
6 residing or practicing in North Carolina. The petitions shall be filed
7 with the Board of Physician Elections after January 1 of the year in
8 which the election is to be held and on or before midnight of May 20th
9 of that year or an earlier date as may be set by the Board of Physician
10 Elections. However, at least 10 days' notice of the earlier date shall be
11 given to all physicians qualified to sign a petition of nomination. The
12 Board of Physician Elections shall, before preparing ballots, notify all
13 persons who have been duly nominated of their nomination.

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

18 (6) Following the close of nominations, ballots shall be prepared in
19 accordance with rules adopted by the Board of Physician Elections,
20 containing the names of all nominees in alphabetical order. Each ballot
21 shall have the method of identification and instructions and
22 requirements printed on the ballot, as prescribed by the Board of
23 Physician Elections. At a time fixed by the Board of Physician
24 Elections, a ballot and a return official envelope addressed to the
25 Board shall be mailed to each person entitled to vote in the election.
26 The envelope shall also contain notice by the Board designating the
27 latest day and hour for return mailing and any other items the Board
28 deems necessary. The envelope shall bear a serial number and shall
29 have printed on the left portion of its face the following:

30 'Serial No. of Envelope

31 Signature of Voter

32 Address of Voter

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

35 The Board of Physician Elections may print, stamp, or write any
36 additional notice on the envelope, as it deems necessary. No ballot
37 shall be valid or shall be counted in an election unless, within the time
38 provided in subdivision (7) of this subsection, the ballot has been
39 delivered to the Board by hand or by mail and is sealed. The Board
40 may, by rule, make provision for replacement of lost or destroyed
41 envelopes or ballots upon making proper provisions to safeguard
42 against abuse.

43 (7) The date and hour fixed by the Board of Physician Elections as the
44 latest time for delivery by hand or mailing of the return ballots shall be

1 on or after the tenth day following the mailing of the envelopes and
2 ballots to the voters.

3 (8) The ballots shall be canvassed by the Board of Physician Elections
4 beginning at noon on a day and at a place set by the Board of
5 Physician Elections and announced by the Board of Physician
6 Elections in the notice accompanying the ballots and envelopes sent to
7 the voters. The date canvassing the ballots shall be no later than four
8 days after the date fixed by the Board of Physician Elections for
9 closing the ballots. The canvassing shall be made publicly and any
10 licensed physicians may be present. Once the Board of Physician
11 Elections is ready to count the ballots, the envelopes shall be displayed
12 to the persons present and an opportunity shall be given to any person
13 present to challenge the qualification of the voter whose signature
14 appears on the envelope or to challenge the validity of the envelope.
15 Any envelope containing a ballot that is being challenged shall be set
16 aside, and the challenge shall be heard at a time to be determined by
17 the Board of Physician Elections. After the envelopes have been
18 displayed, those not challenged shall be opened and the ballots
19 extracted in a manner that does not show the marking on the ballots,
20 and each ballot shall be separated from its envelope. Each ballot shall
21 be presented for counting, displayed, and, if not challenged, counted.
22 No ballot shall be valid if it is marked for more nominees than there
23 are positions to be filled in that election. No ballot shall be rejected for
24 any technical error unless it is impossible to determine the voter's
25 choice on the ballot. During the counting, challenge may be made to
26 any ballot only if defects appear on the face of the ballot. The Board of
27 Physician Elections may review the challenge when it is made or it
28 may place the ballot aside and determine the challenge after all the
29 other ballots have been counted.

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

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

34 1. The nominee receiving a majority of the votes cast shall
35 be declared elected.

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

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

41 1. A majority shall be any excess of the sum ascertained by
42 dividing the total number of votes cast for all nominees
43 by four.

- 1 2. If more than two nominees receive a majority of the
2 votes cast, the two receiving the highest number of votes
3 shall be declared elected.
- 4 3. If only one of the nominees receives a majority, he or
5 she shall be declared elected, and the Board of Physician
6 Elections shall order a second election to be conducted
7 between the two nominees receiving the next highest
8 number of votes.
- 9 4. If no nominee receives a majority, a second election
10 shall be conducted among the four candidates receiving
11 the highest number of votes. At the second election, the
12 two nominees receiving the highest number of votes
13 shall be declared elected.
- 14 c. In any election, if there is a tie between candidates, the tie shall
15 be resolved by the vote of the Board of Physician Elections.
16 However, if a member of the Board of Physician Elections is
17 one of the candidates in the tie, he or she may not participate in
18 the vote.
- 19 (10) If a second election is required, the same procedure shall be followed
20 as provided in subdivision (9) of this subsection, and the election shall
21 be subject to the same limitations and requirements, except that if the
22 second election is between four candidates, then the two receiving the
23 highest number of votes shall be declared elected.
- 24 (11) In the event of death or withdrawal of a candidate prior to the closing
25 of the polls in any election, he or she shall be eliminated from the
26 contest and any votes cast for the candidate shall be disregarded. If, at
27 any time after the closing of the period for nominations because of
28 lack of plural or proper nominations, death, withdrawal,
29 disqualification, or any other reason, there are only two candidates for
30 two positions, they shall be declared elected by the Board of Physician
31 Elections. If there is only one candidate for one position, he or she
32 shall be declared elected by the Board of Elections. If there are no
33 candidates for two positions, the two positions shall be filled by the
34 Medical Board. If there is no candidate for one position, the position
35 shall be filled by the Medical Board. If there is one candidate for two
36 positions, the one candidate shall be declared elected by the Board of
37 Physician Elections and one qualified physician shall be elected to the
38 other position by the Medical Board. In the event of the death or
39 withdrawal of a candidate after election but prior to taking office, the
40 position to which he or she was elected shall be filled by the Medical
41 Board. In the event of the death or resignation of a physician member
42 of the Medical Board after taking office, the Medical Board shall fill
43 his or her position for the unexpired term.

- 1 (12) An official list of licensed physicians shall be kept at the office of the
2 Board of Physician Elections and shall be open for inspection by any
3 person at all times. Any licensed physician may make copies of the
4 list. As soon as the voting in any election begins, a list of the licensed
5 physicians shall be posted in the office of the Board of Physician
6 Elections and the list shall be marked to show whether a
7 ballot-enclosing envelope has been returned.
- 8 (13) All envelopes enclosing ballots and all ballots shall be preserved and
9 held separately by the Board of Physician Elections for a period of six
10 months following the close of an election.
- 11 (14) A physician may appeal any decision of the Board of Physician
12 Elections relating to the conduct of the elections in accordance with
13 Chapter 150B of the General Statutes of North Carolina.
- 14 (15) The Board of Physician Elections may adopt rules regarding the
15 conduct of these elections, except that the rules shall not conflict with
16 the provisions of this section. The Board of Physician Elections shall
17 notify each licensed physician residing in this State of the rules
18 adopted by the Board of Physician Elections.

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

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

23 "(b) ~~The Board shall~~ may refer to the State Medical Society Physician Health and
24 Effectiveness Committee all physicians whose health and effectiveness have been
25 significantly impaired by alcohol, drug addiction or mental illness. Sexual misconduct
26 shall not constitute a mental illness for purposes of this subsection. A physician shall be
27 limited to two referrals to the State Medical Society Physician Health and Effectiveness
28 Committee, except upon the suspension or revocation of the physician's license."

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

30 "**§ 90-14.13. Reports of disciplinary action by health care institutions; immunity**
31 **from liability.**

32 (a) The chief administrative officer of every licensed hospital or other health care
33 institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,
34 preferred providers, as defined in G.S. 58-50-56, and all other provider organizations
35 that issue credentials to physicians who practice medicine in the State, shall, after
36 consultation with the chief of staff of that institution, report to the Board any revocation,
37 suspension, or limitation of a physician's privileges to practice in that institution. A
38 hospital is not required to report the suspension of a physician's privileges for failure to
39 timely complete medical records unless the suspension is the third within the calendar
40 year for failure to timely complete medical records. Upon reporting the third
41 suspension, the hospital shall also report the previous two suspensions. The institution
42 shall also report to the Board resignations from practice in that institution by persons
43 licensed under this Article. The Board shall report all violations of this subsection
44 known to it to the licensing agency for the institution involved.

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

4 (c) The chief administrative officer of each insurance company providing
5 professional liability insurance for physicians who practice medicine in North Carolina,
6 the administrative officer of the Liability Insurance Trust Fund Council created by G.S.
7 116-220, and the administrative officer of any trust fund operated by a hospital
8 authority, group, or provider shall report to the Board within 30 days:

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

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

13 (d) The Board may request details about any action and the officers shall
14 promptly furnish the requested information. The reports required by this section are
15 privileged and shall not be open to the public. The Board shall report all violations of
16 this paragraph to the Commissioner of Insurance.

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

20 (f) The Board shall provide to the public information in a summary fashion by
21 individual physicians on any award of damages or any settlement of any medical
22 malpractice claim that contains the number of payouts over one hundred thousand
23 dollars (\$100,000) in excess of three payouts within a 10-year period, and the number of
24 any payouts over one million dollars (\$1,000,000)."

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

26 "**§ 90-15. License fee; salaries, fees, and expenses of Board.**

27 Each applicant for a license by examination shall pay to the North Carolina Medical
28 Board a fee which shall be prescribed by the Board in an amount not exceeding the sum
29 of four hundred dollars (\$400.00) plus the cost of test materials before being admitted to
30 the examination. Whenever a license is granted without examination, as authorized in
31 G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by
32 the Board not in excess of two hundred fifty dollars (\$250.00). Whenever a limited
33 license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee
34 not to exceed one hundred fifty dollars (\$150.00), except where a limited license to
35 practice in a medical education and training program approved by the Board for the
36 purpose of education or training is granted, the applicant shall pay a fee of twenty-five
37 dollars (\$25.00), and where a limited license to practice medicine and surgery only at
38 clinics that specialize in the treatment of indigent patients is granted, the applicant shall
39 not pay a fee. A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a
40 duplicate license. All fees shall be paid in advance to the North Carolina Medical Board,
41 to be held in a fund for the use of the Board. The compensation and expenses of the
42 members and officers of the Board and all expenses proper and necessary in the opinion
43 of the Board to the discharge of its duties under and to enforce the laws regulating the
44 practice of medicine or surgery shall be paid out of the fund, upon the warrant of the

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

6 For the initial and annual registration of an assistant to a physician, the Board may
7 require the payment of a fee not to exceed a reasonable amount. The Board may collect
8 reasonable charges associated with expenses and costs of elections pursuant to G.S.
9 90-3."

10 **SECTION 7.** Notwithstanding G.S. 90-3, enacted by Section 3 of this act,
11 members serving on the North Carolina Medical Board on the effective date of this act
12 may complete the terms' for which they were elected or appointed. When the terms of
13 any of the seven members appointed by the Governor, upon the recommendation of the
14 North Carolina Medical Society, are completed, the vacancies shall be filled by election
15 pursuant to G.S. 90-3, enacted by Section 3 of this act. Members described in this
16 section shall serve for the terms for which they were elected and until their successors
17 are elected and qualified.

18 **SECTION 8.** This act is effective when it becomes law.