

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS65224-LU-44 (3/19)

Short Title: Due Process for Physicians. (Public)

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROVISIONS RELATING TO THE NORTH
CAROLINA MEDICAL BOARD UNDER THE LAWS REGULATING THE
PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

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

"§ 90-2. Medical Board.

(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 the North Carolina Medical Board. The Board shall consist of 12 members.

(1) Seven of the members shall be duly licensed physicians elected and nominated ~~to by the Governor by the North Carolina Medical Society.~~ Governor. Of the seven members appointed by the Governor, one member shall be a faculty member at one of the medical schools in North Carolina.

(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, 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

1 significant financial interest in a health service or profession is not a
2 public member.

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

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

9 (d) ~~Any~~A member of the Board ~~may~~shall be removed from office by the
10 Governor for good cause ~~shown~~shown, including malicious prosecution or abuse of
11 power. Any vacancy in the physician membership of the Board shall be filled for the
12 period of the unexpired term by the ~~Governor from a list of physicians submitted by the~~
13 ~~North Carolina Medical Society Executive Council~~Governor. Any vacancy in the
14 public, physician assistant, or nurse practitioner membership of the Board shall be filled
15 by the Governor for the unexpired term.

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

22 **SECTION 2.** G.S. 90-8 reads as rewritten:

23 **"§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other**
24 **materials.**

25 The president and secretary of the Board may administer oaths to all persons
26 appearing before it as the Board may deem necessary to perform its duties, and may
27 summon and issue subpoenas for the appearance of any witnesses deemed necessary to
28 testify concerning any matter to be heard before or inquired into by the Board. The
29 power of the Board to subpoena is limited to persons with knowledge related to a matter
30 before the Board. Medical expert witnesses, including medical practitioners licensed in
31 the United States, must routinely and actively practice in the specialty that is under
32 investigation by the Board. Each party must disclose the identity of an expert, the
33 subjects on which the expert is expected to testify, the substance of the facts and
34 opinions on which the expert is expected to rely, and the qualifications of the expert.
35 Statements contained in medical or scientific literature may be relied upon in direct and
36 cross-examination and admitted into evidence. The Board may order that any patient
37 records, documents or other material concerning any matter to be heard before or
38 inquired into by the Board shall be produced before the Board or made available for
39 inspection, notwithstanding any other provisions of law providing for the application of
40 any physician-patient privilege with respect to such records, documents or other
41 material. All records, documents, or other material compiled by the Board are subject to
42 the provisions of G.S. 90-16. Notwithstanding the provisions of G.S. 90-16, in any
43 proceeding before the Board, in any record of any hearing before the Board, and in the
44 notice of charges against any licensee, the Board shall withhold from public disclosure

1 the identity of a patient including information relating to dates and places of treatment,
2 or any other information that would tend to identify the patient, unless the patient or the
3 representative of the patient expressly consents to the disclosure. Upon written request,
4 the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the
5 production of which is required does not relate to a matter in issue, or if the subpoena
6 does not describe with sufficient particularity the evidence the production of which is
7 required, or if for any other reason in law the subpoena is invalid."

8 **SECTION 3.** G.S. 90-14(a) reads as rewritten:

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

- 13 (1) Immoral or dishonorable conduct.
- 14 (2) Producing or attempting to produce an abortion contrary to law.
- 15 (3) Made false statements or representations to the Board, or who has
16 willfully concealed from the Board material information in connection
17 with an application for a license.
- 18 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 19 (5) Being unable to practice medicine with reasonable skill and safety to
20 patients by reason of illness, drunkenness, excessive use of alcohol,
21 drugs, chemicals, or any other type of material or by reason of any
22 physical or mental abnormality. The Board is empowered and
23 authorized to require a physician licensed by it to submit to a mental or
24 physical examination by physicians designated by the Board before or
25 after charges may be presented against the physician, and the results of
26 the examination shall be admissible in evidence in a hearing before the
27 Board.
- 28 (6) Unprofessional conduct, including, but not limited to, departure from,
29 or the failure to conform to, the standards of acceptable and prevailing
30 medical practice, or the ethics of the medical profession, irrespective
31 of whether or not a patient is injured thereby, or the committing of any
32 act contrary to honesty, justice, or good morals, whether the same is
33 committed in the course of the physician's practice or otherwise, and
34 whether committed within or without North Carolina. The standards of
35 practice in any specialty, including complementary treatments, shall be
36 defined by specialists in that field. The Board shall not annul, suspend,
37 revoke the license of or deny a license to a ~~person~~-person, harass, or
38 initiate an investigation solely because of that person's practice of a
39 therapy that is experimental, nontraditional, or that departs from
40 acceptable and prevailing medical practices unless, by ~~competent~~-a
41 preponderance of the evidence, the Board can establish that the
42 treatment has a safety risk of harm to the patient greater than the
43 prevailing treatment or that the treatment is generally not ~~effective-as~~

- 1 effective in comparison to the effective rates of other prevailing
2 treatments.
- 3 (7) Conviction in any court of a crime involving moral turpitude, or the
4 violation of a law involving the practice of medicine, or a conviction
5 of a felony; provided that a felony conviction shall be treated as
6 provided in subsection (c) of this section.
- 7 (8) By false representations has obtained or attempted to obtain practice,
8 money or anything of value.
- 9 (9) Has advertised or publicly professed to treat human ailments under a
10 system or school of treatment or practice other than that for which the
11 physician has been educated. A duly licensed physician shall not be
12 prohibited from displaying all of his or her certifications in public
13 documents.
- 14 (10) Adjudication of mental incompetency, which shall automatically
15 suspend a license unless the Board orders otherwise.
- 16 (11) Lack of professional competence to practice medicine with a
17 reasonable degree of skill and safety for patients. In this connection the
18 Board may consider repeated acts of a physician indicating the
19 physician's failure to properly treat a patient. The Board may, upon
20 reasonable grounds, require a physician to submit to inquiries or
21 examinations, written or oral, by members of the Board or by other
22 physicians licensed to practice medicine in this State, as the Board
23 deems necessary to determine the professional qualifications of such
24 licensee.
- 25 (12) Promotion of the sale of drugs, devices, appliances or goods for a
26 patient, or providing services to a patient, in such a manner as to
27 exploit the patient, and upon a finding of the exploitation, the Board
28 may order restitution be made to the payer of the bill, whether the
29 patient or the insurer, by the physician; provided that a determination
30 of the amount of restitution shall be based on credible testimony in the
31 record. Selling nutritional supplements or vitamins shall have the same
32 financial disclosures as those required with drugs, devices, appliances,
33 or goods. Nothing in this subdivision shall restrain free trade or limit
34 the legitimate trade activities involved in the course of the practice of
35 medicine.
- 36 (13) Having a license to practice medicine or the authority to practice
37 medicine revoked, suspended, restricted, or acted against or having a
38 license to practice medicine denied by the licensing authority of any
39 jurisdiction. For purposes of this subdivision, the licensing authority's
40 acceptance of a license to practice medicine voluntarily relinquished
41 by a physician or relinquished by stipulation, consent order, or other
42 settlement in response to or in anticipation of the filing of
43 administrative charges against the physician's license, is an action
44 against a license to practice medicine.

1 (14) The failure to respond, within a reasonable period of time and in a
2 reasonable manner as determined by the Board, to inquiries from the
3 Board concerning any matter affecting the license to practice
4 medicine. However, the Board shall conclude an investigation
5 pursuant to a violation of this subdivision within 18 months from the
6 date the incident was initially reported.

7 (15) The failure to complete an amount not to exceed 150 hours of
8 continuing medical education during any three consecutive calendar
9 years pursuant to rules adopted by the Board.

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

19 **SECTION 4.** G.S. 90-14 is amended by adding a new subsection to read:

20 "(g) In order to annul, suspend, deny, or revoke a license of an accused physician,
21 the Board must find that the facts satisfy, by the greater weight of the evidence, that
22 there is a pattern of incompetence and that the care provided was not in accordance with
23 the standards of practice for the procedures or treatments administered."

24 **SECTION 5.** G.S. 90-14.2 reads as rewritten:

25 "**§ 90-14.2. Hearing before revocation or suspension of a license.**

26 Before the Board shall revoke, restrict or suspend any license granted by it, the
27 licensee shall be given a written notice indicating the general nature of the charges,
28 accusation, or complaint made against him, which notice may be prepared by a
29 committee or one or more members of the Board designated by the Board, and stating
30 that such licensee will be given an opportunity to be heard concerning such charges or
31 complaint at a time and place stated in such notice, or at a time and place to be
32 thereafter designated by the Board, and the Board shall hold a public hearing not less
33 than 30 days from the date of the service of such notice upon such licensee, at which
34 such licensee may appear personally and through counsel, may cross examine witnesses
35 and present evidence in his own behalf. A physician who is mentally incompetent shall
36 be represented at such hearing and shall be served with notice as herein provided by and
37 through a guardian ad litem appointed by the clerk of the court of the county in which
38 the physician has his residence. Such licensee or physician may, if he desires, file
39 written answers to the charges or complaints preferred against him within 30 days after
40 the service of such notice, which answer shall become a part of the record but shall not
41 constitute evidence in the case. Members of the Board participating on the hearing
42 committee shall not have been involved in any part of the investigation."

43 **SECTION 6.** G.S. 90-14.5 reads as rewritten:

44 "**§ 90-14.5. Use of trial examiner or depositions.**

1 ~~Where the licensee requests~~The licensee may request that the hearing herein
2 provided for be held by the Board in a county other than the county designated for the
3 holding of the meeting of the Board at which the matter is to be heard, the Board may
4 designate in writing one or more of its members to conduct the hearing as a trial
5 examiner or trial committee, to take evidence and report a written transcript thereof to
6 the Board at a meeting where a majority of the members are present and participating in
7 the decision. Evidence and testimony may also be presented at such hearings and to the
8 Board in the form of depositions taken before any person designated in writing by the
9 Board for such purpose or before any person authorized to administer oaths, in
10 accordance with the procedure for the taking of depositions in civil actions in the
11 superior court. When a trial examiner or trial committee recommends license
12 revocation, suspension, or retraction, the licensee shall be granted a full Board hearing
13 at the licensee's request, if the request is made in a timely manner as determined by the
14 Board."

15 **SECTION 7.** G.S. 90-14.6 reads as rewritten:

16 "**§ 90-14.6. Evidence admissible.**

17 In proceedings held pursuant to this Article the Board shall admit and hear evidence
18 in the same manner and form as prescribed by law for civil actions. A complete record
19 of such evidence shall be made, together with the other proceedings incident to such
20 hearing. The physician under investigation may call witnesses including medical
21 practitioners licensed in the United States with expertise in the same field of practice as
22 the physician under investigation. Witnesses shall not be restricted to experts certified
23 by the American Board of Medical Specialties. In an investigative meeting, the
24 physician being investigated may present testimony from medical practitioners licensed
25 in the United States with expertise in the same field of practice as the physician under
26 investigation. Members of the Board shall not be immune from civil or criminal liability
27 for failing to exercise, in good faith, its powers and duties authorized by law."

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