

1 (b) Peer review agreements shall include provisions for the society and for the
2 Academy to receive relevant information from the Board and other sources, conduct the
3 investigation and review in an expeditious manner, ~~provide assurance of confidentiality~~
4 ~~of nonpublic information and of the review process~~, make reports of investigations and
5 evaluations to the Board, and to do other related activities for promoting a coordinated
6 and effective peer review process. Peer review agreements shall include provisions
7 assuring due process. Peer review agreements shall not include provisions that prohibit
8 the discovery in a civil action of information or materials obtained from peer review
9 activities.

10 (c) Each society ~~which that~~ enters a peer review agreement with the Board shall
11 establish and maintain a program for impaired physicians licensed by the Board. The
12 Academy, after entering a peer review agreement with the Board, shall either enter an
13 agreement with the North Carolina Medical Society for the inclusion of physician
14 assistants in the Society's program for impaired physicians, or shall establish and
15 maintain the Academy's own program for impaired physician assistants. The purpose of
16 the programs shall be to identify, review, and evaluate the ability of those physicians
17 and physician assistants to function in their professional capacity and to provide
18 programs for treatment and rehabilitation. The Board may provide funds for the
19 administration of impaired physician and impaired physician assistant programs and
20 shall adopt rules with provisions for definitions of impairment; guidelines for program
21 elements; procedures for receipt and use of information of suspected impairment;
22 procedures for intervention and referral; monitoring treatment, rehabilitation,
23 post-treatment support and performance; reports of individual cases to the Board; and
24 periodic reporting of statistical information; assurance of confidentiality of nonpublic
25 information and of the review process information.

26 (d) Upon investigation and review of a physician licensed by the Board, or a
27 physician assistant approved by the Board, or upon receipt of a complaint or other
28 information, a society ~~which that~~ enters a peer review agreement with the Board, or the
29 Academy if it has a peer review agreement with the Board, as appropriate, shall report
30 immediately to the Board detailed information about any physician or physician
31 assistant licensed or approved by the Board if:

- 32 (1) The physician or physician assistant constitutes an imminent danger to
33 the public or to himself by reason of impairment, mental illness,
34 physical illness, the commission of professional sexual boundary
35 violations, or any other reason;
- 36 (2) The physician or physician assistant refuses to cooperate with the
37 program, refuses to submit to treatment, or is still impaired after
38 treatment and exhibits professional incompetence; or
- 39 (3) It reasonably appears that there are other grounds for disciplinary
40 action.

41 (e) Any confidential patient information ~~and other nonpublic information~~
42 acquired, created, or used in good faith by the Academy or a society pursuant to this
43 section shall remain confidential and shall not be subject to discovery or subpoena in a
44 civil case. Any other nonpublic information acquired, created, or used in good faith by

1 the Academy or a society pursuant to this section is subject to discovery or subpoena in
2 a civil case. ~~No~~ A person participating in good faith in the peer review or impaired
3 physician or impaired physician assistant programs of this section ~~shall~~ may be required
4 in a civil case to disclose any information acquired or opinions, recommendations, or
5 evaluations acquired or developed solely in the course of participating in any
6 agreements pursuant to this section.

7 (f) Peer review activities conducted in good faith pursuant to any agreement
8 under this section shall not be grounds for civil action under the laws of this State and
9 are deemed to be State directed and sanctioned and shall constitute State action for the
10 purposes of application of antitrust laws."

11 **SECTION 3.** G.S. 90-21.22A(c) reads as rewritten:

12 "(c) The proceedings of a medical review or quality assurance committee, the
13 records and materials it produces, and the materials it considers shall ~~be confidential and~~
14 ~~not be considered public records within the meaning of G.S. 132-1, 131E-309, or~~
15 ~~58-2-100; and shall not be 58-2-100.~~ The proceedings of a medical review or quality
16 assurance committee, the records and materials it produces, and the materials it
17 considers are subject to discovery or introduction into evidence in any civil action
18 against a provider of health care services who directly provides services and is licensed
19 under this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General
20 Statutes, an ambulatory surgical facility licensed under Chapter 131E of the General
21 Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General
22 Statutes or that is owned or operated by the State, which civil action results from
23 matters that are the subject of evaluation and review by the committee. ~~No~~ A person
24 who was in attendance at a meeting of the committee ~~shall~~ may be required to testify in
25 any civil action as to any evidence or other matters produced or presented during the
26 proceedings of the committee or as to any findings, recommendations, evaluations,
27 opinions, or other actions of the committee or its members. ~~However, information,~~
28 ~~documents, or records otherwise available are not immune from discovery or use in a~~
29 ~~civil action merely because they were presented during proceedings of the~~
30 ~~committee.~~ Unless the patient waives confidentiality as to the confidential patient
31 information, any patient information acquired, created, or used in good faith by the
32 committee shall remain confidential and shall not be subject to discovery or subpoena in
33 a civil action, and no person who was in attendance at a meeting of the committee shall
34 be required to testify in any civil action as to any evidence or other matters that would
35 reveal confidential patient information. Documents otherwise available as public
36 records within the meaning of G.S. 132-1 do not lose their status as public records
37 merely because they were presented or considered during proceedings of the committee.
38 A member of the committee may testify in a civil action ~~but cannot~~ and may be asked
39 about the person's testimony before the committee or any opinions formed as a result of
40 the committee hearings."

41 **SECTION 4.** G.S. 90-85.41 reads as rewritten:

42 "§ 90-85.41. **Board agreements with special peer review organizations for**
43 **impaired pharmacy personnel.**

1 (a) The North Carolina Board of Pharmacy may, under rules adopted by the
2 Board in compliance with Chapter 150B of the General Statutes, enter into agreements
3 with special impaired pharmacy personnel peer review organizations. Peer review
4 activities to be covered by such agreements shall include investigation, review and
5 evaluation of records, reports, complaints, litigation, and other information about the
6 practices and practice patterns of pharmacy personnel licensed or registered by the
7 Board, as such matters may relate to impaired pharmacy personnel. Special impaired
8 pharmacy personnel peer review organizations may include a statewide supervisory
9 committee and various regional and local components or subgroups.

10 (b) Agreements authorized under this section shall include provisions for the
11 impaired pharmacy personnel peer review organizations to receive relevant information
12 from the Board and other sources, conduct any investigation, review, and evaluation in
13 an expeditious manner, ~~provide assurance of confidentiality of nonpublic information~~
14 ~~and of the peer review process~~, make reports of investigations and evaluations to the
15 Board, and to do other related activities for operating and promoting a coordinated and
16 effective peer review process. The agreements shall include provisions assuring basic
17 due process for pharmacy personnel that become involved. The agreements shall not
18 include provisions that prohibit the discovery in a civil action of information or
19 materials obtained from peer review activities.

20 (c) The impaired pharmacy personnel peer review organizations that enter into
21 agreements with the Board shall establish and maintain a program for impaired
22 pharmacy personnel licensed or registered by the Board for the purpose of identifying,
23 reviewing, and evaluating the ability of those pharmacists to function as pharmacists,
24 and pharmacy technicians to function as pharmacy technicians, and to provide programs
25 for treatment and rehabilitation. The Board may provide funds for the administration of
26 these impaired pharmacy personnel peer review programs. The Board shall adopt rules
27 to apply to the operation of impaired pharmacy personnel peer review programs, with
28 provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii)
29 procedures for receipt and use of information of suspected impairment; (iv) procedures
30 for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation,
31 post treatment support, and performance; (vi) reports of individual cases to the Board;
32 and (vii) periodic reporting of statistical information; and (viii) assurance of
33 confidentiality of nonpublic information and of the peer review process information.

34 (d) Upon investigation and review of a pharmacist licensed by the Board, or a
35 pharmacy technician registered with the Board, or upon receipt of a complaint or other
36 information, an impaired pharmacy personnel peer review organization that enters into a
37 peer review agreement with the Board shall report immediately to the Board detailed
38 information about any pharmacist licensed or pharmacy technician registered by the
39 Board, if:

- 40 (1) The pharmacist or pharmacy technician constitutes an imminent
41 danger to the public or himself or herself.
- 42 (2) The pharmacist or pharmacy technician refuses to cooperate with the
43 program, refuses to submit to treatment, or is still impaired after
44 treatment and exhibits professional incompetence.

1 (3) It reasonably appears that there are other grounds for disciplinary
2 action.

3 (e) Any confidential patient information ~~and other nonpublic information~~
4 acquired, created, or used in good faith by an impaired pharmacy personnel peer review
5 organization pursuant to this section shall remain confidential and shall not be subject to
6 discovery or subpoena in a civil case. Any other nonpublic information acquired,
7 created, or used in good faith by an impaired pharmacy personnel peer review
8 organization pursuant to this section is subject to discovery or subpoena in a civil case.
9 ~~No~~ A person participating in good faith in an impaired pharmacy personnel peer review
10 program developed under this section ~~shall~~ may be required in a civil case to disclose
11 any information (including opinions, recommendations, or evaluations) acquired or
12 developed solely in the course of participating in the program.

13 (f) Impaired pharmacy personnel peer review activities conducted in good faith
14 pursuant to any program developed under this section shall not be grounds for civil
15 action under the laws of this State, and the activities are deemed to be State directed and
16 sanctioned and shall constitute "State action" for the purposes of application of antitrust
17 laws."

18 **SECTION 5.** G.S. 131E-95(b) reads as rewritten:

19 "(b) The proceedings of a medical review committee, the records and materials it
20 produces and the materials it considers ~~shall be confidential and not considered~~ are not
21 public records within the meaning of G.S. 132-1, " 'Public records' defined", ~~and shall~~
22 ~~not be~~ but are subject to discovery or introduction into evidence in any civil action
23 against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the
24 General Statutes, or a provider of professional health services which results from
25 matters which are the subject of evaluation and review by the committee. ~~No~~ A person
26 who was in attendance at a meeting of the committee ~~shall~~ may be required to testify in
27 any civil action as to any evidence or other matters produced or presented during the
28 proceedings of the committee or as to any findings, recommendations, evaluations,
29 opinions, or other actions of the committee or its members. ~~However, information,~~
30 ~~documents, or records otherwise available are not immune from discovery or use in a~~
31 ~~civil action merely because they were presented during proceedings of the committee.~~
32 However, any confidential patient information acquired, created, or used in good faith
33 by the medical review committee shall remain confidential and shall not be subject to
34 discovery or subpoena in a civil action, and no person who was in attendance at a
35 meeting of the committee shall be required to testify in any civil action as to any
36 evidence or other matters that would reveal confidential patient information. Documents
37 otherwise available as public records within the meaning of G.S. 132-1 do not lose their
38 status as public records merely because they were presented or considered during
39 proceedings of the committee. A member of the committee or a person who testifies
40 before the committee may testify in a civil action ~~but cannot~~ and may be asked about the
41 person's testimony before the committee or any opinions formed as a result of the
42 committee hearings."

43 **SECTION 6.** This act becomes effective October 1, 2007, and applies to
44 actions filed on or after that date.