

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 341*

Short Title: Bd. of Complementary Med. Examiners.

(Public)

Sponsors: Senators Walker, Blackmon, Hunt, Marshall, Seymour; Martin of Pitt, Richardson, Lee, Martin of Guilford, Gulley, Allran, Odom, Ballance, Parnell, Soles, Tally, Jordan, Carpenter, and Perdue.

Referred to: Hold for New Licensing Rept. (G.S. 120-149)

February 24, 1993

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF COMPLEMENTARY MEDICINE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 29.

"BOARD OF COMPLEMENTARY MEDICAL EXAMINERS.

"§ 90-430. Short title. This Article shall be known as the North Carolina Complementary Medical Practice Act.

"§ 90-431. Definitions.

- (1) 'Board' means the Board of Complementary Medical Examiners.
- (2) 'Chelation therapy' means medical therapy to restore cellular homeostasis through the use of intravenous, metal-binding, and bioinorganic agents such as ethylene diamine tetraacetic acid.
- (3) 'Doctor of complementary medicine' means a physician licensed pursuant to the provisions of Article I of this Chapter who has completed and documented postgraduate education in one or more therapies, including homeopathy, nutritional therapy, chelation therapy, or any other complementary therapy as designated by the Board in its rules, and who has met all such licensing requirements for qualification under this statute.

1 (4) 'Homeopathy' means a system of medicine employing substances of
2 animal, vegetable, or mineral origin which are given in microdosages,
3 prepared according to homeopathic pharmacology, in accordance with
4 the principle that a substance which produces symptoms in a healthy
5 person can cure those symptoms in an ill person.

6 (5) 'Letter of concern' means an advisory letter to notify a physician that,
7 while there is sufficient evidence to support disciplinary action, the
8 Board believes the physician should modify or eliminate certain
9 practices.

10 (6) 'Nutrition therapy' means therapy to provide the optimum
11 concentration of substances normally present in the human body such
12 as vitamins, minerals, amino acids, and enzymes.

13 **"§ 90-432. Board of Complementary Medical Examiners.**

14 (a) There is established a Board of Complementary Medical Examiners which
15 shall consist of five members appointed by the Governor, four of whom shall be
16 complementary physicians who are licensed under this Article, except as provided in
17 subsection (b), and one of whom shall be a public member. Except as provided for
18 initial appointments in subsection (b), the term of office of each member of the Board is
19 three years, ending on June 30.

20 (b) The terms of the initial board members shall be staggered such that one
21 complementary physicians' term and the public member's term expires June 30, 1994,
22 two complementary physicians' terms expire June 30, 1995, and two complementary
23 physicians' terms expire June 30, 1996. The initial complementary physician appointees
24 shall be medical doctors engaged in the practice of one or more complementary
25 therapies.

26 (c) Board members may be removed by the Governor for neglect of duty,
27 malfeasance, or misfeasance.

28 **"§ 90-433. Meetings; organization; compensation.**

29 (a) The Board shall hold an annual meeting during the month of January of each
30 year and may hold other meetings at times and places determined by a majority of the
31 Board upon 10 days' written notice to each member. A majority vote of a quorum
32 present at any meeting governs all actions taken, except that licenses shall be issued
33 under this Chapter only upon the vote of a majority of the full Board.

34 (b) At each annual meeting the Board shall select from among its membership a
35 president and vice-president who shall serve until their successors are chosen.

36 (c) Each Board member is eligible to receive compensation pursuant to G.S.
37 93B-5 for each day actually engaged in carrying out duties as an officer or member of
38 the Board. Compensation and expenses shall be paid from the Board of Complementary
39 Medical Examiners Fund.

40 **"§ 90-434. Powers and duties.**

41 (a) The Board shall:

42 (1) Conduct all examinations for applicants for a license under this
43 Article, issue licenses, conduct hearings, place complementary

- 1 physicians on probation, revoke or suspend licenses, and administer
2 and enforce this Article.
- 3 (2) Enforce within the complementary medical profession in this State the
4 standards of practice prescribed by this Article and the rules and
5 regulations adopted by the Board pursuant to the authority granted by
6 this Article.
- 7 (3) Collect and account for all fees under this Article and deposit same in
8 a fund maintained by the Board; funds may be expended from
9 revenues generated by fees and interest thereon for the administration
10 of this Article.
- 11 (4) Maintain a record of its acts and proceedings, including, but not
12 limited to, the issuance, refusal to issue, renewal, suspension, or
13 revocation of licenses to practice according to this Article.
- 14 (5) Maintain a roster of all complementary physicians licensed under this
15 Article which shall indicate:
- 16 a. The name of the licensed physician.
17 b. The current professional office address.
18 c. The date and the number of the license issued under this
19 Article.
20 d. Whether the licensee is in good standing.
- 21 (6) Adopt and use a seal, the imprint of which, together with the
22 signatures of the president or vice-president of the Board and the
23 secretary-treasurer, shall evidence its official acts.
- 24 (7) Contract for administrative and record keeping services.
- 25 (8) Charge additional fees that do not exceed the cost of the services for
26 the services the Board deems necessary to carry out its intent and
27 purposes.
- 28 (b) The Board may:
- 29 (1) Make and adopt rules and regulations necessary for the administration
30 of this Article.
- 31 (2) Accredit educational institutions in this State which grant degrees
32 toward licensing therapies which are regulated under this Article.
- 33 (3) Hire permanent or temporary personnel to carry out the purposes of
34 this Article.
- 35 (4) Hire or contract with investigators to assist in the investigation of
36 violations of this Article and contract with other State agencies if
37 required to carry out this Article.
- 38 (5) Purchase, rent, lease, sell, or otherwise transfer office space,
39 equipment, supplies, or other real or personal property for the
40 administration of this Article.
- 41 **§ 90-435. Persons and acts not affected by this Article.**
- 42 (a) This Article exists for the exclusive purpose of licensing and regulation of
43 medical doctors who practice complementary therapies. It shall not be construed to
44 govern any method, system, or science of healing by nonmedical doctors.

1 (b) This Article does not govern the practice of complementary physicians
2 discharging their duties while members of the armed forces of the United States or other
3 federal agencies.

4 **"§ 90-436. Qualifications of applicant; application; fees.**

5 (a) A license to practice medicine as a complementary physician shall be granted
6 only to an applicant who:

7 (1) Is of good moral character and is licensed pursuant to Article I of this
8 Chapter;

9 (2) Has a professional record which indicates that the applicant has not
10 had a license to practice medicine refused, revoked, suspended, or
11 restricted in any state, territory, district, or county for reasons which
12 relate to his ability to competently and safely practice medicine;

13 (3) Has a professional record which indicates that the applicant has not
14 committed any act or engaged in any conduct which would constitute
15 grounds for disciplinary action against a licensee under this Article;

16 (4) Has the physical and mental capacity to safely engage in the practice
17 of medicine; and

18 (5) Submits to the Board, at least 30 days prior to the meeting at which the
19 application is to be considered:

20 a. Affidavits from three physicians licensed to practice medicine
21 in any state of the United States or the District of Columbia
22 who are in active practice, attesting to the good moral character
23 of the applicant and fitness to practice medicine as a doctor of
24 complementary medicine. The applicant shall submit to any
25 other reasonable investigation deemed necessary by the Board;

26 b. A diploma or certificate evidencing the completion of
27 postgraduate training in the complementary modality in which
28 the applicant intends to engage. Such training must be
29 approved by the Board and documentation shall evidence
30 requirements equivalent to those established for eligibility for
31 certification by the national accreditation board for the
32 particular therapy; or equivalent to the appropriate number of
33 hours and subjects which are generally accepted as necessary,
34 as determined by the Board, for a thorough knowledge of the
35 practice of each modality;

36 c. A verified application, upon forms furnished by the Board,
37 stating, in addition to any other information requested, that the
38 applicant is the person named in the diploma or certificate and
39 the lawful holder of such diploma or certificate and that the
40 diploma was procured in a regular course of instruction and
41 examination without fraud or misrepresentation;

42 (6) Successfully passes an examination as provided in this Article, except
43 that the Board may waive any such examination if the applicant either:

1 a. Has for three years practiced primarily the complementary
2 therapy for which the applicant is seeking to be licensed as a
3 doctor of complementary medicine, has affidavits from three
4 physicians which attest to competency for this therapy, and is
5 licensed pursuant to Article I of this Chapter; or

6 b. Holds a current, unsuspended, and unrevoked license to practice
7 this complementary therapy issued by another state of the
8 United States or the District of Columbia and is licensed
9 pursuant to Article I of this Chapter;

10 (7) Pays to the Board upon application a fee of two hundred fifty dollars
11 (\$250.00), and an additional fee of two hundred fifty dollars (\$250.00)
12 upon issuance of the license; and

13 (8) Submits to a personal interview at a reasonable time and place as
14 prescribed by the Board.

15 **"§ 90-437. Examination; reexamination.**

16 (a) Examination for a license to practice under this Article shall include all
17 subjects which are generally accepted as necessary for a thorough knowledge of the
18 practice of the selected areas of complementary therapies. The Board shall prescribe
19 rules and regulations for conducting the examinations and set the passing grade.

20 (b) Examinations shall be conducted at least twice annually at times and places to
21 be designated by the Board. Written notice of the date and place of examination shall
22 be mailed to all applicants at least 30 days prior to the date of the examination. A
23 person failing to pass an examination may be reexamined within one year without
24 payment of an additional fee.

25 **"§ 90-438. Renewal of license; failure to renew; reinstatement.**

26 (a) Each physician holding a license under this Article shall renew it and pay a
27 renewal fee not to exceed one thousand dollars (\$1,000) prior to January 1 each year.
28 Failure to renew an active license as required by this section on or before February 1
29 requires an additional late payment fee of one hundred fifty dollars (\$150.00). Failure
30 to renew an active license on or before May 1 shall result in the expiration of the active
31 license. The secretary-treasurer of the Board shall notify each licensee of the renewal
32 date at least 30 days prior to January 1 each year.

33 (b) A person whose license has expired may reapply for a license to practice
34 complementary medicine as provided in this Article.

35 **"§ 90-439. Use of title or abbreviation by a complementary physician.**

36 A physician practicing pursuant to this Article may only use the title 'complementary
37 medicine physician' or 'doctor of complementary medicine', or the abbreviations
38 'M.D.C.M.D.'

39 **"§ 90-440. Definition of unprofessional conduct.**

40 'Unprofessional conduct' includes the following acts, whether occurring in the State
41 or elsewhere:

42 (1) Immoral or dishonorable conduct;

43 (2) Producing or attempting to produce an abortion contrary to law;

- 1 (3) Making false statements or representations to the Board, or willfully
2 concealing from the Board material information in connection with his
3 application for a license;
- 4 (4) Being unable to practice medicine with reasonable skill and safety to
5 patients by reason of illness, drunkenness, excessive use of alcohol,
6 drugs, chemicals, or any other type of material or by reason of any
7 physical or mental abnormality. The Board is empowered and
8 authorized to require a physician licensed by it to submit to a mental or
9 physical examination by physicians designated by the Board before or
10 after charges may be presented against him, and the results of
11 examination shall be admissible in evidence in a hearing before the
12 Board;
- 13 (5) Unprofessional conduct including, but not limited to, the committing
14 of any act contrary to honesty, justice, or good morals, whether the
15 same is committed in the course of his practice or otherwise, and
16 whether committed within or without North Carolina;
- 17 (6) Conviction in any court of a crime involving moral turpitude, or the
18 violation of a law involving the practice of medicine, or a conviction
19 of a felony;
- 20 (7) By false representations obtaining or attempting to obtain practice,
21 money, or anything of value;
- 22 (8) Advertising or publicly professing to treat human ailments under a
23 system or school of treatment or practice other than that for which he
24 has been educated;
- 25 (9) Adjudication of mental incompetency, which shall automatically
26 suspend a license unless the Board orders otherwise;
- 27 (10) Lack of professional competence to practice medicine with a
28 reasonable degree of skill and safety for patients. In this connection
29 the Board may consider repeated acts of a physician indicating his
30 failure to properly treat a patient and may require such physician to
31 submit to inquiries or examinations, written or oral, by members of the
32 Board or by other physicians licensed to practice medicine in this
33 State, as the Board deems necessary to determine the professional
34 qualifications of such licensee;
- 35 (11) Promotion of the sale of drugs, devices, appliances, or goods for a
36 patient, or providing services to a patient, in such a manner as to
37 exploit the patient for financial gain of the physician; and upon a
38 finding of the exploitation for financial gain, the Board may order
39 restitution be made to the payer of the bill, whether the patient or the
40 insurer, by the physician; provided that a determination of the amount
41 of restitution shall be based on credible testimony in the record;
- 42 (12) Suspension or revocation of a license to practice medicine in any other
43 state, or territory of the United States, or other country;

- 1 (13) 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;
- 5 (14) The use of experimental forms of diagnosis and treatment without
6 adequate informed patient consent, without a board-approved written
7 disclosure that the form of diagnosis and treatment to be used is
8 experimental, and without conforming to generally accepted
9 experimental criteria, including protocols, detailed records, periodic
10 analysis of results, and periodic review by a peer review committee;
- 11 (15) Sexual intimacies with a patient in the course of direct treatment;
- 12 (16) Refusal, revocation, or suspension of a license by any other state,
13 territory, district, or country, unless it can be shown that such was not
14 occasioned by reasons which relate to the ability to practice
15 complementary medicine safely and skillfully or to any act of
16 unprofessional conduct as provided in this section.

17 **§ 90-441. Grounds for suspension or revocation of license; duty to report;**
18 **unprofessional conduct hearing; decision of Board.**

19 (a) The Board on its own motion may investigate any information which appears
20 to show that a complementary physician is or may be guilty of unprofessional conduct
21 or is or may be mentally or physically unable to engage safely in the practice of
22 medicine. Any complementary physician, the North Carolina Complementary Medical
23 Association, or any health care institution shall, and any other person may, report to the
24 Board any information such person may have which appears to show that a
25 complementary physician is or may be guilty of unprofessional conduct or is or may be
26 mentally or physically unable to engage safely in the practice of medicine. The Board
27 shall notify the complementary physician about whom information is received as to the
28 content of the information within 120 days after the receipt of the information. Any
29 person who reports or provides information to the Board in good faith is not subject to
30 an action for civil damages as a result thereof, and such person's name shall not be
31 disclosed unless such person's testimony is essential to the disciplinary proceedings
32 conducted pursuant to the section. It is an act of unprofessional conduct for any
33 complementary physician to fail to report as required by this section. Any health care
34 institution which fails to report as required by this section shall be reported by the Board
35 to such institution's licensing agency.

36 (b) A health care institution shall inform the Board when the privileges of a
37 complementary physician to practice in the health care institution are denied, revoked,
38 suspended, or limited because of actions by the complementary physician which
39 jeopardizes patient health and welfare or if the physician resigns during pending
40 proceedings for revocation, suspension, or limitation of his privileges. A report to the
41 Board pursuant to this subsection shall contain a general statement of the reasons the
42 health care institution denied or took action to revoke, suspend, or limit a
43 complementary physician's privileges.

1 (c) If, after completing its investigation, the Board finds that the information
2 provided pursuant to subsection (a) of this section is not of sufficient seriousness to
3 merit direct action against the license of the complementary physician it may take either
4 of the following actions:

5 (1) Dismiss if, in the opinion of the Board, the information is without
6 merit.

7 (2) File a letter of concern.

8 (d) If, in the opinion of the Board, and after completing the investigation, it
9 appears this information is or may be true, the Board may request an informal interview
10 with the complementary physician concerned. If the complementary physician refuses
11 the invitation or if he accepts the invitation and if the results of the interview indicate
12 suspension or revocation of his license might be in order, a formal complaint shall be
13 issued and a formal hearing shall be conducted in accordance with the provisions of
14 Chapter 150B of the General Statutes. If, after completing the investigation, at the
15 informal interview, the Board finds the information provided under subsection (a) of
16 this section is not of sufficient seriousness to merit suspension or revocation of license,
17 it may take the following actions:

18 (1) Dismiss if, in the opinion of the Board, the information is without
19 merit.

20 (2) File a letter of concern.

21 (3) Issue a decree of censure which constitutes an official action against
22 the complementary physician's license and which may include but not
23 be limited to a requirement for restitution of fees to a patient resulting
24 from violations of this Article or rules promulgated under this Article.

25 (4) Fix such period and terms of probation best adapted to protect the
26 public health and safety and rehabilitate or educate the complementary
27 physician concerned. The probation, if deemed necessary, may
28 include but not be limited to temporary suspension of the license not to
29 exceed 12 months, restriction of the complementary physician's license
30 to practice medicine, or a requirement for restitution of fees to a
31 patient resulting from violations of this Article or rules promulgated
32 under this Article. The failure to comply with any probation is cause
33 for filing a summons, complaint, and notice of hearing pursuant to this
34 section based on the information considered by the Board at the
35 informal interview and any other acts or conduct alleged to be in
36 violation of this Article or rules adopted by the Board pursuant to this
37 Article.

38 (5) Enter into an agreement with the complementary physician to restrict
39 or limit the complementary physician's practice or medical activities in
40 order to rehabilitate the complementary physician, protect the public,
41 and insure the complementary physician's ability to safely engage in
42 the practice of medicine.

43 (e) In an informal interview pursuant to subsection (d) of this section or in a
44 hearing pursuant to subsection (f) of this section, the Board, in addition to any other

1 action which may be taken, may impose a civil penalty in an amount of not less than
2 five hundred dollars (\$500.00) but not to exceed two thousand dollars (\$2,000) on a
3 complementary physician who violates any provision of this Article or any rule
4 promulgated pursuant to this Article. Actions to enforce the collection of these
5 penalties shall be brought in the name of this State by the Attorney General or the
6 county attorney in the county in which the violation occurred. Penalties imposed under
7 this section are in addition to and not in limitation of other penalties imposed pursuant
8 to this Article.

9 (f) If in the opinion of the Board it appears that the allegations concerning a
10 complementary physician are of such magnitude as to warrant suspension or revocation
11 of his license, the Board shall serve on such physician a summons and a complaint fully
12 setting forth the conduct or inability concerned; hearings shall be held in accordance
13 with the provisions of Article 3A of Chapter 150B of the General Statutes.

14 (g) Patient records, including clinical records, medical reports, laboratory
15 statements and reports, any file, film, any other report or oral statement relating to
16 diagnostic findings or treatment of patients, any information from which a patient or his
17 family might be identified, or information received and records kept by the Board as a
18 result of investigation procedures shall not be available to the public.

19 (h) Hospital records, medical staff records, medical staff review committee
20 records, and testimony concerning such records, and proceedings related to the creation
21 of such records, are not available to the public, shall be kept confidential by the Board,
22 and are subject to the same provisions concerning discovery and use in legal action as
23 are the original records in the possession and control of hospitals, their medical staffs,
24 and their medical staff review committees. The Board shall use such records and
25 testimony during the course of investigations and proceedings pursuant to this Article.

26 **"§ 90-442. Violation; classification.**

27 A person who practices or attempts to practice medicine as a complementary
28 physician in violation of this Article, or who violates any of the provisions of this
29 Article, is guilty of a misdemeanor, punishable by a fine not to exceed five hundred
30 dollars (\$500.00) per offense.

31 **"§ 90-443. Third-party reimbursement.**

32 Nothing in this Article shall be construed to require direct third-party reimbursement
33 to persons licensed under this Article for the provision of complementary medical
34 services."

35 Sec. 2. G.S. 90-14(a) reads as rewritten:

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

- 40 (1) Immoral or dishonorable conduct;
- 41 (2) Producing or attempting to produce an abortion contrary to law;
- 42 (3) Made false statements or representations to the Board, or who has
43 willfully concealed from the Board material information in connection
44 with his application for a license;

- 1 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 2 (5) Being unable to practice medicine with reasonable skill and safety to
3 patients by reason of illness, drunkenness, excessive use of alcohol,
4 drugs, chemicals, or any other type of material or by reason of any
5 physical or mental abnormality. The Board is empowered and
6 authorized to require a physician licensed by it to submit to a mental or
7 physical examination by physicians designated by the Board before or
8 after charges may be presented against him, and the results of
9 examination shall be admissible in evidence in a hearing before the
10 Board;
- 11 (6) Unprofessional conduct, including, but not limited to, any departure
12 from, or the failure to conform to, the standards of acceptable ~~and~~
13 ~~prevailing~~ medical practice, or the ethics of the medical profession,
14 irrespective of whether or not a patient is injured thereby, or the
15 committing of any act contrary to honesty, justice, or good morals,
16 whether the same is committed in the course of his practice or
17 otherwise, and whether committed within or without North ~~Carolina~~;
18 Carolina. Medical doctors practicing complementary therapies who
19 are not licensed pursuant to Article 29 of this Chapter are subject to
20 finest and penalties as set forth in that Article. The Board is not
21 authorized to revoke, suspend, or deny a license, nor deem as
22 unacceptable the therapies of complementary physicians licensed
23 pursuant to Article 29 of this Chapter, solely on the basis of their use
24 of complementary therapies; provided, however, the Board may take
25 disciplinary action against a physician licensed under Article 29 upon
26 proof that the therapy creates an unreasonable risk of harm that
27 exceeds the degree of risk inherent in the practice of traditional
28 therapies;
- 29 (7) Conviction in any court of a crime involving moral turpitude, or the
30 violation of a law involving the practice of medicine, or a conviction
31 of a felony; provided that a felony conviction shall be treated as
32 provided in subsection (c) of this section;
- 33 (8) By false representations has obtained or attempted to obtain practice,
34 money or anything of value;
- 35 (9) Has advertised or publicly professed to treat human ailments under a
36 system or school of treatment or practice other than that for which he
37 has been educated;
- 38 (10) Adjudication of mental incompetency, which shall automatically
39 suspend a license unless the Board orders otherwise;
- 40 (11) Lack of professional competence to practice medicine with a
41 reasonable degree of skill and safety for patients. In this connection the
42 Board may consider repeated acts of a physician indicating his failure
43 to properly treat a patient and may require such physician to submit to
44 inquiries or examinations, written or oral, by members of the Board or

- 1 by other physicians licensed to practice medicine in this State, as the
2 Board deems necessary to determine the professional qualifications of
3 such licensee;
- 4 (12) Promotion of the sale of drugs, devices, appliances or goods for a
5 patient, or providing services to a patient, in such a manner as to
6 exploit the patient for financial gain of the physician; and upon a
7 finding of the exploitation for financial gain, the Board may order
8 restitution be made to the payer of the bill, whether the patient or the
9 insurer, by the physician; provided that a determination of the amount
10 of restitution shall be based on credible testimony in the record;
- 11 (13) Suspension or revocation of a license to practice medicine in any other
12 state, or territory of the United States, or other country;
- 13 (14) The failure to respond, within a reasonable period of time and in a
14 reasonable manner as determined by the Board, to inquiries from the
15 Board concerning any matter affecting the license to practice
16 medicine.

17 For any of the foregoing reasons, the Board may deny the issuance of a license to an
18 applicant or revoke a license issued to him, may suspend such a license for a period of
19 time, and may impose conditions upon the continued practice after such period of
20 suspension as the Board may deem advisable, may limit the accused physician's practice
21 of medicine with respect to the extent, nature or location of his practice as the Board
22 deems advisable. The Board may, in its discretion and upon such terms and conditions
23 and for such period of time as it may prescribe, restore a license so revoked or
24 rescinded."

25 Sec. 3. This act is effective upon ratification.