

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1049

Short Title: Physician Licensure.

(Public)

Sponsors: Representative Miller.

Referred to: Select Committee on Health Care Delivery.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE LICENSURE OF
PHYSICIANS IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-5 reads as rewritten:

"§ 90-5. Meetings of Board.

The North Carolina Medical Board shall assemble at least once in every year in the City of Raleigh, ~~and shall remain in session from day to day until all applicants who may present themselves for examination within the first two days of this meeting have been examined and disposed of; other Raleigh.~~ Other meetings in each year may be held at some suitable point in the State if deemed advisable."

Section 2. G.S. 90-9 reads as rewritten:

"§ 90-9. Examination for license; scope; conditions and prerequisites.

It is the duty of the North Carolina Medical Board to examine for license to practice medicine or surgery, or any of the branches thereof, ~~every applicant who complies with the following provisions: the applicant shall, before admittance to examination, satisfy the Board of possession of academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that the applicant has passed an examination upon literary attainments to meet the requirements of entrance in the regular course of the State University. The applicant shall exhibit a diploma or~~

1 furnish satisfactory proof of graduation from a medical college or an osteopathic college
2 approved by the American Osteopathic Association at the time of graduation, dated from January
3 1, 1960, to the present, and whose medical and osteopathic schools shall require an attendance of
4 not less than four years or for a lesser period of time approved by the Board, and supply these
5 facilities for clinical and scientific instruction as meet the approval of the Board. An applicant
6 shall have graduated from a medical college approved by the Liaison Commission on Medical
7 Education or osteopathic college that has been approved by the American Osteopathic
8 Association; or, if graduated from any other medical or osteopathic college, the applicant shall be
9 enrolled in a graduate medical education and training program in North Carolina that has been
10 approved by the Board. An applicant who has graduated from a medical college not approved by
11 the Liaison Commission on Medical Education or osteopathic college that has not been approved
12 by the American Osteopathic Association and who has not enrolled in a graduate medical
13 education and training program in North Carolina which has been approved by the Board shall
14 satisfy the Board that the applicant has successfully completed three years of graduate medical
15 education in a training program approved by the Board. applicants for a medical license who
16 meet eligibility requirements as provided by Board rules. The Board may contract for the
17 design of, application for, and administration of the licensing examination through the
18 Federation of State Medical Boards of the U.S., Inc., its successor organization, or
19 another organization approved by the Board. No applicant from a medical or osteopathic
20 college that has been disapproved by the Board is eligible to take the examination.

21 The examination shall cover the branches of medical science and subjects which the
22 Board considers necessary to determine competence to practice medicine. The Board may
23 divide the examination into parts or components.

24 The Board shall grant the applicant a license authorizing the applicant to practice
25 medicine in any of its branches if the Board determines that the applicant has successfully
26 passed the examination, is of good moral character, satisfies the requirements of the
27 Board's rules, and is: is one of the following:

- 28 (1) ~~a~~ A graduate of a medical college approved by the Liaison Commission
29 on Medical Education or an osteopathic college approved by the
30 American Osteopathic Association and has successfully completed one
31 year of training in a medical education program approved by the Board
32 after graduation from medical ~~school;~~ school.
- 33 (2) ~~a~~ A graduate of a medical college approved by the Liaison Commission
34 on Medical Education or an osteopathic college approved by the
35 American Osteopathic Association, is a dentist licensed to practice
36 dentistry under Article 2 of Chapter 90 of the General Statutes, and has
37 been certified by the American Board of Oral and Maxillofacial Surgery
38 after having completed a residency in an Oral and Maxillofacial Surgery
39 Residency Program approved by the Board before completion of
40 medical ~~school;~~ or school.
- 41 (3) ~~a~~ A graduate of a medical college that has not been approved by the
42 Liaison Commission on Medical Education or an osteopathic college
43 that has not been approved by the American Osteopathic Association
44 and has successfully completed three years of training in a medical

1 education program approved by the Board after graduation from
2 medical school.

3 ~~Applicants shall be examined by number only; names and other identifying~~
4 ~~information shall not appear on examination papers."~~

5 Section 3. G.S. 90-14 reads as rewritten:

6 **"§ 90-14. Revocation, suspension, annulment or denial of license.**

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

11 (1) Immoral or dishonorable conduct.

12 (2) Producing or attempting to produce an abortion contrary to law.

13 (3) Made false statements or representations to the Board, or who has
14 willfully concealed from the Board material information in connection
15 with an application for a license.

16 (4) Repealed by Session Laws 1977, c. 838, s. 3.

17 (5) Being unable to practice medicine with reasonable skill and safety to
18 patients by reason of illness, drunkenness, excessive use of alcohol,
19 drugs, chemicals, or any other type of material or by reason of any
20 physical or mental abnormality. The Board is empowered and
21 authorized to require a physician licensed by it to submit to a mental or
22 physical examination by physicians designated by the Board before or
23 after charges may be presented against the physician, and the results of
24 the examination shall be admissible in evidence in a hearing before the
25 Board.

26 (6) Unprofessional conduct, including, but not limited to, departure from, or
27 the failure to conform to, the standards of acceptable and prevailing
28 medical practice, or the ethics of the medical profession, irrespective of
29 whether or not a patient is injured thereby, or the committing of any act
30 contrary to honesty, justice, or good morals, whether the same is
31 committed in the course of the physician's practice or otherwise, and
32 whether committed within or without North Carolina. The Board shall
33 not revoke the license of or deny a license to a person solely because of
34 that person's practice of a therapy that is experimental, nontraditional, or
35 that departs from acceptable and prevailing medical practices unless, by
36 competent evidence, the Board can establish that the treatment has a
37 safety risk greater than the prevailing treatment or that the treatment is
38 generally not effective.

39 (7) Conviction in any court of a crime involving moral turpitude, or the
40 violation of a law involving the practice of medicine, or a conviction of
41 a felony; provided that a felony conviction shall be treated as provided
42 in subsection (c) of this section.

- 1 (8) By false representations has obtained or attempted to obtain practice,
2 money or anything of value.
- 3 (9) Has advertised or publicly professed to treat human ailments under a
4 system or school of treatment or practice other than that for which the
5 physician has been educated.
- 6 (10) Adjudication of mental incompetency, which shall automatically
7 suspend a license unless the Board orders otherwise.
- 8 (11) Lack of professional competence to practice medicine with a reasonable
9 degree of skill and safety for patients. In this connection the Board may
10 consider repeated acts of a physician indicating the physician's failure to
11 properly treat a patient. The Board may, upon reasonable grounds,
12 require a physician to submit to inquiries or examinations, written or
13 oral, by members of the Board or by other physicians licensed to
14 practice medicine in this State, as the Board deems necessary to
15 determine the professional qualifications of such licensee.
- 16 (12) Promotion of the sale of drugs, devices, appliances or goods for a
17 patient, or providing services to a patient, in such a manner as to exploit
18 the patient, and upon a finding of the exploitation, the Board may order
19 restitution be made to the payer of the bill, whether the patient or the
20 insurer, by the physician; provided that a determination of the amount of
21 restitution shall be based on credible testimony in the record.
- 22 (13) Having a license to practice medicine or the authority to practice
23 medicine revoked, suspended, restricted, or acted against or having a
24 license to practice medicine denied by the licensing authority of any
25 jurisdiction. For purposes of this subdivision, the licensing authority's
26 acceptance of a license to practice medicine voluntarily relinquished by
27 a physician or relinquished by stipulation, consent order, or other
28 settlement in response to or in anticipation of the filing of administrative
29 charges against the physician's license, is an action against a license to
30 practice medicine.
- 31 (14) The failure to respond, within a reasonable period of time and in a
32 reasonable manner as determined by the Board, to inquiries from the
33 Board concerning any matter affecting the license to practice medicine.
- 34 (15) The failure to complete an amount not to exceed 150 hours of
35 continuing medical education during any three consecutive calendar
36 years pursuant to rules adopted by the Board.
- 37 (16) Aiding in the unlicensed practice of medicine.
- 38 (17) Allowing another person or organization to use a license issued by the
39 Board.
- 40 (18) The repeated prescribing of controlled substances for personal or family
41 use.
- 42 (19) Fee splitting.
- 43 (20) Failure to report to the Board disciplinary action in another state.

1 (21) Failure to make copies of patient records available to another physician
2 when legally requested to do so.

3 For any of the foregoing reasons, the Board may deny the issuance of a license to an
4 applicant or revoke a license issued to a physician, may suspend such a license for a
5 period of time, and may impose conditions upon the continued practice after such period
6 of suspension as the Board may deem advisable, may limit the accused physician's
7 practice of medicine with respect to the extent, nature or location of the physician's
8 practice as the Board deems advisable. The Board may, in its discretion and upon such
9 terms and conditions and for such period of time as it may prescribe, restore a license so
10 revoked or rescinded, except that no license that has been revoked shall be restored for a
11 period of two years following the date of revocation. In addition to and in conjunction
12 with the actions described above, the Board may make a finding adverse to a licensee or
13 applicant but withhold imposition of judgment and penalty or it may impose judgment
14 and penalty but suspend enforcement thereof and place the licensee on probation, which
15 probation may be vacated upon noncompliance with such reasonable terms as the Board
16 may impose. The Board may administer a public or private reprimand or a private letter
17 of concern and the private reprimand and private letter of concern shall not require a
18 hearing in accordance with G.S. 90-14.2 and shall not be disclosed to any person except
19 the licensee. The Board may require a licensee to: (i) make specific redress or monetary
20 redress; (ii) provide free public or charity service; (iii) complete educational, remedial
21 training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for
22 disciplinary costs.

23 (b) ~~The Board shall may refer to the State Medical Society Physician Health and~~
24 ~~Effectiveness Committee all physicians—North Carolina Physicians Health Program any~~
25 ~~physician or physician assistant whose health and effectiveness have been significantly~~
26 ~~impaired by alcohol, drug addiction or mental illness.~~

27 (c) A felony conviction shall result in the automatic revocation of a license issued
28 by the Board, unless the Board orders otherwise or receives a request for a hearing from
29 the person within 60 days of receiving notice from the Board, after the conviction, of the
30 provisions of this subsection. If the Board receives a timely request for a hearing in such
31 a case, the provisions of G.S. 90-14.2 shall be followed.

32 (d) ~~The Board and its members and staff may release confidential or nonpublic~~
33 ~~information to any health care licensure board in this State or another state about the~~
34 ~~issuance, denial, annulment, suspension, or revocation of a license, or the voluntary~~
35 ~~surrender of a license by a Board-licensed physician, including the reasons for the action,~~
36 ~~or an investigative report made by the Board. The Board shall notify the physician within 60~~
37 ~~days after the information is transmitted. A summary of the information that is being transmitted~~
38 ~~shall be furnished to the physician. If the physician requests, in writing, within 30 days after~~
39 ~~being notified that such information has been transmitted, he shall be furnished a copy of all~~
40 ~~information so transmitted. The notice or copies of the information shall not be provided if the~~
41 ~~information relates to an ongoing criminal investigation by any law enforcement agency, or~~
42 ~~authorized Department of Health and Human Services personnel with enforcement or~~
43 ~~investigative responsibilities.~~

1 (e) The Board and its members and staff shall not be held liable in any civil or
2 criminal proceeding for exercising, in good faith, the powers and duties authorized by
3 law.

4 (f) A person, partnership, firm, corporation, association, authority, or other entity
5 shall be immune from civil and criminal liability for (i) reporting or investigating the acts
6 or omissions of a licensee or applicant that violate the provisions of subsection (a) of this
7 section or any other provision of law relating to the fitness of a licensee or applicant to
8 practice medicine and (ii) initiating or conducting proceedings against a licensee or
9 applicant if a complaint is made or action is taken in good faith without fraud or malice.
10 Any person who testifies before the Board in good faith and without fraud or malice in
11 any proceeding involving a violation of subsection (a) of this section or any other law
12 relating to the fitness of an applicant or licensee to practice medicine, or who makes a
13 recommendation to the Board in the nature of peer review, shall be immune from civil
14 and criminal liability."

15 Section 4. G.S. 90-15.1 reads as rewritten:

16 **"§ 90-15.1. Registration every year with Board.**

17 Every person licensed to practice medicine by the North Carolina Medical Board shall
18 register annually with the Board within 30 days of the person's birthday. A person who
19 registers with the Board shall report to the Board the person's name and office and
20 residence address and any other information required by the Board, and shall pay a
21 registration fee fixed by the Board not in excess of ~~one hundred dollars (\$100.00).~~ one
22 hundred twenty-five dollars (\$125.00). A physician who is not actively engaged in the
23 practice of medicine in North Carolina and who does not wish to register the license may
24 direct the Board to place the license on inactive status. For purposes of annual
25 registration, the Board shall use a simplified registration form which allows registrants to
26 confirm information on file with the Board. A physician who fails to register as required
27 by this section shall pay an additional fee of twenty dollars (\$20.00) to the Board. The
28 license of any physician who fails to register and who remains unregistered for a period
29 of 30 days after certified notice of the failure is automatically inactive. A person whose
30 license is inactive shall not practice medicine in North Carolina nor be required to pay the
31 annual registration fee. Upon payment of all accumulated fees and penalties, the license
32 of the physician may be reinstated, subject to the Board requiring the physician to appear
33 before the Board for an interview and to comply with other licensing requirements. The
34 penalty may not exceed the maximum fee for a license under G.S. 90-13."

35 Section 5. G.S. 90-18 reads as rewritten:

36 **"§ 90-18. Practicing without license; practicing defined; penalties.**

37 (a) No person shall practice medicine or surgery, or any of the branches thereof,
38 nor in any case prescribe for the cure of diseases unless the person shall have been first
39 licensed and registered so to do in the manner provided in this Article, and if any person
40 shall practice medicine or surgery without being duly licensed and registered, as provided
41 in this Article, the person shall not be allowed to maintain any action to collect any fee
42 for such services. The person so practicing without license shall be guilty of a Class 4
43 ~~misdemeanor.~~ J felony.

1 (b) Any person shall be regarded as practicing medicine or surgery within the
2 meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to
3 treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat
4 any human ailment, physical or mental, or any physical injury to or deformity of another
5 person. A person who resides in any state and who, by use of any electronic or other
6 mediums, performs any of the acts described in this subsection shall be regarded as
7 practicing medicine or surgery and shall be subject to the provisions of this Article and
8 appropriate regulation by the North Carolina Medical Board. Any person who has
9 graduated from a medical college or osteopathic college in accordance with G.S. 90-9
10 and who performs medical precertification, utilization review, or evaluation of the
11 medical management of a patient and the use of resources for patient care shall be
12 regarded as practicing medicine within the meaning of this Article.

13 (c) The following shall not constitute practicing medicine or surgery as defined in
14 subsection (b) of this section:

- 15 (1) The administration of domestic or family remedies in cases of
16 emergency.
- 17 (2) The practice of dentistry by any legally licensed dentist engaged in the
18 practice of dentistry and dental surgery.
- 19 (3) The practice of pharmacy by any legally licensed pharmacist engaged in
20 the practice of pharmacy.
- 21 (4) The practice of medicine and surgery by any surgeon or physician of the
22 United States army, navy, or public health service in the discharge of his
23 official duties.
- 24 (5) The treatment of the sick or suffering by mental or spiritual means
25 without the use of any drugs or other material means.
- 26 (6) The practice of optometry by any legally licensed optometrist engaged
27 in the practice of optometry.
- 28 (7) The practice of midwifery as defined in G.S. 90-178.2.
- 29 (8) The practice of chiropody by any legally licensed chiropodist when
30 engaged in the practice of chiropody, and without the use of any drug.
- 31 (9) The practice of osteopathy by any legally licensed osteopath when
32 engaged in the practice of osteopathy as defined by law, and especially
33 G.S. 90-129.
- 34 (10) The practice of chiropractic by any legally licensed chiropractor when
35 engaged in the practice of chiropractic as defined by law, and without
36 the use of any drug or surgery.
- 37 (11) The practice of medicine or surgery by any nonregistered reputable
38 physician or surgeon who comes into this State, either in person or by
39 use of any electronic or other mediums, on an irregular basis, to consult
40 with a resident registered physician or to consult with personnel at a
41 medical school about educational or medical training. This proviso shall
42 not apply to physicians resident in a neighboring state and regularly
43 practicing in this State.

- 1 (12) Any person practicing radiology as hereinafter defined shall be deemed
2 to be engaged in the practice of medicine within the meaning of this
3 Article. 'Radiology' shall be defined as, that method of medical practice
4 in which demonstration and examination of the normal and abnormal
5 structures, parts or functions of the human body are made by use of X
6 ray. Any person shall be regarded as engaged in the practice of
7 radiology who makes or offers to make, for a consideration, a
8 demonstration or examination of a human being or a part or parts of a
9 human body by means of fluoroscopic exhibition or by the shadow
10 imagery registered with photographic materials and the use of X rays; or
11 holds himself out to diagnose or able to make or makes any
12 interpretation or explanation by word of mouth, writing or otherwise of
13 the meaning of such fluoroscopic or registered shadow imagery of any
14 part of the human body by use of X rays; or who treats any disease or
15 condition of the human body by the application of X rays or radium.
16 Nothing in this subdivision shall prevent the practice of radiology by
17 any person licensed under the provisions of Articles 2, 7, 8, and 12A of
18 this Chapter.
- 19 (13) The performance of any medical acts, tasks, and functions by a licensed
20 physician assistant at the direction or under the supervision of a
21 physician in accordance with rules adopted by the Board. This
22 subdivision shall not limit or prevent any physician from delegating to a
23 qualified person any acts, tasks, and functions that are otherwise
24 permitted by law or established by custom. The Board shall authorize
25 physician assistants licensed in this State or another state to perform
26 specific medical acts, tasks, and functions during a disaster.
- 27 (14) The practice of nursing by a registered nurse engaged in the practice of
28 nursing and the performance of acts otherwise constituting medical
29 practice by a registered nurse when performed in accordance with rules
30 and regulations developed by a joint subcommittee of the North
31 Carolina Medical Board and the Board of Nursing and adopted by both
32 boards.
- 33 (15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist
34 under the provisions of Article 25 of this Chapter.
- 35 (16) The practice of acupuncture by a licensed acupuncturist in accordance
36 with the provisions of Article 30 of this Chapter."
- 37 Section 6. G.S. 90-18.1 is amended by adding the following new subsection:
38 "(g) The provisions of G.S. 90-14 shall apply to physician assistants."
39 Section 7. This act is effective when it becomes law.