

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE DRH80294-LD-128A (04/12)**

Short Title: Abolish Health Care Discovery Prohibitions.

(Public)

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Sponsors: Representative Faison.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ABOLISH CURRENT PROHIBITIONS AGAINST DISCOVERY OF  
INFORMATION AND MATERIALS OBTAINED IN PEER REVIEW  
PROCEEDINGS FOR CERTAIN HEALTH CARE PROVIDERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-14(a)(5) reads as rewritten:

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

**SECTION 2.** G.S. 90-14(d) reads as rewritten:

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

1 Department of Health and Human Services personnel with enforcement or investigative  
2 ~~responsibilities-responsibilities, and the notice or copies of the information is subject to~~  
3 ~~discovery in a civil action."~~

4 **SECTION 3.** G.S. 90-21.22 reads as rewritten:

5 "**§ 90-21.22. Peer review agreements.**

6 (a) The North Carolina Medical Board may, under rules adopted by the Board in  
7 compliance with Chapter 150B of the General Statutes, enter into agreements with the  
8 North Carolina Medical Society and its local medical society components, and with the  
9 North Carolina Academy of Physician Assistants for the purpose of conducting peer  
10 review activities. Peer review activities to be covered by such agreements shall include  
11 investigation, review, and evaluation of records, reports, complaints, litigation and other  
12 information about the practices and practice patterns of physicians licensed by the  
13 Board, and of physician assistants approved by the Board, and shall include programs  
14 for impaired physicians and impaired physician assistants. Agreements between the  
15 Academy and the Board shall be limited to programs for impaired physicians and  
16 physician assistants and shall not include any other peer review activities.

17 (b) Peer review agreements shall include provisions for the society and for the  
18 Academy to receive relevant information from the Board and other sources, conduct the  
19 investigation and review in an expeditious manner, ~~provide assurance of confidentiality~~  
20 ~~of nonpublic information and of the review process~~, make reports of investigations and  
21 evaluations to the Board, and to do other related activities for promoting a coordinated  
22 and effective peer review process. Peer review agreements shall include provisions  
23 assuring due process. Peer review agreements shall not include provisions that prohibit  
24 the discovery in a civil action of information or materials obtained from peer review  
25 activities.

26 (c) Each society ~~which-that~~ enters a peer review agreement with the Board shall  
27 establish and maintain a program for impaired physicians licensed by the Board. The  
28 Academy, after entering a peer review agreement with the Board, shall either enter an  
29 agreement with the North Carolina Medical Society for the inclusion of physician  
30 assistants in the Society's program for impaired physicians, or shall establish and  
31 maintain the Academy's own program for impaired physician assistants. The purpose of  
32 the programs shall be to identify, review, and evaluate the ability of those physicians  
33 and physician assistants to function in their professional capacity and to provide  
34 programs for treatment and rehabilitation. The Board may provide funds for the  
35 administration of impaired physician and impaired physician assistant programs and  
36 shall adopt rules with provisions for definitions of impairment; guidelines for program  
37 elements; procedures for receipt and use of information of suspected impairment;  
38 procedures for intervention and referral; monitoring treatment, rehabilitation,  
39 post-treatment support and performance; reports of individual cases to the Board; and  
40 periodic reporting of statistical information; assurance of confidentiality of nonpublic  
41 information and of the review process-information.

42 (d) Upon investigation and review of a physician licensed by the Board, or a  
43 physician assistant approved by the Board, or upon receipt of a complaint or other  
44 information, a society ~~which-that~~ enters a peer review agreement with the Board, or the

1 Academy if it has a peer review agreement with the Board, as appropriate, shall report  
2 immediately to the Board detailed information about any physician or physician  
3 assistant licensed or approved by the Board if:

- 4 (1) The physician or physician assistant constitutes an imminent danger to  
5 the public or to himself;
- 6 (2) The physician or physician assistant refuses to cooperate with the  
7 program, refuses to submit to treatment, or is still impaired after  
8 treatment and exhibits professional incompetence; or
- 9 (3) It reasonably appears that there are other grounds for disciplinary  
10 action.

11 (e) Any confidential patient information ~~and other nonpublic information~~  
12 acquired, created, or used in good faith by the Academy or a society pursuant to this  
13 section shall remain confidential and shall not be subject to discovery or subpoena in a  
14 civil case. Any other nonpublic information acquired, created, or used in good faith by  
15 the Academy or a society pursuant to this section is subject to discovery or subpoena in  
16 a civil case. ~~No~~ A person participating in good faith in the peer review or impaired  
17 physician or impaired physician assistant programs of this section ~~shall~~ may be required  
18 in a civil case to disclose any information acquired or opinions, recommendations, or  
19 evaluations acquired or developed solely in the course of participating in any  
20 agreements pursuant to this section.

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

25 **SECTION 4.** G.S. 90-21.22A(c) reads as rewritten:

26 "(c) The proceedings of a medical review or quality assurance committee, the  
27 records and materials it produces, and the materials it considers ~~shall be confidential and~~  
28 ~~not be considered public records within the meaning of G.S. 132-1, 131E-309, or~~  
29 ~~58-2-100; and shall not be 58-2-100.~~ The proceedings of a medical review or quality  
30 assurance committee, the records and materials it produces, and the materials it  
31 considers is subject to discovery or introduction into evidence in any civil action against  
32 a provider of health care services who directly provides services and is licensed under  
33 this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General Statutes,  
34 an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or  
35 a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that  
36 is owned or operated by the State, which civil action results from matters that are the  
37 subject of evaluation and review by the committee. ~~No~~ A person who was in attendance  
38 at a meeting of the committee ~~shall~~ may be required to testify in any civil action as to  
39 any evidence or other matters produced or presented during the proceedings of the  
40 committee or as to any findings, recommendations, evaluations, opinions, or other  
41 actions of the committee or its members. ~~However, information, documents, or records~~  
42 ~~otherwise available are not immune from discovery or use in a civil action merely~~  
43 ~~because they were presented during proceedings of the committee.~~ However, any  
44 confidential patient information acquired, created, or used in good faith by the

1 committee shall remain confidential and shall not be subject to discovery or subpoena in  
2 a civil action, and no person who was in attendance at a meeting of the committee shall  
3 be required to testify in any civil action as to any evidence or other matters that would  
4 reveal confidential patient information. Documents otherwise available as public  
5 records within the meaning of G.S. 132-1 do not lose their status as public records  
6 merely because they were presented or considered during proceedings of the committee.  
7 A member of the committee may testify in a civil action ~~but cannot~~ and may be asked  
8 about the person's testimony before the committee or any opinions formed as a result of  
9 the committee hearings."

10 **SECTION 5.** G.S. 90-85.41 reads as rewritten:

11 "**§ 90-85.41. Board agreements with special peer review organizations for**  
12 **impaired pharmacy personnel.**

13 (a) The North Carolina Board of Pharmacy may, under rules adopted by the  
14 Board in compliance with Chapter 150B of the General Statutes, enter into agreements  
15 with special impaired pharmacy personnel peer review organizations. Peer review  
16 activities to be covered by such agreements shall include investigation, review and  
17 evaluation of records, reports, complaints, litigation, and other information about the  
18 practices and practice patterns of pharmacy personnel licensed or registered by the  
19 Board, as such matters may relate to impaired pharmacy personnel. Special impaired  
20 pharmacy personnel peer review organizations may include a statewide supervisory  
21 committee and various regional and local components or subgroups.

22 (b) Agreements authorized under this section shall include provisions for the  
23 impaired pharmacy personnel peer review organizations to receive relevant information  
24 from the Board and other sources, conduct any investigation, review, and evaluation in  
25 an expeditious manner, ~~provide assurance of confidentiality of nonpublic information~~  
26 ~~and of the peer review process,~~ make reports of investigations and evaluations to the  
27 Board, and to do other related activities for operating and promoting a coordinated and  
28 effective peer review process. The agreements shall include provisions assuring basic  
29 due process for pharmacy personnel that become involved. The agreements shall not  
30 include provisions that prohibit the discovery in a civil action of information or  
31 materials obtained from peer review activities.

32 (c) The impaired pharmacy personnel peer review organizations that enter into  
33 agreements with the Board shall establish and maintain a program for impaired  
34 pharmacy personnel licensed or registered by the Board for the purpose of identifying,  
35 reviewing, and evaluating the ability of those pharmacists to function as pharmacists,  
36 and pharmacy technicians to function as pharmacy technicians, and to provide programs  
37 for treatment and rehabilitation. The Board may provide funds for the administration of  
38 these impaired pharmacy personnel peer review programs. The Board shall adopt rules  
39 to apply to the operation of impaired pharmacy personnel peer review programs, with  
40 provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii)  
41 procedures for receipt and use of information of suspected impairment; (iv) procedures  
42 for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation,  
43 post treatment support, and performance; and (vi) reports of individual cases to the

1 Board; (vii) periodic reporting of statistical information; and (viii) assurance of  
2 confidentiality of nonpublic information and of the peer review process information.

3 (d) Upon investigation and review of a pharmacist licensed by the Board, or a  
4 pharmacy technician registered with the Board, or upon receipt of a complaint or other  
5 information, an impaired pharmacy personnel peer review organization that enters into a  
6 peer review agreement with the Board shall report immediately to the Board detailed  
7 information about any pharmacist licensed or pharmacy technician registered by the  
8 Board, if:

9 (1) The pharmacist or pharmacy technician constitutes an imminent  
10 danger to the public or himself or herself.

11 (2) The pharmacist or pharmacy technician refuses to cooperate with the  
12 program, refuses to submit to treatment, or is still impaired after  
13 treatment and exhibits professional incompetence.

14 (3) It reasonably appears that there are other grounds for disciplinary  
15 action.

16 (e) Any confidential patient information and other nonpublic information  
17 acquired, created, or used in good faith by an impaired pharmacy personnel peer review  
18 organization pursuant to this section shall remain confidential and shall not be subject to  
19 discovery or subpoena in a civil case. Any other nonpublic information acquired,  
20 created, or used in good faith by an impaired pharmacy personnel peer review  
21 organization pursuant to this section is subject to discovery or subpoena in a civil case.  
22 ~~No~~ A person participating in good faith in an impaired pharmacy personnel peer review  
23 program developed under this section ~~shall~~ may be required in a civil case to disclose  
24 any information (including opinions, recommendations, or evaluations) acquired or  
25 developed solely in the course of participating in the program.

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

31 **SECTION 6.** G.S. 131E-95 reads as rewritten:

32 "**§ 131E-95. Medical review committee.**

33 (a) A member of a duly appointed medical review committee who acts without  
34 malice or fraud shall not be subject to liability for damages in any civil action on  
35 account of any act, statement or proceeding undertaken, made, or performed within the  
36 scope of the functions of the committee.

37 (b) The proceedings of a medical review committee, the records and materials it  
38 produces and the materials it considers ~~shall be confidential and not considered~~ are not  
39 public records within the meaning of G.S. 132-1, " 'Public records' defined", and shall  
40 ~~not be~~ but are subject to discovery or introduction into evidence in any civil action  
41 against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the  
42 General Statutes, or a provider of professional health services which results from  
43 matters which are the subject of evaluation and review by the committee. ~~No~~ A person  
44 who was in attendance at a meeting of the committee ~~shall~~ may be required to testify in

1 any civil action as to any evidence or other matters produced or presented during the  
2 proceedings of the committee or as to any findings, recommendations, evaluations,  
3 opinions, or other actions of the committee or its members. ~~However, information,~~  
4 ~~documents, or records otherwise available are not immune from discovery or use in a~~  
5 ~~civil action merely because they were presented during proceedings of the committee.~~  
6 However, any confidential patient information acquired, created, or used in good faith  
7 by the medical review committee shall remain confidential and shall not be subject to  
8 discovery or subpoena in a civil action, and no person who was in attendance at a  
9 meeting of the committee shall be required to testify in any civil action as to any  
10 evidence or other matters that would reveal confidential patient information. Documents  
11 otherwise available as public records within the meaning of G.S. 132-1 do not lose their  
12 status as public records merely because they were presented or considered during  
13 proceedings of the committee. A member of the committee or a person who testifies  
14 before the committee may testify in a civil action ~~but cannot~~ and may be asked about the  
15 person's testimony before the committee or any opinions formed as a result of the  
16 committee hearings.

17 (c) Information that is confidential and is not subject to discovery or use in civil  
18 actions under this section may be released to a professional standards review  
19 organization that performs any accreditation or certification including the Joint  
20 Commission on Accreditation of Healthcare Organizations. Information released under  
21 this subsection shall be limited to that which is reasonably necessary and relevant to the  
22 standards review organization's determination to grant or continue accreditation or  
23 certification. Information released under this subsection retains its confidentiality and is  
24 not subject to discovery or use in any civil actions as provided under this section, and  
25 the standards review organization shall keep the information confidential subject to this  
26 section."

27 **SECTION 7.** This act becomes effective October 1, 2005, and applies to  
28 actions filed on or after that date.