

1 ~~responsibilities.~~responsibilities, and the notice or copies of the information is subject to
2 discovery in a civil action."

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

4 "**§ 90-21.22. Peer review agreements.**

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

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

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

41 (d) Upon investigation and review of a physician licensed by the Board, or a
42 physician assistant approved by the Board, or upon receipt of a complaint or other
43 information, a society ~~which that~~ enters a peer review agreement with the Board, or the
44 Academy if it has a peer review agreement with the Board, as appropriate, shall report

1 immediately to the Board detailed information about any physician or physician
2 assistant licensed or approved by the Board if:

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

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

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

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

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

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

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

10 "**§ 90-85.41. Board agreements with special peer review organizations for**
11 **impaired pharmacy personnel.**

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

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

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

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

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

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

12 (3) It reasonably appears that there are other grounds for disciplinary
13 action.

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

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

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

30 **"§ 131E-95. Medical review committee.**

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

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

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

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

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