

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE DRH10408-RUqq-39 (03/20)**

Short Title: Strengthen NC Medical Board. (Public)

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Sponsors: Representatives L. Allen, Nye, Wright, England (Primary Sponsors);  
Ross, Current, Fisher, Tucker, and Insko.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE AUTHORITY OF THE NORTH CAROLINA  
MEDICAL BOARD TO DISCIPLINE PHYSICIANS AND CERTAIN OTHERS  
AUTHORIZED TO PRACTICE MEDICINE IN ORDER TO IMPROVE PATIENT  
SAFETY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON  
HEALTH CARE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-14 reads as rewritten:

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

(a) The Board shall have the power to place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke a license or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct.
- (2) Producing or attempting to produce an abortion contrary to law.
- (3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with an application for a license.
- (4) Repealed by Session Laws 1977, c. 838, s. 3.
- (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

1 authorized to require a physician licensed by it to submit to a mental or  
2 physical examination by physicians designated by the Board before or  
3 after charges may be presented against the physician, and the results of  
4 the examination shall be admissible in evidence in a hearing before the  
5 Board.

- 6 (6) Unprofessional conduct, including, but not limited to, departure from,  
7 or the failure to conform to, the standards of acceptable and prevailing  
8 medical practice, or the ethics of the medical profession, irrespective  
9 of whether or not a patient is injured thereby, or the committing of any  
10 act contrary to honesty, justice, or good morals, whether the same is  
11 committed in the course of the physician's practice or otherwise, and  
12 whether committed within or without North Carolina. The Board shall  
13 not revoke the license of or deny a license to a person solely because  
14 of that person's practice of a therapy that is experimental,  
15 nontraditional, or that departs from acceptable and prevailing medical  
16 practices unless, by competent evidence, the Board can establish that  
17 the treatment has a safety risk greater than the prevailing treatment or  
18 that the treatment is generally not effective.
- 19 (7) Conviction in any court of a crime involving moral turpitude, or the  
20 violation of a law involving the practice of medicine, or a conviction  
21 of a felony; provided that a felony conviction shall be treated as  
22 provided in subsection (c) of this section.
- 23 (8) By false representations has obtained or attempted to obtain practice,  
24 money or anything of value.
- 25 (9) Has advertised or publicly professed to treat human ailments under a  
26 system or school of treatment or practice other than that for which the  
27 physician has been educated.
- 28 (10) Adjudication of mental incompetency, which shall automatically  
29 suspend a license unless the Board orders otherwise.
- 30 (11) Lack of professional competence to practice medicine with a  
31 reasonable degree of skill and safety for patients. In this connection the  
32 Board may consider repeated acts of a physician indicating the  
33 physician's failure to properly treat a patient. The Board may, upon  
34 reasonable grounds, require a physician to submit to inquiries or  
35 examinations, written or oral, ~~by members of the Board or by other~~  
36 ~~physicians licensed to practice medicine in this State,~~ as the Board  
37 deems necessary to determine the professional qualifications of such  
38 licensee. In order to annul, suspend, deny, or revoke a license of an  
39 accused person, the Board shall find by the greater weight of the  
40 evidence that the care provided was not in accordance with the  
41 standards of practice for the procedures or treatments administered.
- 42 (11a) Not actively practiced medicine or practiced as a physician assistant,  
43 or having not maintained continued competency, as determined by the  
44 Board, for the two-year period immediately preceding the filing of an

1           application for an initial license from the Board or a request, petition,  
2           motion, or application to reactivate an inactive, suspended, or revoked  
3           license previously issued by the Board. The Board is authorized to  
4           adopt any rules or regulations it deems necessary to carry out the  
5           provisions of this subdivision.

6           (12) Promotion of the sale of drugs, devices, appliances or goods for a  
7           patient, or providing services to a patient, in such a manner as to  
8           exploit the patient, and upon a finding of the exploitation, the Board  
9           may order restitution be made to the payer of the bill, whether the  
10          patient or the insurer, by the physician; provided that a determination  
11          of the amount of restitution shall be based on credible testimony in the  
12          record.

13          (13) Having a license to practice medicine or the authority to practice  
14          medicine revoked, suspended, restricted, or acted against or having a  
15          license to practice medicine denied by the licensing authority of any  
16          jurisdiction. For purposes of this subdivision, the licensing authority's  
17          acceptance of a license to practice medicine voluntarily relinquished  
18          by a physician or relinquished by stipulation, consent order, or other  
19          settlement in response to or in anticipation of the filing of  
20          administrative charges against the physician's license, is an action  
21          against a license to practice medicine.

22          (14) The failure to respond, within a reasonable period of time and in a  
23          reasonable manner as determined by the Board, to inquiries from the  
24          Board concerning any matter affecting the license to practice  
25          medicine.

26          (15) The failure to complete an amount not to exceed 150 hours of  
27          continuing medical education during any three consecutive calendar  
28          years pursuant to rules adopted by the Board.

29          ~~For any of the foregoing reasons, the Board may deny the issuance of a license to an~~  
30          ~~applicant or revoke a license issued to a physician, may suspend such a license for a~~  
31          ~~period of time, and may impose conditions upon the continued practice after such period~~  
32          ~~of suspension as the Board may deem advisable, may limit the accused physician's~~  
33          ~~practice of medicine with respect to the extent, nature or location of the physician's~~  
34          ~~practice as the Board deems advisable. The Board may, in its discretion and upon such~~  
35          ~~terms and conditions and for such period of time as it may prescribe, restore a license so~~  
36          ~~revoked or rescinded, otherwise acted upon, except that no license that has been revoked~~  
37          ~~shall be restored for a period of two years following the date of revocation.~~

38          (b) The Board shall refer to the ~~State Medical Society Physician Health and~~  
39          ~~Effectiveness Committee North Carolina Physicians Health Program~~ all physicians and  
40          ~~physician assistants~~ whose health and effectiveness have been significantly impaired by  
41          alcohol, drug addiction or mental illness. Sexual misconduct shall not constitute mental  
42          illness for purposes of this subsection. A physician or physician assistant shall be  
43          limited to two referrals to the North Carolina Physicians Health Program except upon  
44          the suspension or revocation of the physician's or physician assistant's license.

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

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

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

22 (f) A person, partnership, firm, corporation, association, authority, or other entity  
23 acting in good faith without fraud or malice shall be immune from civil liability for (i)  
24 ~~reporting or reporting, investigating, or providing an expert medical opinion to the~~  
25 Board regarding the acts or omissions of a licensee or applicant that violate the  
26 provisions of subsection (a) of this section or any other provision of law relating to the  
27 fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting  
28 proceedings against a licensee or applicant if a complaint is made or action is taken in  
29 good faith without fraud or malice. A person shall not be held liable in any civil  
30 proceeding for testifying before the Board in good faith and without fraud or malice in  
31 any proceeding involving a violation of subsection (a) of this section or any other law  
32 relating to the fitness of an applicant or licensee to practice medicine, or for making a  
33 recommendation to the Board in the nature of peer review, in good faith and without  
34 fraud and malice.

35 (g) Prior to taking action against any licensee who practices integrative medicine  
36 for providing care not in accordance with the standards of practice for the procedures or  
37 treatments administered, the Board shall consult with a licensee who practices  
38 integrative medicine."

39 **SECTION 2.** G.S. 90-14.5 reads as rewritten:

40 "**§ 90-14.5. Use of ~~trial examiner or~~ hearing committee and depositions.**

41 ~~Where the licensee requests that the hearing herein provided for be held by the~~  
42 ~~Board in a county other than the county designated for the holding of the meeting of the~~  
43 ~~Board at which the matter is to be heard, the Board may designate in writing one or~~  
44 ~~more of its members to conduct the hearing as a trial examiner or trial committee, to~~

1 take evidence and report a written transcript thereof to the Board at a meeting where a  
2 majority of the members are present and participating in the decision. Evidence and  
3 testimony may also be presented at such hearings and to the Board in the form of  
4 depositions taken before any person designated in writing by the Board for such purpose  
5 or before any person authorized to administer oaths, in accordance with the procedure  
6 for the taking of depositions in civil actions in the superior court.

7 (a) The Board, in its discretion, may designate in writing three or more of its  
8 members to conduct hearings as a hearing committee to take evidence.

9 (b) Evidence and testimony may be presented at hearings before the Board or a  
10 hearing committee in the form of depositions before any person authorized to administer  
11 oaths in accordance with the procedure for the taking of depositions in civil actions in  
12 the superior court.

13 (c) The hearing committee shall submit a recommended decision that contains  
14 findings of fact and conclusions of law to the Board. Before the Board makes a final  
15 decision, it shall give each party an opportunity to file written exceptions to the  
16 recommended decision made by the hearing committee and to present oral arguments to  
17 the Board. A quorum of the Board will issue a final decision."

18 **SECTION 3.** G.S. 90-14.13 reads as rewritten:

19 "**§ 90-14.13. Reports of disciplinary action by health care institutions; reports of**  
20 **professional liability insurance awards or settlements; immunity from**  
21 **liability.**

22 (a) The chief administrative officer of every licensed hospital or other health care  
23 institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,  
24 preferred providers, as defined in G.S. 58-50-56, and all other provider organizations  
25 that issue credentials to physicians who practice medicine in the State, shall, after  
26 consultation with the chief of staff of that institution, report to the Board any revocation,  
27 suspension, or limitation of a physician's privileges to practice in that  
28 ~~institution.~~ institution within 30 days, whether or not the action has been appealed. A  
29 hospital is not required to report the suspension of a physician's privileges for failure to  
30 timely complete medical records unless the suspension is the third within the calendar  
31 year for failure to timely complete medical records. Upon reporting the third  
32 suspension, the hospital shall also report the previous two suspensions. The institution  
33 shall also report to the Board resignations from practice in that institution by persons  
34 licensed under this Article. The Board shall report all violations of this subsection  
35 known to it to the licensing agency for the institution involved. The licensing agency for  
36 the institution involved is authorized to order the payment of a monetary penalty of not  
37 less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000),  
38 for each violation, from any institution that fails to make a report as required.

39 (b) Any licensed physician who does not possess professional liability insurance  
40 shall report to the Board any award of damages or any settlement of any malpractice  
41 complaint affecting his or her practice within 30 days of the award or settlement.

42 (c) The chief administrative officer of each insurance company providing  
43 professional liability insurance for physicians who practice medicine in North Carolina,  
44 the administrative officer of the Liability Insurance Trust Fund Council created by

1 G.S. 116-220, and the administrative officer of any trust fund or other fund operated or  
2 administered by a hospital authority, group, or provider shall report to the Board within  
3 30 days:

- 4 (1) Any award of damages or settlement of any claim or lawsuit affecting  
5 or involving affecting, involving, or in any way implicating the care  
6 provided by a physician—physician, physician assistant, or nurse  
7 practitioner it insures, or  
8 (2) Any cancellation or nonrenewal of its professional liability coverage of  
9 a physician, if the cancellation or nonrenewal was for cause.

10 (d) ~~The Board may request details about any action and the officers shall~~  
11 ~~promptly furnish the requested information. The reports required by this section are~~  
12 ~~privileged and shall not be open to the public.~~ The Board shall report all violations of  
13 this paragraph to the Commissioner of Insurance. The Commissioner of Insurance is  
14 authorized to order the payment of a monetary penalty of not less than five hundred  
15 dollars (\$500.00) nor more than one thousand dollars (\$1,000), for each violation, from  
16 any person or entity that fails to make a report as required.

17 (e) The Board may request details about any action covered by this section, and  
18 the officers shall promptly furnish the requested information. The reports required by  
19 this section are privileged and shall not be open to the public. Any person making a  
20 report required by this section shall be immune from any criminal prosecution or civil  
21 liability resulting therefrom unless such person knew the report was false or acted in  
22 reckless disregard of whether the report was false."

23 **SECTION 4.(a)** The subcommittee of the North Carolina Medical Board  
24 and the subcommittee of the Board of Nursing, directed to work jointly to develop rules  
25 to govern the performance of medical acts by registered nurses pursuant to G.S. 90-6(b),  
26 shall examine adding the provisions of G.S. 90-14(a) to their joint rules that set forth  
27 grounds for action against a registered nurse's approval to perform medical acts.

28 **SECTION 4.(b)** The subcommittee of the North Carolina Medical Board  
29 and the subcommittee of the North Carolina Board of Pharmacy, directed to work  
30 jointly to develop rules to govern the performance of medical acts by clinical  
31 pharmacist practitioners pursuant to G.S. 90-6(c), shall examine adding the provisions  
32 of G.S. 90-14(a) to the joint rules that set forth grounds for action against a clinical  
33 pharmacist practitioner's approval to perform medical acts.

34 **SECTION 4.(c)** The North Carolina Medical Board, the Board of Nursing,  
35 and the North Carolina Pharmacy Board shall report to the Chairs of the House  
36 Committee on Health, the Senate Committee on Health Care, the House Select  
37 Committee on Health Care, and the Subcommittee on Patient Safety, Quality and  
38 Accountability of the House Select Committee on Health Care on the adoption of the  
39 provisions of G.S. 90-14(a) as part of the joint rules governing the practice of medical  
40 acts for nurse practitioners and clinical pharmacist practitioners. The boards shall file  
41 their reports no later than August 1, 2006.

42 **SECTION 5.** Section 4 of this act is effective when it becomes law. The  
43 remainder of this act becomes effective October 1, 2006. Section 1 applies to acts or  
44 omissions that occur on or after the effective date. Section 2 applies to hearings held on

- 1 or after the effective date. Section 3 applies to awards entered or settlements entered
- 2 into on or after the effective date.