

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 2021

Short Title: Strengthen NC Medical Board. (Public)

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

Referred to: Health.

May 17, 2006

A BILL TO BE ENTITLED

1 AN ACT TO STRENGTHEN THE AUTHORITY OF THE NORTH CAROLINA
2 MEDICAL BOARD TO DISCIPLINE PHYSICIANS AND CERTAIN OTHERS
3 AUTHORIZED TO PRACTICE MEDICINE IN ORDER TO IMPROVE PATIENT
4 SAFETY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON
5 HEALTH CARE.
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 90-14. Revocation, suspension, annulment or denial of license.**

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

- 17 (1) Immoral or dishonorable conduct.
18 (2) Producing or attempting to produce an abortion contrary to law.
19 (3) Made false statements or representations to the Board, or who has
20 willfully concealed from the Board material information in connection
21 with an application for a license.
22 (4) Repealed by Session Laws 1977, c. 838, s. 3.
23 (5) Being unable to practice medicine with reasonable skill and safety to
24 patients by reason of illness, drunkenness, excessive use of alcohol,
25 drugs, chemicals, or any other type of material or by reason of any
26 physical or mental abnormality. The Board is empowered and
27 authorized to require a physician licensed by it to submit to a mental or
28 physical examination by physicians designated by the Board before or

1 after charges may be presented against the physician, and the results of
2 the examination shall be admissible in evidence in a hearing before the
3 Board.

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

1 license previously issued by the Board. The Board is authorized to
2 adopt any rules or regulations it deems necessary to carry out the
3 provisions of this subdivision.

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, and upon a finding of the exploitation, the Board
7 may order restitution be made to the payer of the bill, whether the
8 patient or the insurer, by the physician; provided that a determination
9 of the amount of restitution shall be based on credible testimony in the
10 record.

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

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

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

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

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

43 (c) A felony conviction shall result in the automatic revocation of a license
44 issued by the Board, unless the Board orders otherwise or receives a request for a

1 hearing from the person within 60 days of receiving notice from the Board, after the
2 conviction, of the provisions of this subsection. If the Board receives a timely request
3 for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

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

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

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

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

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

38 "**§ 90-14.5. Use of trial examiner or hearing committee and depositions.**

39 ~~Where the licensee requests that the hearing herein provided for be held by the~~
40 ~~Board in a county other than the county designated for the holding of the meeting of the~~
41 ~~Board at which the matter is to be heard, the Board may designate in writing one or~~
42 ~~more of its members to conduct the hearing as a trial examiner or trial committee, to~~
43 ~~take evidence and report a written transcript thereof to the Board at a meeting where a~~
44 ~~majority of the members are present and participating in the decision. Evidence and~~

1 testimony may also be presented at such hearings and to the Board in the form of
2 depositions taken before any person designated in writing by the Board for such purpose
3 or before any person authorized to administer oaths, in accordance with the procedure
4 for the taking of depositions in civil actions in the superior court.

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

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

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

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

17 "**§ 90-14.13. Reports of disciplinary action by health care institutions; reports of**
18 **professional liability insurance awards or settlements; immunity from**
19 **liability.**

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

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

40 (c) The chief administrative officer of each insurance company providing
41 professional liability insurance for physicians who practice medicine in North Carolina,
42 the administrative officer of the Liability Insurance Trust Fund Council created by
43 G.S. 116-220, and the administrative officer of any trust fund or other fund operated or

1 administered by a hospital authority, group, or provider shall report to the Board within
2 30 days:

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

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

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

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

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

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

41 **SECTION 5.** Section 4 of this act is effective when it becomes law. The
42 remainder of this act becomes effective October 1, 2006. Section 1 applies to acts or
43 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.