

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1092

Short Title: NC Medical Board Membership Reforms/Reports. (Public)

Sponsors: Senators Holloman; Berger of Franklin, Malone, and Shaw.

Referred to: Health Care.

March 24, 2005

A BILL TO BE ENTITLED

1 AN ACT TO CHANGE THE LAWS PERTAINING TO THE APPOINTMENT OF
2 CERTAIN MEMBERS TO THE NORTH CAROLINA MEDICAL BOARD IN
3 ORDER TO ESTABLISH A NEW PROCESS WHEREBY CERTAIN MEMBERS
4 ARE ELECTED TO SERVE ON THE BOARD AND TO AMEND REPORTING
5 REQUIREMENTS UNDER THE LAWS REGULATING THE PRACTICE OF
6 MEDICINE.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 90-2 reads as rewritten:

10 **"§ 90-2. Medical Board.**

11 (a) There is established the North Carolina Medical Board to regulate the
12 practice of medicine and surgery for the benefit and protection of the people of North
13 Carolina. The Board shall consist of 12 members.

14 (1) Seven of the members shall be duly licensed physicians elected ~~and~~
15 ~~nominated to the Governor by the North Carolina Medical~~
16 ~~Society pursuant to G.S. 90-3A.~~

17 (2) Of the remaining five members, all to be appointed by the Governor,
18 one shall be a duly licensed physician who is a doctor of osteopathy or
19 a full-time faculty member of one of the medical schools in North
20 Carolina who utilizes integrative medicine in that person's clinical
21 practice or a member of The Old North State Medical Society, three
22 shall be public members and one shall be a physician assistant as
23 defined in G.S. 90-18.1 or a nurse practitioner as defined in
24 G.S. 90-18.2. A public member shall not be a health care provider nor
25 the spouse of a health care provider. For purposes of board
26 membership, "health care provider" means any licensed health care
27 professional and any agent or employee of any health care institution,
28 health care insurer, health care professional school, or a member of
29 any allied health profession. For purposes of this section, a person

1 enrolled in a program to prepare him to be a licensed health care
2 professional or an allied health professional shall be deemed a health
3 care provider. For purposes of this section, any person with significant
4 financial interest in a health service or profession is not a public
5 member.

6 (a1) Each appointing and ~~nominating~~ electing authority shall endeavor to see,
7 insofar as possible, that its appointees and ~~nominees~~ elected members to the Board
8 reflect the composition of the State with regard to gender, ethnic, racial, and age
9 composition.

10 (b) No member shall serve more than two complete consecutive three-year terms,
11 except that each member shall serve until a successor is chosen or elected and qualifies.

12 (c) Repealed by Session Laws 2003-366, s. 1, effective October 1, 2003.

13 (d) Any member of the Board may be removed from office by the Governor for
14 good cause shown. Any vacancy in the physician membership of the Board shall be
15 filled for the period of the unexpired term ~~by the Governor from a list of physicians~~
16 ~~submitted by the North Carolina Medical Society Executive Council.~~ pursuant to
17 G.S. 90-3A. Any vacancy in the public, physician assistant, or nurse practitioner
18 membership of the Board shall be filled by the Governor for the unexpired term.

19 (e) The North Carolina Medical Board ~~shall have the power to may~~ acquire, hold,
20 rent, encumber, alienate, and otherwise deal with real property in the same manner as
21 any private person or corporation, subject only to approval of the Governor and the
22 Council of State as to the acquisition, rental, encumbering, leasing, and sale of real
23 property. Collateral pledged by the Board for an encumbrance is limited to the assets,
24 income, and revenues of the Board."

25 **SECTION 2.** G.S. 90-3 is repealed.

26 **SECTION 3.** Article 1 of Chapter 90 of the General Statutes is amended by
27 adding the following new section to read:

28 **"§ 90-3A. Election of physician members of the Board.**

29 (a) Physician members of the Board shall be elected as provided in this section in
30 an election where every person licensed to practice medicine in this State and residing
31 or practicing in this State is entitled to vote. Any physician member vacancy occurring
32 on the Board shall be filled by a majority vote of the remaining physician members of
33 the Board to serve until the next regular election conducted by the Board, at which time
34 the vacancy shall be filled by the election process provided for in this section. No
35 physician shall be nominated for or elected to membership on the Board unless, at the
36 time of the nomination or election, that person is licensed to practice medicine in this
37 State and is actually engaged in the practice of medicine.

38 (b) Nominations and elections of physician members of the Board shall be as
39 follows:

40 (1) An election shall be held each year to elect successors to those
41 members whose terms are expiring in the year of the election, each
42 successor to take office on the first day of August following the
43 election and to hold office for a term of three years and until a
44 successor is elected and qualified. However, if in any year the election

1 of the members of the Board for that year shall not have been
2 completed by August 1 of that year, then those members elected that
3 year shall take office immediately after the completion of the election
4 and shall hold office until the first of August of the third year
5 thereafter and until their successors are elected and qualified.

6 (2) Every physician with a current North Carolina license residing or
7 practicing in this State shall be eligible to vote in elections of
8 physicians to the Board. Holding a license to practice medicine in this
9 State shall constitute registration to vote in the elections. The list of
10 licensed physicians shall constitute the registration list for elections to
11 the appropriate seats on the Board.

12 (3) All elections shall be conducted by the Board, which is hereby
13 constituted the Board of Physician Elections. If a member of the Board
14 whose position is to be filled at any election is nominated to succeed
15 himself or herself, and the member does not withdraw his or her name,
16 the member shall be disqualified to serve as a member of the Board of
17 Physician Elections for that election and the remaining members of the
18 Board of Physician Elections shall proceed and function without that
19 member's participation.

20 (4) Nomination of physicians for election shall be made to the Board of
21 Physician Elections by a written petition signed by not less than 10
22 physicians licensed to practice medicine in North Carolina and
23 residing or practicing in this State. The petitions shall be filed with the
24 Board of Physician Elections after January 1 of the year in which the
25 election is to be held and on or before midnight of May 20 of that year
26 or earlier, as may be set by the Board of Physician Elections. However,
27 at least 10 days' notice of the earlier date shall be given to all
28 physicians qualified to sign a petition of nomination. The Board of
29 Physician Elections shall, before preparing ballots, notify all persons
30 who have been duly nominated of their nomination.

31 (5) Any person who is nominated as provided in subdivision (4) of this
32 subsection may withdraw his or her name by written notice delivered
33 to the Board of Physician Elections or its designated secretary at any
34 time before the closing of the polls in any election.

35 (6) Following the close of nominations, ballots shall be prepared in
36 accordance with rules adopted by the Board of Physician Elections,
37 containing the names of all nominees in alphabetical order. Each ballot
38 shall have the method of identification and instructions and
39 requirements printed on the ballot, as prescribed by the Board of
40 Physician Elections. At a time fixed by the Board of Physician
41 Elections, a ballot and a return official envelope addressed to the
42 Board of Physician Elections shall be mailed to each person entitled to
43 vote in the election. The envelope shall also contain notice by the
44 Board of Physician Elections designating the latest day and hour for

1 return mailing and any other items the Board of Physician Elections
2 deems necessary. The envelope shall bear a serial number and shall
3 have printed on the left portion of its face the following:

4 'Serial No. of Envelope

5 Signature of Voter

6 Address of Voter

7
8 (Note: The enclosed ballot is not valid unless the signature of the
9 voter is on this envelope.)'

10 The Board of Physician Elections may print, stamp, or write any
11 additional notice on the envelope as it deems necessary. No ballot shall
12 be valid or be counted in an election unless, within the time provided
13 in subdivision (7) of this subsection, the ballot has been delivered to
14 the Board of Physician Elections by hand or by mail and is sealed. The
15 Board of Physician Elections may, by rule, make provision for
16 replacement of lost or destroyed envelopes or ballots upon making
17 proper provisions to safeguard against abuse.

18 (7) The date and hour fixed by the Board of Physician Elections as the
19 latest time for delivery by hand or mailing of the return ballots shall be
20 on or after 10 days following the mailing of the envelopes and ballots
21 to the voters.

22 (8) The ballots shall be canvassed by the Board of Physician Elections
23 beginning at noon on a day and at a place set by the Board of
24 Physician Elections and announced by the Board of Physician
25 Elections in the notice accompanying the ballots and envelopes sent to
26 the voters. The date canvassing the ballots shall be no later than four
27 days after the date fixed by the Board of Physician Elections for
28 closing the ballots. The canvassing shall be made publicly and any
29 licensed physicians may be present. Once the Board of Physician
30 Elections is ready to count the ballots, the envelopes shall be displayed
31 to the persons present, and an opportunity shall be given to any person
32 present to challenge the qualification of the voter whose signature
33 appears on the envelope or to challenge the validity of the envelope.
34 Any envelope containing a ballot that is being challenged shall be set
35 aside, and the challenge shall be heard at a time to be determined by
36 the Board of Physician Elections. After the envelopes have been
37 displayed, those not challenged shall be opened and the ballots
38 extracted in a manner that does not show the marking on the ballots,
39 and each ballot shall be separated from its envelope. Each ballot shall
40 be presented for counting, displayed and, if not challenged, counted.
41 No ballot shall be rejected for any technical error unless it is
42 impossible to determine the voter's choice on the ballot. During the
43 counting, challenge may be made to any ballot only if defects appear
44 on the face of the ballot. The Board of Physician Elections may review

1 the challenge immediately when it is made or it may place the ballot
2 aside and determine the challenge after all the other ballots have been
3 counted.

4 (9) After the ballots have been counted, results of the voting shall be
5 handled in the following manner:

6 a. Where there is more than one nominee eligible for election to a
7 single seat:

8 1. The nominee receiving a majority of the votes cast shall
9 be declared elected.

10 2. If no nominee receives a majority, a second election
11 shall be conducted between the two nominees who
12 receive the highest numbers of votes.

13 b. Where there are more than two nominees eligible for election to
14 either of two seats at issue in the same election:

15 1. A majority shall be any excess of the sum ascertained by
16 dividing the total number of votes cast for all nominees
17 by four.

18 2. If more than two nominees receive a majority of the
19 votes cast, the two receiving the highest numbers of
20 votes shall be declared elected.

21 3. If only one of the nominees receives a majority, that
22 nominee shall be declared elected, and the Board of
23 Physician Elections shall order a second election to be
24 conducted between the two nominees receiving the next
25 to highest numbers of votes.

26 4. If no nominee receives a majority, a second election
27 shall be conducted among the four candidates receiving
28 the highest numbers of votes. At the second election, the
29 two nominees receiving the highest numbers of votes
30 shall be declared elected.

31 c. In any election, if there is a tie between candidates, the tie shall
32 be resolved by the vote of the Board of Physician Elections.
33 However, if a member of the Board of Physician Elections is
34 one of the candidates in the tie, that member may not participate
35 in the vote.

36 (10) If a second election is required, the same procedure shall be followed
37 as provided in subdivision (9) of this subsection, and the election shall
38 be subject to the same limitations and requirements, except that if the
39 second election is between four candidates, then the two receiving the
40 highest numbers of votes shall be declared elected.

41 (11) In the event of death or withdrawal of a candidate before the closing of
42 the polls in any election, he or she shall be eliminated from the contest
43 and any votes cast for him or her shall be disregarded. If, at any time
44 after the closing of the period for nominations because of lack of plural

1 or proper nominations, death, withdrawal, disqualification, or any
2 other reason, there are only two candidates for two positions, they shall
3 be declared elected by the Board of Physician Elections. If there is
4 only one candidate for one position, that candidate shall be declared
5 elected by the Board of Physician Elections. If there are no candidates
6 for two positions, the two positions shall be filled by the Board. If
7 there is no candidate for one position, the position shall be filled by the
8 Board. If there is one candidate for two positions, the one candidate
9 shall be declared elected by the Board of Physician Elections, and one
10 qualified physician shall be elected to the other position by the Board.
11 In the event of the death or withdrawal of a candidate after election but
12 before taking office, the position to which that candidate was elected
13 shall be filled by the Board. In the event of the death or resignation of
14 a member of the Board after taking office, the Board shall fill that
15 position for the unexpired term.

16 (12) An official list of licensed physicians shall be kept at an office of the
17 Board of Physician Elections and shall be open to the inspection of any
18 person at all times. Any licensed physician may make copies of the
19 list. As soon as the voting in any election begins, a list of the licensed
20 physicians shall be posted in the office of the Board of Physician
21 Elections, and the list shall be marked to show whether a
22 ballot-enclosing envelope has been returned.

23 (13) All envelopes enclosing ballots and all ballots shall be preserved and
24 held separately by the Board of Physician Elections for a period of six
25 months following the close of an election.

26 (14) A physician may appeal any decision of the Board of Physician
27 Elections relating to the conduct of the elections pursuant to Chapter
28 150B of the General Statutes.

29 (15) The Board of Physician Elections may adopt rules regarding the
30 conduct of these elections, except that the rules shall not conflict with
31 the provisions of this section. The Board of Physician Elections shall
32 notify each licensed physician residing in this State of the rules
33 adopted by the Board of Physician Elections.

34 (c) In addition to the fees authorized under G.S. 90-15, the Board may collect
35 reasonable charges under G.S. 90-15 to recover expenses and costs associated with
36 conducting the elections pursuant to this section."

37 **SECTION 4.** G.S. 90-14(b) reads as rewritten:

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

1 **SECTION 5.** G.S. 90-14.13 reads as rewritten:

2 "**§ 90-14.13. Reports of disciplinary action by health care institutions; immunity**
3 **from liability.**

4 **(a)** The chief administrative officer of every licensed hospital or other health care
5 institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,
6 preferred providers, as defined in G.S. 58-50-56, and all other provider organizations
7 that issue credentials to physicians who practice medicine in the State, shall, after
8 consultation with the chief of staff of that institution, report to the Board any revocation,
9 suspension, or limitation of a physician's privileges to practice in that institution. A
10 hospital is not required to report the suspension of a physician's privileges for failure to
11 timely complete medical records unless the suspension is the third within the calendar
12 year for failure to timely complete medical records. Upon reporting the third
13 suspension, the hospital shall also report the previous two suspensions. The institution
14 shall also report to the Board resignations from practice in that institution by persons
15 licensed under this Article. The Board shall report all violations of this subsection
16 known to it to the licensing agency for the institution involved.

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

20 **(c)** The chief administrative officer of each insurance company providing
21 professional liability insurance for physicians who practice medicine in North Carolina,
22 the administrative officer of the Liability Insurance Trust Fund Council created by
23 G.S. 116-220, and the administrative officer of any trust fund operated by a hospital
24 authority, group, or provider shall report to the Board within 30 days:

- 25 (1) Any award of damages or settlement affecting or involving a physician
26 it insures, or
27 (2) Any cancellation or nonrenewal of its professional liability coverage of
28 a physician, if the cancellation or nonrenewal was for cause.

29 **(d)** The Board may request details about any action and the officers shall
30 promptly furnish the requested information. The reports required by this section are
31 privileged and shall not be open to the ~~public~~-public, except as provided in this section.
32 The Board shall report all violations of this paragraph to the Commissioner of
33 Insurance.

34 **(e)** Within 30 days of receiving a report of a settlement of a malpractice claim
35 affecting or involving a physician, the Board shall publish on its public access Web site,
36 without identifying the physician by name, the following information:

- 37 (1) A unique identifying number for the physician to be used in all
38 subsequent reports pursuant to this section.
39 (2) The date of the settlement.
40 (3) The date the settlement was reported to the Board.
41 (4) The amount of the settlement.
42 (5) The physician's medical specialty.

1 (6) The total number of malpractice settlements paid on behalf of that
2 physician in the 15-year period before the date of the present
3 settlement.

4 Upon receiving a report of an award of damages or settlement affecting or involving a
5 physician, the Board shall determine whether it has received two or more other similar
6 reports regarding the physician within 15 years of the most recent report. If so, within
7 90 days of receiving the most recent report, the Board shall conduct an investigation to
8 determine whether disciplinary action against the physician or other remedial measures
9 are warranted and shall publish on its public access Web site the results of its
10 investigation, including the name of the physician, the date, and amount of the most
11 recent award of damages or settlement affecting or involving the physician, the date,
12 and amount of each other similar award of damages or settlement reported to the Board
13 within 15 years of the most recent report, and a description of the Board's investigation
14 and shall report to the General Assembly describing the Board's response in the
15 preceding year to reports of physicians with a history of multiple awards of damages
16 and settlements under this subsection.

17 (f) Any person making a report required by this section shall be immune from
18 any criminal prosecution or civil liability resulting therefrom unless such person knew
19 the report was false or acted in reckless disregard of whether the report was false.

20 (g) The Board shall provide to the public information in a summary fashion by
21 individual physicians on any award of damages or any settlement of any medical
22 malpractice claim that contains the number of payouts over one hundred thousand
23 dollars (\$100,000) in excess of three payouts within a 10-year period, and the number of
24 any payouts over one million dollars (\$1,000,000)."

25 **SECTION 6.** G.S. 90-15 reads as rewritten:

26 **"§ 90-15. License fee; salaries, fees, and expenses of Board.**

27 Each applicant for a license by examination shall pay to the North Carolina Medical
28 Board a fee which shall be prescribed by the Board in an amount not exceeding the sum
29 of four hundred dollars (\$400.00) plus the cost of test materials before being admitted to
30 the examination. Whenever a license is granted without examination, as authorized in
31 G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by
32 the Board not in excess of two hundred fifty dollars (\$250.00). Whenever a limited
33 license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee
34 not to exceed one hundred fifty dollars (\$150.00), except where a limited license to
35 practice in a medical education and training program approved by the Board for the
36 purpose of education or training is granted, the applicant shall pay a fee of twenty-five
37 dollars (\$25.00), and where a limited license to practice medicine and surgery only at
38 clinics that specialize in the treatment of indigent patients is granted, the applicant shall
39 not pay a fee. A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a
40 duplicate license. All fees shall be paid in advance to the North Carolina Medical Board,
41 to be held in a fund for the use of the Board. The compensation and expenses of the
42 members and officers of the Board and all expenses proper and necessary in the opinion
43 of the Board to the discharge of its duties under and to enforce the laws regulating the
44 practice of medicine or surgery shall be paid out of the fund, upon the warrant of the

1 Board. The per diem compensation of Board members shall not exceed two hundred
2 dollars (\$200.00) per day per member for time spent in the performance and discharge
3 of duties as a member. Any unexpended sum or sums of money remaining in the
4 treasury of the Board at the expiration of the terms of office of the members of the
5 Board shall be paid over to their successors in office.

6 For the initial and annual registration of an assistant to a physician, the Board may
7 require the payment of a fee not to exceed a reasonable amount. The Board may collect
8 reasonable charges associated with expenses and costs of elections pursuant to
9 G.S. 90-3A."

10 **SECTION 7.** G.S. 90-21.22 reads as rewritten:

11 "**§ 90-21.22. Peer review agreements.**

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

23 (b) Peer review agreements shall include provisions for the society and for the
24 Academy to receive relevant information from the Board and other sources, conduct the
25 investigation and review in an expeditious manner, provide assurance of confidentiality
26 of nonpublic information and of the review process, make reports of investigations and
27 evaluations to the Board, and to do other related activities for promoting a coordinated
28 and effective peer review process. Peer review agreements shall include provisions
29 assuring due process.

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

1 information and of the review process. Sexual misconduct or harassment or sexual
2 interaction with a patient shall not be included within the definition of 'impairment'.

3 (d) Upon investigation and review of a physician licensed by the Board, or a
4 physician assistant approved by the Board, or upon receipt of a complaint or other
5 information, a society which enters a peer review agreement with the Board, or the
6 Academy if it has a peer review agreement with the Board, as appropriate, shall report
7 immediately to the Board detailed information about any physician or physician
8 assistant licensed or approved by the Board if:

9 (1) The physician or physician assistant constitutes an imminent danger to
10 the public or to himself;

11 (2) The physician or physician assistant refuses to cooperate with the
12 program, refuses to submit to treatment, or is still impaired after
13 treatment and exhibits professional incompetence; ~~or~~

14 (2a) The physician or physician assistant has engaged in sexual
15 misconduct, sexual harassment, or sexual interaction with a patient;

16 (2b) It reasonably appears that the physician or physician assistant has
17 committed a felony;

18 (2c) The physician or physician assistant has participated in the program on
19 a previous occasion; or

20 (3) It reasonably appears that there are other grounds for disciplinary
21 action.

22 (e) Any confidential patient information and other nonpublic information
23 acquired, created, or used in good faith by the Academy or a society pursuant to this
24 section shall remain confidential and shall not be subject to discovery or subpoena in a
25 civil case. No person participating in good faith in the peer review or impaired
26 physician or impaired physician assistant programs of this section shall be required in a
27 civil case to disclose any information acquired or opinions, recommendations, or
28 evaluations acquired or developed solely in the course of participating in any
29 agreements pursuant to this section.

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

34 **SECTION 8.** Notwithstanding G.S. 90-3A, enacted in Section 3 of this act,
35 members serving on the North Carolina Medical Board on the effective date of this act
36 may complete the terms for which they were elected or appointed. When the terms of
37 any of the seven members appointed by the Governor, upon recommendation of the
38 North Carolina Medical Society, are completed, the vacancies shall be filled by election
39 pursuant to G.S. 90-3A, as enacted in Section 3 of this act. Members described in this
40 section shall serve for the terms for which they were elected and until their successors
41 are elected and qualified.

42 **SECTION 9.** This act is effective when it becomes law.