

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 405
SENATE BILL 653

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE MEDICAL
PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-2 reads as rewritten:

"§ 90-2. Board of Examiners.

(a) In order to properly regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina, there is established a Board of Medical Examiners of the State of North Carolina. The Board shall consist of 12 members.

- (1) Seven of the members shall be duly licensed physicians elected and nominated to the Governor by the North Carolina Medical Society.
- (2) Of the remaining five members, all to be appointed by the Governor, at least three shall be public members and at least one shall be a physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S. 90-18.2. A public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, 'health care provider' means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) No member appointed to the Board on or after November 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is chosen and qualifies.

(c) In order to establish regularly overlapping terms, the terms of office of the members shall expire as follows: two on October 31, 1993; four on October 31, 1994; four on October 31, 1995; and two on October 31, 1996. ~~No initial physician member of the Board may serve another term until at least three years from the date of expiration of his current term.~~

(d) Any ~~initial or regular~~ member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the ~~initial or regular~~ physician

membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of physicians submitted by the North Carolina Medical Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term.

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

Sec. 2. G.S. 90-6 reads as rewritten:

"§ 90-6. Regulations governing applicants for license, examinations, etc.; appointment of subcommittee.

The Board of Medical Examiners is empowered to prescribe such regulations as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper.

The Board of Medical Examiners shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules and regulations to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars (\$100.00) and for renewal of ~~such~~ approval not to exceed fifty dollars (\$50.00). The fee for reactivation of an inactive incomplete application shall be five dollars (\$5.00). Rules and regulations developed by this subcommittee from time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the Board of Medical Examiners and the Board of Nursing. The Board of Medical Examiners shall have responsibility for securing compliance with these regulations."

Sec. 3. G.S. 90-12 reads as rewritten:

"§ 90-12. Limited license.

(a) The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make ~~such any~~ modifications of the requirements of G.S. 90-9, 90-10, and 90-11 as in its judgment the interests of the people living in that locality may demand, and may issue to ~~such the~~ applicant a special license, to be entitled a 'Limited License,' authorizing the holder ~~thereof of the limited license~~ to practice medicine and surgery within the limits only of the districts specifically described therein. A resident's training license shall expire at the time its holder ceases to be a resident in the training program or obtains any other license to practice medicine issued by the Board. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; and the Board ~~is empowered to may~~ revoke ~~such the~~ limited license, in its discretion, after due notice.

(b) As used in this section:

- (1) 'Limited license' includes a resident's training license.
- (2) 'Resident training license' means a license to practice in a medical education and training program, approved by the Board, for the purpose of education or training."

Sec. 4. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to 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 his 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 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 him, and the results of examination shall be admissible in evidence in a hearing before the Board.
- (6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.
- (7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.
- (8) By false representations has obtained or attempted to obtain practice, money or anything of value.

- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he has been educated.
- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating his failure to properly treat a ~~patient and may patient~~. The Board may, upon reasonable grounds, require such a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.
- (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient ~~for financial gain of the physician~~, and upon a finding of the exploitation ~~for financial gain~~, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.
- (13) ~~Suspension or revocation of a license to practice medicine in any other state, or territory of the United States, or other country.~~ Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.
- (14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to him, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of his practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or

~~rescinded~~ rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Sec. 5. G.S. 90-14.3 reads as rewritten:

"§ 90-14.3. Service of notices.

Any notice required by this Chapter may be served either personally or by an officer authorized by law to serve process, or by registered or certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered or certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to ~~addressee or the addressee, showing refusal of the addressee to accept the notice.~~ notice, or showing failure to locate the addressee at the last known address as shown by the records of the Board."

Sec. 6. G.S. 90-14.9 reads as rewritten:

"§ 90-14.9. Appeal bond; stay of Board order.

(a) The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of two hundred dollars (\$200.00) at the same time the notice of appeal is filed with the Board. ~~At Subject to subsection (b) of this section,~~ at any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the Board decision pending the outcome of the review, which the court may grant or deny in its discretion.

(b) No stay shall be granted under this section unless the Board is given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision."

Sec. 7. G.S. 90-14.11 reads as rewritten:

"§ 90-14.11. Appeal; appeal bond.

(a) Any party to the review proceeding, including the Board, may appeal from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the Board. ~~The Subject to subsection (b) of this section,~~ the appealing party may apply to the superior court for a stay of that court's decision or a stay of the Board's decision, whichever shall be appropriate, pending the outcome of the appeal.

(b) No stay shall be granted unless all parties are given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision."

Sec. 8. G.S. 90-14.13 reads as rewritten:

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

The chief administrative officer of every licensed hospital or other health care ~~institution~~ institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-50, and all other provider organizations that issue credentials to physicians who practice medicine in the State

State, shall, after consultation with the chief of staff of such institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. Each such institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

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

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

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

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

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

Sec. 9. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives