

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 886
Committee Substitute Favorable 4/28/03
Third Edition Engrossed 4/30/03

Short Title: Due Process for Physicians.

(Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE PROVISIONS OF ARTICLE 1, CHAPTER 90 OF THE
2 GENERAL STATUTES TO DESIGNATE ONE APPOINTMENT TO THE
3 NORTH CAROLINA MEDICAL BOARD FOR A DOCTOR OF OSTEOPATHY
4 OR A MEDICAL SCHOOL FACULTY MEMBER WHO UTILIZES
5 INTEGRATIVE MEDICINE IN THEIR CLINICAL PRACTICE OR A MEMBER
6 OF THE OLD NORTH STATE MEDICAL SOCIETY, TO ESTABLISH THE
7 STANDARD OF PROOF FOR ANNULMENT, SUSPENSION, DENIAL OR
8 REVOCATION OF A MEDICAL LICENSE IN THE CASE OF LACK OF
9 PROFESSIONAL COMPETENCE, TO REQUIRE THE BOARD TO CONSULT
10 WITH A LICENSEE WHO PRACTICES INTEGRATIVE MEDICINE PRIOR TO
11 TAKING ACTION AGAINST ANY LICENSEE WHO PRACTICES
12 INTEGRATIVE MEDICINE FOR PROVIDING CARE NOT IN ACCORDANCE
13 WITH THE STANDARDS OF PRACTICE FOR THE PROCEDURES OR
14 TREATMENTS ADMINISTERED, TO SPECIFY THAT A LICENSEE MAY
15 CALL WITNESSES WITH EXPERTISE IN THE SAME FIELD OF PRACTICE
16 AS THE LICENSEE IN A PROCEEDING BEFORE THE MEDICAL BOARD
17 AND TO SPECIFY THAT WITNESSES SHALL NOT BE RESTRICTED TO
18 EXPERTS CERTIFIED BY THE AMERICAN BOARD OF MEDICAL
19 SPECIALTIES, AND TO PROVIDE THAT STATEMENTS CONTAINED IN
20 MEDICAL OR SCIENTIFIC LITERATURE SHALL BE COMPETENT
21 EVIDENCE IN PROCEEDINGS HELD BEFORE THE BOARD.
22

23 The General Assembly of North Carolina enacts:

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

25 **"§ 90-2. Medical Board.**

26 (a) ~~In order to properly regulate the practice of medicine and surgery for the~~
27 ~~benefit and protection of the people of North Carolina, there is established the North~~
28 ~~Carolina Medical Board.~~ There is established the North Carolina Medical Board to

1 regulate the practice of medicine and surgery for the benefit and protection of the people
2 of North Carolina. The Board shall consist of 12 members.

3 (1) Seven of the members shall be duly licensed physicians elected and
4 nominated to the Governor by the North Carolina Medical Society.

5 (2) Of the remaining five members, all to be appointed by the Governor,
6 one shall be a duly licensed physician who is a doctor of osteopathy or
7 a full-time faculty member of one of the medical schools in North
8 Carolina who utilizes integrative medicine in their clinical practice or a
9 member of The Old North State Medical Society, at least three shall be
10 public members and ~~at least~~ one shall be a physician assistant as
11 defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S.
12 90-18.2. A public member shall not be a health care provider nor the
13 spouse of a health care provider. For purposes of board membership,
14 "health care provider" means any licensed health care professional and
15 any agent or employee of any health care institution, health care
16 insurer, health care professional school, or a member of any allied
17 health profession. For purposes of this section, a person enrolled in a
18 program to prepare him to be a licensed health care professional or an
19 allied health professional shall be deemed a health care provider. For
20 purposes of this section, any person with significant financial interest
21 in a health service or profession is not a public member.

22 (a1) Each appointing and nominating authority shall ensure, insofar as possible,
23 that its appointees and nominees to the Board reflect the composition of the State with
24 regard to gender, ethnic, racial, and age composition.

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

28 (c) ~~In order to establish regularly overlapping terms, the terms of office of the~~
29 ~~members shall expire as follows: two on October 31, 1993; four on October 31, 1994;~~
30 ~~four on October 31, 1995; and two on October 31, 1996.~~

31 (d) Any member of the Board may be removed from office by the Governor for
32 good cause shown. Any vacancy in the physician membership of the Board shall be
33 filled for the period of the unexpired term by the Governor from a list of physicians
34 submitted by the North Carolina Medical Society Executive Council. Any vacancy in
35 the public, physician assistant, or nurse practitioner membership of the Board shall be
36 filled by the Governor for the unexpired term.

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

43 **SECTION 2.** G.S. 90-14(a)(11) reads as rewritten:

44 "...

1 (11) Lack of professional competence to practice medicine with a
2 reasonable degree of skill and safety for patients. In this connection the
3 Board may consider repeated acts of a physician indicating the
4 physician's failure to properly treat a patient. The Board may, upon
5 reasonable grounds, require a physician to submit to inquiries or
6 examinations, written or oral, by members of the Board or by other
7 physicians licensed to practice medicine in this State, as the Board
8 deems necessary to determine the professional qualifications of such
9 licensee. In order to annul, suspend, deny, or revoke a license of an
10 accused person, the Board shall find that the facts satisfy, by the
11 greater weight of the evidence, that the care provided was not in
12 accordance with the standards of practice for the procedures or
13 treatments administered."

14 **SECTION 3.** G.S. 90-14 is amended by adding a new subsection to read:

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

19 **SECTION 4.** G.S. 90-14.6 reads as rewritten:

20 "**§ 90-14.6. Evidence admissible.**

21 (a) In proceedings held pursuant to this Article the Board shall admit and hear
22 evidence in the same manner and form as prescribed by law for civil actions. A
23 complete record of such evidence shall be made, together with the other proceedings
24 incident to such hearing.

25 (b) Subject to the North Carolina Rules of Civil Procedure and Rules of
26 Evidence, in proceedings held pursuant to this Article, the licensee under investigation
27 may call witnesses, including medical practitioners licensed in the United States, with
28 expertise in the same field of practice as the licensee under investigation, and the Board
29 shall consider this testimony. Witnesses shall not be restricted to experts certified by the
30 American Board of Medical Specialties.

31 (c) Subject to the North Carolina Rules of Civil Procedure and Rules of
32 Evidence, statements contained in medical or scientific literature shall be competent
33 evidence in proceedings held pursuant to this Article."

34 **SECTION 5.** This act becomes effective October 1, 2003.