

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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Short Title: Due Process for Physicians. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN PROVISIONS OF ARTICLE 1, CHAPTER 90 OF  
THE GENERAL STATUTES RELATING TO THE NORTH CAROLINA  
MEDICAL BOARD AND THE PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

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

**"§ 90-2. Medical Board.**

(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 the North Carolina Medical Board. There is established the North Carolina Medical Board to regulate the practice of medicine and surgery for the benefit and protection of the people 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, one shall be a duly licensed physician who is a doctor of osteopathy or a full-time faculty member of one of the medical schools in North Carolina who utilizes integrative medicine in that person's clinical practice or a member of The Old North State Medical Society, 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

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

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

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

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

16 (d) Any member of the Board may be removed from office by the Governor for  
17 good cause shown. Any vacancy in the physician membership of the Board shall be  
18 filled for the period of the unexpired term by the Governor from a list of physicians  
19 submitted by the North Carolina Medical Society Executive Council. Any vacancy in  
20 the public, physician assistant, or nurse practitioner membership of the Board shall be  
21 filled by the Governor for the unexpired term.

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

28 **SECTION 2.** Article 1 of Chapter 90 of the General Statutes is amended by  
29 adding a new section to read:

30 **"§ 90-2.1. Integrative medicine defined.**

31 For purposes of this Article, the term "integrative medicine" means a diagnostic or  
32 therapeutic treatment that may not be considered a conventionally accepted medical  
33 treatment and that a licensed physician in the physician's professional opinion believes  
34 may be of potential benefit to the patient, so long as the treatment poses no greater risk  
35 of harm to the patient than the comparable conventional treatments."

36 **SECTION 3.** G.S. 90-14(a)(11) reads as rewritten:

37 "...

38 (11) Lack of professional competence to practice medicine with a  
39 reasonable degree of skill and safety for patients. In this connection the  
40 Board may consider repeated acts of a physician indicating the  
41 physician's failure to properly treat a patient. The Board may, upon  
42 reasonable grounds, require a physician to submit to inquiries or  
43 examinations, written or oral, by members of the Board or by other  
44 physicians licensed to practice medicine in this State, as the Board

1                   deems necessary to determine the professional qualifications of such  
2                   licensee. In order to annul, suspend, deny, or revoke a license of an  
3                   accused person, the Board shall find by the greater weight of the  
4                   evidence that the care provided was not in accordance with the  
5                   standards of practice for the procedures or treatments administered."

6                   **SECTION 4.** G.S. 90-14 is amended by adding a new subsection to read:

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

11                   **SECTION 5.** G.S. 90-14.6 reads as rewritten:

12                   "**§ 90-14.6. Evidence admissible.**

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

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

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

26                   **SECTION 6.** Section 1 becomes effective October 1, 2003, and applies to  
27                   positions on the Board only upon their expiration. Current members of the Board  
28                   eligible to be reappointed to the Board may be reappointed, notwithstanding Section 1.  
29                   The remainder of this act is effective when it becomes law.