

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**D**

**HOUSE DRH50296-LDf-97 (3/2)**

Short Title: Elect Medical Board/Fees/Report Misconduct. (Public)

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Sponsors: Representative Faison.

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Referred to:

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A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE ELECTION OF PHYSICIAN MEMBERS OF THE  
2 NORTH CAROLINA MEDICAL BOARD, TO AUTHORIZE THE MEDICAL  
3 BOARD TO COLLECT REASONABLE FEES TO COVER THE COSTS OF THIS  
4 ELECTION, TO PROVIDE INFORMATION TO THE PUBLIC REGARDING  
5 CERTAIN DAMAGE AWARDS OR SETTLEMENTS OF MEDICAL  
6 MALPRACTICE ACTIONS AND CLAIMS, AND TO REQUIRE THE  
7 REPORTING OF SEXUAL MISCONDUCT BY A PHYSICIAN OR A  
8 PHYSICIAN ASSISTANT TO THE MEDICAL BOARD WHEN THE CONDUCT  
9 WAS SUBJECT TO PEER REVIEW.  
10

11 The General Assembly of North Carolina enacts:

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

13 **"§ 90-2. Medical Board.**

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

17 (1) Seven of the members shall be duly licensed physicians elected ~~and~~  
18 ~~nominated to the Governor by the North Carolina Medical Society as~~  
19 provided in G.S. 90-3.1.

20 (2) Of the remaining five members, all to be appointed by the Governor,  
21 one shall be a duly licensed physician who is a doctor of osteopathy or  
22 a full-time faculty member of one of the medical schools in North  
23 Carolina who utilizes integrative medicine in that person's clinical  
24 practice or a member of The Old North State Medical Society, three  
25 shall be public members and one shall be a physician assistant as  
26 defined in G.S. 90-18.1 or a nurse practitioner as defined in  
27 G.S. 90-18.2. A public member shall not be a health care provider nor

1 the spouse of a health care provider. For purposes of board  
2 membership, "health care provider" means any licensed health care  
3 professional and any agent or employee of any health care institution,  
4 health care insurer, health care professional school, or a member of  
5 any allied health profession. For purposes of this section, a person  
6 enrolled in a program to prepare him to be a licensed health care  
7 professional or an allied health professional shall be deemed a health  
8 care provider. For purposes of this section, any person with significant  
9 financial interest in a health service or profession is not a public  
10 member.

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

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

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

17 (d) Any member of the Board may be removed from office by the Governor for  
18 good cause shown. Any vacancy in the physician membership of the Board shall be  
19 filled for the period of the unexpired term ~~by the Governor from a list of physicians~~  
20 ~~submitted by the North Carolina Medical Society Executive Council. as provided in~~  
21 G.S. 90-3.1. Any vacancy in the public, physician assistant, or nurse practitioner  
22 membership of the Board shall be filled by the Governor for the unexpired term.

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

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

30 **SECTION 3.** Article 1 of Chapter 90 of the General Statutes is amended by  
31 adding a new section to read:

32 **"§ 90-3.1. Election of physician members of the Medical Board.**

33 (a) Physician members of the North Carolina Medical Board shall be elected in  
34 accordance with this section. Every person licensed to practice medicine in this State  
35 and either residing or practicing in this State is entitled to vote in this election. Any  
36 vacancy of a physician member occurring on the Board shall be filled by a majority vote  
37 of the remaining physician members of the Board, and this member shall serve until the  
38 next regular election conducted by the Board, at which time the vacancy shall be filled  
39 by the election process under this section. No physician shall be nominated for or  
40 elected to membership on the Board unless, at the time of the nomination and at the  
41 time of the election, that person is licensed to practice medicine in this State and is  
42 actually engaged in the practice of medicine.

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

- 1           (1)   An election shall be held each year to elect successors to those  
2           members whose terms are expiring in the year of the election, each  
3           successor to take office on the first day of August following the  
4           election and to hold office for a term of three years or until his or her  
5           successor has been elected and qualified, whichever occurs later.  
6           However, if in any year the election of the members of the Board for  
7           that year shall not have been completed by August 1 of that year, then  
8           those members elected that year shall take office immediately after the  
9           completion of the election and shall hold office until the first of  
10          August of the third year thereafter or until their successors are elected  
11          and qualified, whichever occurs later.
- 12          (2)   Every physician with a current North Carolina license residing or  
13          practicing in North Carolina shall be eligible to vote in elections of  
14          physicians to the Board. Holding a license to practice medicine in  
15          North Carolina constitutes registration to vote in the elections. The list  
16          of licensed physicians is the registration list for elections to the  
17          appropriate seats on the Board.
- 18          (3)   All elections shall be conducted by the Medical Board, which is  
19          hereby established as the Board of Physician Elections. If a member of  
20          the Medical Board whose position is to be filled at any election is  
21          nominated to succeed himself or herself, and the member does not  
22          withdraw his or her name, the member shall be disqualified to serve as  
23          a member of the Board of Physician Elections for that election and the  
24          remaining members of the Board of Physician Elections shall proceed  
25          and function without his or her participation.
- 26          (4)   Nomination of physicians for election shall be made to the Board of  
27          Physician Elections by a written petition signed by not less than 10  
28          physicians licensed to practice medicine in North Carolina and  
29          residing or practicing in North Carolina. The petitions shall be filed  
30          with the Board of Physician Elections after January 1 of the year in  
31          which the election is to be held and on or before midnight of May 20  
32          of that year or an earlier date as may be set by the Board of Physician  
33          Elections. However, at least 10 days' notice of the earlier date shall be  
34          given to all physicians qualified to sign a petition of nomination. The  
35          Board of Physician Elections shall, before preparing ballots, notify all  
36          persons who have been nominated under this subdivision of their  
37          nomination.
- 38          (5)   Any person who is nominated as provided in subdivision (4) of this  
39          subsection may withdraw his or her name by written notice delivered  
40          to the Board of Physician Elections or its designated secretary at any  
41          time prior to the closing of the polls in any election.
- 42          (6)   Following the close of nominations, ballots shall be prepared in  
43          accordance with rules adopted by the Board of Physician Elections  
44          containing the names of all nominees in alphabetical order. Each ballot

1 shall have the method of identification and instructions and  
2 requirements printed on the ballot, as prescribed by the Board of  
3 Physician Elections. At a time fixed by the Board of Physician  
4 Elections, a ballot and an official return envelope addressed to the  
5 Board shall be mailed to each person entitled to vote in the election.  
6 The envelope shall also contain notice by the Board designating the  
7 latest date and hour by which the envelope must be returned and any  
8 other items the Board deems necessary. The envelope shall bear a  
9 serial number and shall have printed on the left portion of its face the  
10 following:

11 'Serial No. of Envelope \_\_\_\_\_

12 Signature of Voter \_\_\_\_\_

13 Address of Voter \_\_\_\_\_

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

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

23 (7) The date and hour fixed by the Board of Physician Elections as the  
24 latest time for delivery by hand or mailing of the return ballots shall be  
25 on or after the tenth day following the mailing of the envelopes and  
26 ballots to the voters.

27 (8) The ballots shall be canvassed by the Board of Physician Elections  
28 beginning at noon on a day and at a place set by the Board of  
29 Physician Elections and announced by the Board of Physician  
30 Elections in the notice accompanying the ballots and envelopes sent to  
31 the voters. The date canvassing the ballots shall be no later than four  
32 days after the date fixed by the Board of Physician Elections for  
33 closing the ballots. The canvassing shall be made publicly and any  
34 licensed physicians may be present. Once the Board of Physician  
35 Elections is ready to count the ballots, the envelopes shall be displayed  
36 to the persons present and an opportunity shall be given to any person  
37 present to challenge the qualification of the voter whose signature  
38 appears on the envelope or to challenge the validity of the envelope.  
39 Any envelope containing a ballot that is being challenged shall be set  
40 aside, and the challenge shall be heard at a time to be determined by

1           the Board of Physician Elections. After the envelopes have been  
2           displayed, those not challenged shall be opened and the ballots  
3           extracted in a manner that does not show the marking on the ballots,  
4           and each ballot shall be separated from its envelope. Each ballot shall  
5           be presented for counting, displayed, and, if not challenged, counted.  
6           No ballot shall be valid if it is marked for more nominees than there  
7           are positions to be filled in that election. No ballot shall be rejected for  
8           any technical error unless it is impossible to determine the voter's  
9           choice on the ballot. During the counting, challenge may be made to  
10           any ballot only if defects appear on the face of the ballot. The Board of  
11           Physician Elections may review the challenge when it is made or it  
12           may place the ballot aside and determine the challenge after all the  
13           other ballots have been counted.

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

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

18               1.   The nominee receiving a majority of the votes cast shall  
19               be declared elected.

20               2.   In the event that no nominee receives a majority, a  
21               second election shall be conducted between the two  
22               nominees who receive the highest number of votes.

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

25               1.   A majority shall be any excess of the sum ascertained by  
26               dividing the total number of votes cast for all nominees  
27               by four.

28               2.   If more than two nominees receive a majority of the  
29               votes cast, the two receiving the highest number of votes  
30               shall be declared elected.

31               3.   If only one of the nominees receives a majority, he or  
32               she shall be declared elected, and the Board of Physician  
33               Elections shall order a second election to be conducted  
34               between the two nominees receiving the next highest  
35               number of votes.

36               4.   If no nominee receives a majority, a second election  
37               shall be conducted among the four candidates receiving  
38               the highest number of votes. At the second election, the  
39               two nominees receiving the highest number of votes  
40               shall be declared elected.

41           c.    In any election, if there is a tie between candidates, the tie shall  
42           be resolved by the vote of the Board of Physician Elections.  
43           However, if a member of the Board of Physician Elections is

1                   one of the candidates in the tie, he or she may not participate in  
2                   the vote.

3           (10) If a second election is required under this section, the same procedure  
4           shall be followed as provided in subdivision (9) of this subsection, and  
5           the election shall be subject to the same limitations and requirements,  
6           except that if the second election is between four candidates, then the  
7           two receiving the highest number of votes shall be declared elected.

8           (11) In the event of death or withdrawal of a candidate prior to the closing  
9           of the polls in any election, he or she shall be eliminated from the  
10          contest and any votes cast for the candidate shall be disregarded. If, at  
11          any time after the closing of the period for nominations because of  
12          lack of plural or proper nominations, death, withdrawal,  
13          disqualification, or any other reason, there are only two candidates for  
14          two positions, they shall be declared elected by the Board of Physician  
15          Elections. If there is only one candidate for one position, he or she  
16          shall be declared elected by the Board of Physician Elections. If there  
17          are no candidates for two positions, the two positions shall be filled by  
18          the Medical Board. If there is no candidate for one position, the  
19          position shall be filled by the Medical Board. If there is one candidate  
20          for two positions, the one candidate shall be declared elected by the  
21          Board of Physician Elections and one qualified physician shall be  
22          elected to the other position by the Medical Board. In the event of the  
23          death or withdrawal of a candidate after election but prior to taking  
24          office, the position to which he or she was elected shall be filled by the  
25          Medical Board. In the event of the death or resignation of a physician  
26          member of the Medical Board after taking office, the Medical Board  
27          shall fill his or her position for the unexpired term.

28          (12) An official list of licensed physicians shall be kept at the office of the  
29          Board of Physician Elections and shall be open for inspection by any  
30          person at all times. Any licensed physician may make copies of the  
31          list. As soon as the voting in any election begins, a list of the licensed  
32          physicians shall be posted in the office of the Board of Physician  
33          Elections, and the list shall be marked to show whether a  
34          ballot-enclosing envelope has been returned.

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

38          (14) A physician may appeal any decision of the Board of Physician  
39          Elections relating to the conduct of the elections in accordance with  
40          Chapter 150B of the General Statutes.

41          (15) The Board of Physician Elections may adopt rules regarding the  
42          conduct of these elections, except that the rules shall not conflict with  
43          the provisions of this section. The Board of Physician Elections shall

1           notify each licensed physician residing in this State of the rules  
2           adopted by the Board of Physician Elections.

3           (c)   The Medical Board may collect reasonable fees under G.S. 90-15 to recover  
4           expenses and costs associated with conducting the elections pursuant to this section."

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

6           "(b)   The Board ~~shall~~may refer to the North Carolina Physicians Health Program  
7           all physicians and physician assistants whose health and effectiveness have been  
8           significantly impaired by alcohol, drug ~~addiction~~addiction, or mental illness. Sexual  
9           misconduct shall not constitute mental illness for purposes of this subsection. A  
10          physician shall be limited to two referrals to the North Carolina Physicians Health  
11          Program, and, upon a third referral, the physician's license shall be suspended or  
12          revoked."

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

14          "**§ 90-14.13. Reports of disciplinary action by health care institutions; reports of**  
15          **professional liability insurance awards or settlements; immunity from**  
16          **liability.**

17          (a)   The chief administrative officer of every licensed hospital or other health care  
18          institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,  
19          preferred providers, as defined in G.S. 58-50-56, and all other provider organizations  
20          that issue credentials to physicians who practice medicine in the State, shall, after  
21          consultation with the chief of staff of that institution, report to the Board the following  
22          actions involving a physician's privileges to practice in that institution within 30 days of  
23          the date that the action takes effect:

- 24               (1)   A summary revocation, summary suspension, or summary limitation  
25               of privileges, regardless of whether the action has been finally  
26               determined.  
27               (2)   A revocation, suspension, or limitation of privileges that has been  
28               finally determined by the governing body of the institution.  
29               (3)   A resignation from practice or voluntary reduction of privileges.  
30               (4)   Any action reportable pursuant to Title IV of P.L. 99-660, the Health  
31               Care Quality Improvement Act of 1986, as amended, not otherwise  
32               reportable under subdivisions (1), (2), or (3) of this subsection.

33          (a1)  A hospital is not required to report:

- 34               (1)   The suspension or limitation of a physician's privileges for failure to  
35               timely complete medical records unless the suspension or limitation is  
36               the third within the calendar year for failure to timely complete  
37               medical records. Upon reporting the third suspension or limitation, the  
38               hospital shall also report the previous two suspensions or limitations.  
39               (2)   A resignation from practice due solely to the physician's completion of  
40               a medical residency, internship, or fellowship.

41          (a2)  The Board shall report all violations of subsection (a) of this section known to  
42          it to the licensing agency for the institution involved. The licensing agency for the  
43          institution involved is authorized to order the payment of a civil penalty of two hundred  
44          fifty dollars (\$250.00) for a first violation and five hundred dollars (\$500.00) for each

1 subsequent violation if the institution fails to report as required under subsection (a) of  
2 this section.

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

6 (c) The chief administrative officer of each insurance company providing  
7 professional liability insurance for physicians who practice medicine in North Carolina,  
8 the administrative officer of the Liability Insurance Trust Fund Council created by  
9 G.S. 116-220, and the administrative officer of any trust fund or other fund operated or  
10 administered by a hospital authority, group, or provider shall report to the Board within  
11 30 days any of the following:

- 12 (1) Any award of damages or settlement of any claim or lawsuit affecting  
13 or involving a person licensed under this Article that it insures.
- 14 (2) Any cancellation or nonrenewal of its professional liability coverage of  
15 a physician, if the cancellation or nonrenewal was for cause.
- 16 (3) A malpractice payment that is reportable pursuant to Title IV of P.L.  
17 99-660, the Health Care Quality Improvement Act of 1986, as  
18 amended, not otherwise reportable under subdivision (1) or (2) of this  
19 subsection.

20 (d) The Board shall report all violations of this section to the Commissioner of  
21 Insurance. The Commissioner of Insurance is authorized to order the payment of a civil  
22 penalty of two hundred fifty dollars (\$250.00) for a first violation and five hundred  
23 dollars (\$500.00) for each subsequent violation against an insurer for failure to report as  
24 required under this section.

25 (e) The Board may request details about any action covered by this section, and  
26 the licensees or officers shall promptly furnish the requested information. The reports  
27 required by this section are privileged, not open to the public, confidential and are not  
28 subject to discovery, subpoena, or other means of legal compulsion for release to  
29 anyone other than the Board or its employees or agents involved in application for  
30 license or discipline, except as provided in subsection (f) and subsection (g) of this  
31 section and in G.S. 90-16. Any officer making a report required by this section,  
32 providing additional information required by the Board, or testifying in any proceeding  
33 as a result of the report or required information shall be immune from any criminal  
34 prosecution or civil liability resulting therefrom unless such person knew the report was  
35 false or acted in reckless disregard of whether the report was false.

36 (f) The Board shall provide to the public information in a summary fashion by  
37 individual physicians on all awards of damages in medical malpractice actions and all  
38 settlements of medical malpractice claims whereby five payouts are made within a  
39 10-year period, each of which is in excess of one hundred thousand dollars (\$100,000).

40 (g) Within 30 days of receiving a report of a settlement of a medical malpractice  
41 claim affecting or involving a physician, the Medical Board shall publish on its public  
42 access Web site, without identifying the physician by name, all of the following  
43 information:



1           (1) A unique identifying number for the physician, to be used in all  
2           subsequent reports under this section.

3           (2) The date of the settlement.

4           (3) The date the settlement was reported to the Medical Board."

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

6           "**§ 90-15. License fee; salaries, fees, and expenses of ~~Board.~~Board; other fees and**  
7           **expenses.**

8           (a) License Fees. – Each applicant for a license to practice medicine and surgery  
9           in this State under either G.S. 90-9, 90-10, or 90-13 shall pay to the North Carolina  
10           Medical Board an application fee of three hundred fifty dollars (\$350.00). Whenever a  
11           limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board  
12           a fee not to exceed one hundred fifty dollars (\$150.00), except where a limited license  
13           to practice in a medical education and training program approved by the Board for the  
14           purpose of education or training is granted, the applicant shall pay a fee of one hundred  
15           dollars (\$100.00), and where a limited license to practice medicine and surgery only at  
16           clinics that specialize in the treatment of indigent patients is granted, the applicant shall  
17           not pay a fee. A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a  
18           duplicate license. All fees shall be paid in advance to the North Carolina Medical Board,  
19           to be held in a fund for the use of the Board.

20           (b) Board Salaries and Expenses. – The compensation and expenses of the  
21           members and officers of the Board and all expenses proper and necessary in the opinion  
22           of the Board to the discharge of its duties under and to enforce the laws regulating the  
23           practice of medicine or surgery shall be paid out of the fund, upon the warrant of the  
24           Board. The per diem compensation of Board members shall not exceed two hundred  
25           dollars (\$200.00) per day per member for time spent in the performance and discharge  
26           of duties as a member. Any unexpended sum or sums of money remaining in the  
27           treasury of the Board at the expiration of the terms of office of the members of the  
28           Board shall be paid over to their successors in office.

29           (c) Physician Assistant Fees. – For the initial and annual registration of an  
30           assistant to a physician, the Board may require the payment of a fee not to exceed a  
31           reasonable amount.

32           (d) Board Election Expenses. – The Board may collect reasonable fees associated  
33           with expenses and costs of elections pursuant to G.S. 90-3.1."

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

35           "**§ 90-21.22. Peer review agreements.**

36           (a) The North Carolina Medical Board may, under rules adopted by the Board in  
37           compliance with Chapter 150B of the General Statutes, enter into agreements with the  
38           North Carolina Medical Society and its local medical society components, and with the  
39           North Carolina Academy of Physician Assistants for the purpose of conducting peer  
40           review activities. Peer review activities to be covered by such agreements shall include  
41           investigation, review, and evaluation of records, reports, complaints, litigation and other  
42           information about the practices and practice patterns of physicians licensed by the  
43           Board, and of physician assistants approved by the Board, and shall include programs  
44           for impaired physicians and impaired physician assistants. Agreements between the

1 Academy and the Board shall be limited to programs for impaired physicians and  
2 physician assistants and shall not include any other peer review activities.

3 (b) Peer review agreements shall include provisions for the society and for the  
4 Academy to receive relevant information from the Board and other sources, conduct the  
5 investigation and review in an expeditious manner, provide assurance of confidentiality  
6 of nonpublic information and of the review process, make reports of investigations and  
7 evaluations to the Board, and to do other related activities for promoting a coordinated  
8 and effective peer review process. Peer review agreements shall include provisions  
9 assuring due process.

10 (c) Each society ~~which~~that enters into a peer review agreement with the Board  
11 shall establish and maintain a program for impaired physicians licensed by the Board.  
12 The Academy, after entering a peer review agreement with the Board, shall either enter  
13 an agreement with the North Carolina Medical Society for the inclusion of physician  
14 assistants in the Society's program for impaired physicians, or shall establish and  
15 maintain the Academy's own program for impaired physician assistants. The purpose of  
16 the programs shall be to identify, review, and evaluate the ability of those physicians  
17 and physician assistants to function in their professional capacity and to provide  
18 programs for treatment and rehabilitation. The Board may provide funds for the  
19 administration of impaired physician and impaired physician assistant programs and  
20 shall adopt rules with provisions for definitions of impairment; guidelines for program  
21 elements; procedures for receipt and use of information of suspected impairment;  
22 procedures for intervention and referral; monitoring treatment, rehabilitation,  
23 post-treatment support and performance; reports of individual cases to the Board;  
24 periodic reporting of statistical information; assurance of confidentiality of nonpublic  
25 information and of the review process. As used in this section, 'impairment' shall not  
26 include sexual misconduct or harassment or sexual interaction with a patient.

27 (d) Upon investigation and review of a physician licensed by the Board, or a  
28 physician assistant approved by the Board, or upon receipt of a complaint or other  
29 information, a society ~~which~~that enters a peer review agreement with the Board, or the  
30 Academy if it has a peer review agreement with the Board, as appropriate, shall report  
31 immediately to the Board detailed information about any physician or physician  
32 assistant licensed or approved by the Board ~~if~~if any of the following apply:

- 33 (1) The physician or physician assistant constitutes an imminent danger to  
34 the public or to himself by reason of impairment, mental illness,  
35 physical illness, the commission of professional sexual boundary  
36 violations, or any other ~~reason~~reason.
- 37 (2) The physician or physician assistant refuses to cooperate with the  
38 program, refuses to submit to treatment, or is still impaired after  
39 treatment and exhibits professional ~~incompetence~~or incompetence.
- 40 (3) It reasonably appears that the physician or physician assistant has  
41 committed a felony.
- 42 (4) The physician or physician assistant has participated in a program for  
43 impaired physicians or impaired physician assistants on a previous  
44 occasion.

1           ~~(3)~~(5) It reasonably appears that there are other grounds for disciplinary  
2           action.

3           (e) Any confidential patient information and other nonpublic information  
4 acquired, created, or used in good faith by the Academy or a society pursuant to this  
5 section shall remain confidential and shall not be subject to discovery or subpoena in a  
6 civil case. No person participating in good faith in the peer review or impaired  
7 physician or impaired physician assistant programs of this section shall be required in a  
8 civil case to disclose any information acquired or opinions, recommendations, or  
9 evaluations acquired or developed solely in the course of participating in any  
10 agreements pursuant to this section.

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

15           **SECTION 8.** Notwithstanding G.S. 90-3.1, enacted by Section 3 of this act,  
16 members serving on the North Carolina Medical Board on the effective date of this act  
17 may complete the terms for which they were elected or appointed. When the terms of  
18 any of the seven members appointed by the Governor, upon the recommendation of the  
19 North Carolina Medical Society, are completed, the vacancies shall be filled by election  
20 pursuant to G.S. 90-3.1, enacted by Section 3 of this act. Members described in this  
21 section shall serve for the terms for which they were elected and until their successors  
22 are elected and qualified.

23           **SECTION 9.** This act becomes effective January 1, 2008.