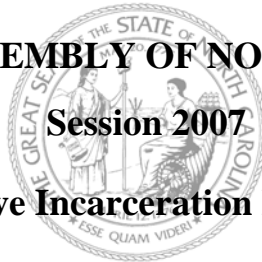


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** House Bill 818 (Sixth Edition)

**SHORT TITLE:** Amend Practice of Medicine Laws.-AB

**SPONSOR(S):** Representative Allen

	<b>FISCAL IMPACT</b>				
	<b>Yes (x)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>REVENUES:</b>					
<b>General Fund</b>		<b>No impact to General Fund.</b>			
<b>NC Medical Board</b>		<b>No impact to NC Medical Board.</b>			
<b>EXPENDITURES:</b>					
<b>NC Medical Board</b>		<b>No significant impact anticipated.</b>			
<b>Correction</b>		<b>No significant impact anticipated; however, the exact amount cannot be determined. See pp. 3-6, "Assumptions and Methodology."</b>			
<b>Judicial</b>					
<b>TOTAL EXPENDITURES:</b>					
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>		<b>Impact on state prison and local jail populations is indeterminate.</b>			
<b>POSITIONS: (cumulative)</b>		<b>Amount cannot be determined.</b>			
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch; North Carolina Medical Board				
<b>EFFECTIVE DATE:</b>	October 1, 2007.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

**BILL SUMMARY:** Reorganizes and amends G.S. Chapter 90, Article 1, which governs the practice of medicine, most notably: (1) Enacts new G.S. 90-1A defining the major terms used in Article 1; (2) Enacts new G.S. 90-5.1 setting forth the powers and duties of the North Carolina Medical Board; (3)

Repeals G.S. 90-9 and 90-10, governing examinations required for a medical license and enacts new G.S. 90-9.1, 90-9.2, 90-9.3, and 90-10.1 in their stead; (4) Repeals G.S. 90-12 and 90-13, governing limited licenses, and enacts new G.S. 90-12A, 90-21.1A, 90-12.2A and 90-12.3 in their stead; (5) Enacts new G.S. 90-13.3 setting the compensation of Medical Board members; and, (6) Makes other clarifying and conforming changes.

The second edition makes the following changes to the first edition:

- Modifies proposed G.S. 90-1A to amend the definition of the practice of medicine or surgery as follows:
  - Removes from the definition rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient;
  - Removes from the definition rendering a documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient in this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within a state to the physician or the physician's agent;
  - Clarifies that the definition includes the performance of an action by electronic means inside or outside the state; and,
  - Includes using the designation doctor, or other listed titles, unless (i) the designation additionally contains the description of or reference to (was, description of) another branch of the healing arts for which the individual is licensed, or (ii) the use of the designation doctor or physician is otherwise allowed by law.
- Modifies proposed G.S. 90-5.1(a)(5) to provide that the rules for disposition of records of a deceased licensee do not apply to records created or maintained by persons licensed under other articles of the chapter or to medical records maintained in the normal course of business by licensed health care institutions.
- Modifies proposed G.S. 90-9.1 to clarify that the requirements apply to those eligible for licensure as a physician under the article.
- Makes conforming amendment to G.S. 90-13.1(a) to require applicants for a limited license to practice in a medical education and training program to pay a \$100 fee.
- Amends G.S. 90-14(11) to allow the North Carolina Medical Board to discipline anyone who has made false statements to the board or willfully concealed material information in connection with an application, request, or petition for reinstatement or revocation of a license, an annual registration of a license, or an investigation or inquiry by the board.
- Also amends the caption of G.S. 90-14.
- Amends G.S. 90-14.2 to expand the statute to all disciplinary actions against any license granted by it (was, revocation, restriction, or suspension of any license granted by it) and makes conforming statute caption change.
- Makes a conforming change to G.S. 90-14.10.
- Repeals G.S. 90-14.4 (Place of hearings for revocation or suspension of license).
- Amends G.S. 90-14.8 to require review of the board's decision to suspend or revoke a license to take place in the Wake County Superior Court (deletes review in the superior court in the county in which the hearing was held or upon agreement of the parties to the appeal in any other superior court of the state); makes conforming changes.
- Amends G.S. 90-18(8) (acts that do not constitute practicing medicine or surgery) to (1) replace references to the practice of chiropody with podiatry and podiatric medicine and surgery and (2) remove the prohibition against podiatric physicians using drugs in practicing podiatry.

Third edition makes the following changes to the second edition:

- Clarifies that the proposed definition in G.S. 90-1A of practice of medicine or surgery applies only in Article 1 (practice of medicine) of Chapter 90.
- Deletes language in new G.S. 90-8.2, setting a \$5 fee for reactivating an incomplete application. Amends G.S. 90-14.6 (evidence admissible) to provide for the forms in which documentary evidence may be received and to allow admission of the most reliable and substantial evidence available when evidence is not reasonably available under the Rules of Civil Procedure and Rules of Evidence.
- Changes the effective date from when the act becomes law to October 1, 2007.

Fourth edition makes the following changes to the third edition:

- Modifies proposed new G.S. 90-1A to remove from the definition of the *practice of medicine and surgery*, “cosmetic procedures employing lasers or other means that involve the revision, destruction, incision, or structural alteration of human tissue...”
- Amends G.S. 90-14.5 to provide that hearing officers are entitled to per diem compensation and reimbursement for expenses authorized by the board, not to exceed \$200 per member (formerly stated that hearing officers were entitled to receive compensation and reimbursement as authorized by the Article).
- Amends G.S. 90-16 to require that the board inform a person who has complained about a patient’s care of: 1) the board’s decision regarding the complaint; and, 2) the board’s basis for its decision. Specifies when the board may provide the patient or complainant with a licensee’s written response to the complaint concerning the patient’s care. Provides that the information provided to the patient or the complainant is inadmissible as evidence in any civil proceeding, but that information otherwise available is not immune from discovery or for use in a civil action just because the information was included in the board’s review or was the subject of information given to the patient or complainant.
- Makes technical and conforming changes.

Fifth edition makes the following changes to the fourth edition:

*NC Medical Board appointments.* Effective January 1, 2008, amends G.S. 90-3 to remove the requirement that the Governor appoint physicians nominated by the North Carolina Medical Society to the NC Medical Board (board) and instead creates a nine-member Review Panel (panel) to review applicants to the board for the physician and physician assistant or nurse practitioner positions and make two recommendations for each open position to the Governor. Exempts members and staff of the panel from civil or criminal liability while exercising their duties. Establishes criteria to be met by applicants for physician and physician assistant or nurse practitioner positions. Requires notice of open positions to be sent. Makes conforming and technical changes to G.S. 90-2. Also provides that the three members of the public on the board are not subject to the recommendations of the panel and prohibits public members from being a health care provider or the spouse of one. Removes the prohibition on the physician’s assistant or nurse practitioner from being a health care provider or spouse of one.

*Information to the board.* Enacts new G.S. 90-5.2 requiring all physicians and physician’s assistants to report specified information to the board and requires the board to make the information available to the public. Provides that failure to provide the required information or providing false information may be considered unprofessional conduct.

*Notice.* Amends G.S. 90-14.3 to add employees of the board to those who may serve notice. Also provides that notice is deemed to have been served on the date showing delivery to the licensee's or applicants last known address regardless of whether the notice was actually received.

*Volunteer dentists.* Enacts new G.S. 90-37.2 allowing the NC Board of Dental Examiners to issue a temporary volunteer permit to allow dental school graduates who are licensed in another state to practice dentistry under the supervision of a dentist licensed in NC. Sets conditions on the permits including conditions on permit duration, scope of practice, and compensation.

*Misc.* Deletes the proposed amendment to G.S. 90-8.2 removing the fee for reactivation of an inactive incomplete application. Moves proposed new G.S. 90-10.1 into a new section of the bill. Deletes the repeal of G.S. 90-9 (examination for license; scope; conditions and prerequisites), G.S. 90-10 (provision in lieu of examination), and G.S. 90-13 (when license without examination allowed). Deletes the following proposed new statutes: G.S. 90-12A, G.S. 90-12.1A, G.S. 90-12.2A, G.S. 90-12.3. Deletes all of the proposed changes to G.S. 90-13.1 except the removal of the provisions concerning the compensation and expenses of members of the board and the registration fees for a physician's assistant. Deletes the proposed changes to G.S. 90-13.2. Makes technical changes to G.S. 90-16. Makes technical section numbering changes. Makes a conforming title change.

***Sixth edition (Senate amendment) recodifies G.S. 90-11 (a1) as G.S. 90-9.4 (requirements for licensure as an anesthesiologist assistant).***

*Source: Adapted from Bill Digest H.B. 818 (03/14/0200).*

**ASSUMPTIONS AND METHODOLOGY:** H.B. 818 eliminates a \$5 fee on the reactivation of inactive applications for Registered Nurses, as well as licensed physicians. This fee has not previously been collected, so the proposed elimination will not result in any revenue decrease. The remaining fee changes are technical in nature, and should not result in any change in revenues. Consequently, *the proposed fee changes are assumed to be revenue neutral.*

However, the additional changes to Chapter 90 expand certain criminal offenses, which may result in additional costs for the justice system. In addition, some workload increase is anticipated for the North Carolina Medical Board, due to the increased prosecution of cases and disciplinary hearings. Included below is a discussion of these respective fiscal impacts.

## **PART I. LICENSURE**

### **North Carolina Medical Board**

Sections 1 and 18 of H.B. 818 expand the Board's capacity to conduct disciplinary hearings through the use of "hearing officers." Because the law would permit the use of past Board members and judges as members of panels hearing disciplinary cases (in addition to the twelve current members), the Board's legal staff will prosecute more cases in more locations around the State. Additional legal staff will be required as a result of this change. Increasing the number of disciplinary hearings conducted by the Board will also result in greater expenditures with regard to the per diem and expenses to be received by Board members/hearing officers. Also, in Section 4 of the bill, the Board is expected to provide administrative support to the Review Panel delineated in the bill. The Board reports that such costs can be accommodated with existing resources. As the North Carolina Medical Board is fee supported, if these new duties and responsibilities result in the need for additional resources, the Board may need to ask the General Assembly for a fee increase.

## **PART II. CRIMINAL & CIVIL CASES**

H.B. 818 expands the offense of practicing medicine without a valid license. *Because this is a broadened offense, it is not known how many additional charges or convictions might result.* However, given few prior year charges and convictions under current G.S. 90-18 (only one Class 1 misdemeanor charge in CY 2006; no convictions in FY 05-06), Fiscal Research does not assume that a significant number of cases will arise. Accordingly, any resultant fiscal impact for the following offenses should prove minimal.

Enacts G.S. 90-1A (Definitions), which includes a definition of “the practice of medicine or surgery.” Because this new definition includes activities not covered by the current definition of “practicing medicine” in G.S. 90-18(b), including representation as licensed practitioner, it expands the pool of offenders who practice medicine without a license in violation of G.S. 90-18(a). Current G.S. 90-18(a) provides that the offense of practicing medicine without a license is a Class 1 misdemeanor; however, it is a Class I felony for an out-of-state practitioner (licensed to practice elsewhere) to practice in North Carolina without the appropriate license.

In addition, current G.S. 90-14.8 now provides that license revocations or suspensions by the Medical Board may be appealed in superior court, either in Wake County or “in the superior court in the county in which the hearing was held or upon agreement of the parties to the appeal in any other superior court of the State.” Section 20 of H.B. 818 restricts such appeals solely to the Superior Court of Wake County. Since the additional requirements created by the bill could lead to additional disciplinary hearings, license revocations/suspensions, *and appeals*, the proposed change could increase the workloads of superior court judges and the clerk’s office in Wake Co. However, it is not known how many additional appeals might result.

#### **Department of Correction: Division of Prisons**

It is not known how many additional offenses and convictions might result. However, since Class 1 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence will not impact the state prison population.<sup>1</sup> The potential impact on local jail populations is unknown.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Thus, if future convictions result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. But, based on the average sentence length for Class 1 misdemeanors, DOC reimbursements should not increase significantly.

Conversely, because there are no surplus prison beds, any resultant Class I felony active sentence (G.S. 90-18) will necessitate the construction of an additional bed. In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. For illustration, if *twelve* Class I convictions occur annually, *the combination of active sentences and probation revocations will require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State approximately \$272,160 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

\$168,480.<sup>2</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,390 by FY 2009-10.<sup>3</sup>

**Department of Correction: Division of Community Corrections**

In FY 2005-06, 80% of Class 1 and 85% of Class I convictions resulted in either intermediate or community punishments – predominantly special, intensive, or general supervision probation. Consequently, *if additional non-active sentences occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Included below is a brief discussion of DCC supervision costs, per offender:

- General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**Judicial Branch**

Although it is not known how many additional charges might occur for the relevant offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and workloads for district attorneys, superior and district court judges, clerks, court reporters, juries, and indigent defense counsel. The estimated single trial/plea costs for Class 1 misdemeanor and Class I felony cases are shown below. Actual costs may vary from these general estimates, which include indigent defense.

<b>Table 1. AOC Cost Estimates Per Trial and Plea: FY 2007-08</b>		
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>
Class 1 Misdemeanor	\$ 3,702	\$ 243
Class I Felony	\$ 6,980	\$ 298

**SOURCES OF DATA:** North Carolina Medical Board, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

<sup>2</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>3</sup> Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

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**DATE:** August 1, 2007



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