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SENATE BILL 864*
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Short Title: Amend Chiropractic Practice Act.

(Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHIROPRACTIC PRACTICE ACT TO REQUIRE
CRIMINAL RECORD CHECKS ON APPLICANTS FOR LICENSURE AS
CHIROPRACTIC PHYSICIANS, TO PROHIBIT CHIROPRACTORS FROM
OFFERING ENTICEMENTS TO PROSPECTIVE PATIENTS, TO EXPAND THE
GROUNDS FOR PROFESSIONAL DISCIPLINE OF CHIROPRACTORS, TO
REPEAL THE SALES AND USE TAX EXEMPTION FOR NUTRITIONAL
SUPPLEMENTS SOLD BY A CHIROPRACTOR, AND TO AMEND THE
PERFUSIONIST LICENSURE ACT, AND TO MAKE CHANGES TO THE
APPOINTING PROCESS FOR THE NORTH CAROLINA STATE BOARD OF
OPTICIANS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 90 of the General Statutes is amended by
adding a new section to read:

§ 90-143.3. Criminal record checks of applicants for licensure.

(a) Any person applying for licensure as a chiropractic physician in this State shall provide to the Board a fingerprint card in a format acceptable to the Board and a form signed by the applicant consenting to a criminal record check and the use of the applicant's fingerprints and such other identifying information as may be required by the State or national data banks. The Board shall submit these documents to the Department of Justice, along with a request for a criminal record check of the applicant.

(b) Upon receipt of the Board's submission, the Department of Justice shall commence the requested criminal record check. The Department of Justice shall forward a set of the applicant's fingerprints to the State Bureau of Investigation for a search of the State's criminal records, and the State Bureau of Investigation shall forward a set of the applicant's fingerprints to the Federal Bureau of Investigation for a

1 search of national criminal records. The Department of Justice may charge the licensure
2 applicant a fee for performing the criminal record check.

3 (c) The Board shall keep all information obtained from criminal record checks
4 privileged and confidential, in accordance with applicable State law and federal
5 guidelines, and the information shall not be a public record under Chapter 132 of the
6 General Statutes. If the Board refuses to issue a license based in whole or part on
7 information obtained from a criminal record check, the Board may disclose the relevant
8 information to the applicant but shall not provide a copy of the record check to the
9 applicant.

10 (d) When acting in good faith and in conformity with this section, the Board, its
11 officers, and employees shall be immune from civil liability for initially refusing
12 licensure based on information contained in a criminal record check supplied by the
13 Department of Justice, even if the information relied upon is later shown to be
14 erroneous."

15 **SECTION 2.** Part 2 of Article 4 of Chapter 114 of the General Statutes is
16 amended by adding the following new section to read:

17 **"§ 114-19.22. Criminal record checks of applicants for licensure as chiropractic**
18 **physicians.**

19 The Department of Justice may provide to the State Board of Chiropractic
20 Examiners from the State and National Repositories of Criminal Histories the criminal
21 history of any applicant for licensure pursuant to Article 8 of Chapter 90 of the General
22 Statutes. Along with the request, the Board shall provide to the Department of Justice
23 the fingerprints of the applicant, a form signed by the applicant consenting to the
24 criminal record check and use of fingerprints and other identifying information required
25 by the State and National Repositories, and any additional information required by the
26 Department of Justice. The applicant's fingerprints shall be forwarded to the State
27 Bureau of Investigation for a search of the State's criminal history record file, and the
28 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
29 Investigation for a national criminal history record check. The Board shall keep all
30 information obtained pursuant to this section confidential. The Department of Justice
31 may charge a fee to offset the cost incurred by it to conduct a criminal record check
32 under this section. The fee shall not exceed the actual cost of locating, editing,
33 researching, and retrieving the information."

34 **SECTION 3.** Article 8 of Chapter 90 of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 90-154.4. Enticements prohibited.**

37 (a) For purposes of this section, an enticement is anything of monetary value
38 offered by a chiropractor to a prospective patient as an incentive to enter treatment.
39 Except as permitted in subsection (b) of this section, it shall be an unlawful rebate, in
40 violation of G.S. 90-154(b)(12), for a chiropractor to offer an enticement to a
41 prospective patient if, at the time the offer is made, the chiropractor knows or has reason
42 to believe that the prospective patient's treatment expenses will be paid in whole or part
43 by an insurer or other third-party payor.

1 (b) Unless prohibited by other State or federal law, the following marketing
 2 practices shall not be construed as violations of subsection (a) of this section:

- 3 (1) Free or reduced rates, services, examinations, or treatments advertised
 4 and delivered in conformity with G.S. 90-154.1.
- 5 (2) Cash or point-of-service discounts not more than 30 percentage points
 6 lower than the charges customarily billed to third-party payors.
- 7 (3) Prepaid wellness plans covering only services that can be performed
 8 entirely by the offering chiropractor or the chiropractor's staff within
 9 the confines of the chiropractor's office.
- 10 (4) Merchandise with a value of not more than ten dollars (\$10.00) given
 11 to a prospective patient for promotional purposes."

12 **SECTION 4.** G.S. 90-154(b) is amended by adding a new subdivision to
 13 read:

14 "(b) Any one of the following is grounds for disciplinary action by the Board
 15 under subsection (a):

- 16 ...
- 17 (21) Committing an act on or after October 1, 2007, which demonstrates a
 18 lack of good moral character which would have been a basis for
 19 denying a license under G.S. 90-143(b)(1), had it been committed
 20 before application for a license."

21 **SECTION 5.** G.S. 90-151.1 reads as rewritten:
 22 **"§ 90-151.1. Selling nutritional supplements to patients.**

23 A chiropractic physician may sell nutritional supplements at a chiropractic office to
 24 a patient as part of the patient's plan of treatment but may not otherwise sell nutritional
 25 supplements at a chiropractic office. ~~A chiropractic physician who sells nutritional~~
 26 ~~supplements to a patient must keep a record of the sale that complies with~~
 27 ~~G.S. 105-164.24, except that the record may not disclose the name of the patient."~~

28 **SECTION 6.** G.S. 105-164.13(13c) is repealed.
 29 **SECTION 7.** G.S. 90-682(2) reads as rewritten:

30 **"§ 90-682. Definitions.**

31 The following definitions apply in this Article:

- 32 ...
- 33 (2) Committee. – ~~The North Carolina Perfusion Advisory~~
 34 ~~Committee.~~Perfusionist Advisory Committee of the North Carolina
 35 Medical Board.

36 ..."
 37 **SECTION 8.** G.S. 90-682.1 reads as rewritten:

38 **"§ 90-682.1. Medical Board approval required.**

39 (a) The Committee shall report to the Medical Board all actions taken by the
 40 Committee pursuant to this Article, except for actions taken by the Committee pursuant
 41 to G.S. 90-684. No action by the Committee is effective unless the action is approved by
 42 the Medical Board. The Medical Board may also rescind or ~~superecede;~~supersede, in
 43 whole or in part, any action taken by the Committee in carrying out the provisions of
 44 this Article, except for actions taken by the Committee pursuant to G.S. 90-684. In

1 rescinding or superseding an action by the Committee, the Board may remand the
2 matter back to the Committee with instructions to perform some act consistent with this
3 Article or Article 1 of Chapter 90. Members of the Medical Board may be selected by
4 the President of the Board to participate in the matter that is the subject of the Order
5 remanding the matter back to the Committee.

6 (b) The Board may waive any requirements of this Article consistent with
7 G.S. 90-12.2."

8 **SECTION 9.** G.S. 90-684 is amended by adding a new subsection to read:

9 "(h) Qualified Immunity. – The Committee and its members and staff shall not be
10 held liable in any civil or criminal proceeding for exercising, in good faith, the powers
11 and duties authorized by law. A person, partnership, firm, corporation, association,
12 authority, or other entity acting in good faith without fraud or malice shall be immune
13 from civil liability for (i) reporting, investigating, or providing an expert medical
14 opinion to the Committee regarding the acts and omissions of a licensee or applicant
15 that violates the provisions of G.S. 90-691(a) or any other provision of law relating to
16 the fitness of a licensee or applicant to practice perfusion and (ii) initiating or
17 conducting proceedings against a licensee or applicant if a complaint is made or action
18 is taken in good faith without fraud or malice. A person shall not be held liable in any
19 civil proceeding for testifying before the Committee in good faith and without fraud or
20 malice in any proceeding involving a violation of G.S. 90-961(a) or any other law
21 relating to the fitness of an applicant or licensee to practice perfusion, or for making a
22 recommendation to the Committee in the nature of peer review, in good faith and
23 without fraud and malice."

24 **SECTION 10.** G.S. 90-685 reads as rewritten:

25 **"§ 90-685. Powers of the Committee.**

26 The Committee shall have the power and duty to:

- 27 (1) Administer this Article.
- 28 (2) Issue interpretations of this Article.
- 29 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
30 provisions of this Article.
- 31 (4) Employ and fix the compensation of personnel that the Committee
32 determines is necessary to carry into effect the provisions of this
33 Article and incur other expenses necessary to effectuate this Article.
- 34 (4a) Establish the standards for qualifications and fitness of applicants for
35 licensure, provisional licensure, licensure renewal, and reciprocal
36 licensure.
- 37 (5) Determine the qualifications and fitness of applicants for licensure,
38 provisional licensure, licensure renewal, and reciprocal licensure.
- 39 (6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue
40 reprimands, and carry out any other disciplinary actions authorized by
41 this Article.
- 42 (7) Set fees for licensure, provisional licensure, reciprocal licensure,
43 licensure renewal, and other services deemed necessary to carry out
44 the purposes of this Article.

- 1 (8) Establish continuing education requirements for licensees.
2 (9) Establish a code of ethics for licensees.
3 (10) Maintain a current list of all persons who have been licensed under this
4 Article.
5 (11) Conduct investigations for the purpose of determining whether
6 violations of this Article or grounds for disciplining licensees exist.
7 (12) Maintain a record of all proceedings and make available to all
8 licensees and other concerned parties an annual report of all
9 Committee action.
10 (13) Adopt a seal containing the name of the Committee for use on all
11 official documents and reports issued by the Committee.
12 (14) Summon and issue subpoenas for the appearance of any witnesses
13 deemed necessary to testify concerning any matter to be heard before
14 or inquired into by the Committee.
15 (15) Order that any patient records, documents, or other material
16 concerning any matter to be heard before or inquired into by the
17 Committee shall be produced before the Committee or made available
18 for inspection, notwithstanding any other provisions of law providing
19 for the application of any physician-patient privilege with respect to
20 such records, documents, or other material. The Committee shall
21 withhold from public disclosure the identity of a patient, including
22 information relating to dates and places of treatment, or any other
23 information that would tend to identify the patient, unless the patient
24 or the representative of the patient expressly consents to the disclosure.
25 (16) Order a licensee whose health and effectiveness have been
26 significantly impaired by alcohol, drug addiction, or mental illness to
27 attend and successfully complete a treatment program as deemed
28 necessary and appropriate."

29 **SECTION 11.** Article 40 of Chapter 90 of the General Statutes is amended
30 by adding a new section to read:

31 **"§ 90-685.1. Confidentiality of Committee investigative information.**

32 (a) All records, papers, investigative files, investigative reports, other
33 investigative information, and other documents containing information in the possession
34 of or received or gathered by the Committee or its members or employees as a result of
35 investigations, inquiries, or interviews conducted in connection with a licensing,
36 complaint, or disciplinary matter shall not be considered public records within the
37 meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not
38 subject to discovery, subpoena, or other means of legal compulsion for release to any
39 person other than the Committee, its employees, or agents involved in the application
40 for license or discipline of a license holder, except as provided in subsection (b) of this
41 section. For purposes of this subsection, investigative information includes information
42 relating to the identity of, and a report made by, a perfusionist, or other person
43 performing an expert review for the Committee.

1 (b) The Committee shall provide the licensee or applicant with access to all
2 information in its possession that the Committee intends to offer into evidence in
3 presenting its case in chief at the contested hearing on the matter, subject to any
4 privilege or restriction set forth by rule, statute, or legal precedent, upon written request
5 from a licensee or applicant who is the subject of a complaint or investigation, or from
6 the licensee's or applicant's counsel, unless good cause is shown for delay. The
7 Committee is not required to provide any of the following:

8 (1) A Committee investigative report.

9 (2) The identity of a nontestifying complainant.

10 (3) Attorney-client communications, attorney work product, or other
11 materials covered by a privilege recognized by the Rules of Civil
12 Procedure or the Rules of Evidence."

13 **SECTION 12.** G.S. 90-690 reads as rewritten:

14 **"§ 90-690. Renewal of licenses.**

15 (a) All licenses to practice perfusion shall expire two years after the date they
16 were issued. The Committee shall send a notice of expiration to each licensee at his or
17 her last known address at least 30 days prior to the expiration of his or her license. All
18 applications for renewal of unexpired licenses shall be filed with the Committee and
19 accompanied by proof satisfactory to the Committee that the applicant has completed
20 the continuing education requirements established by the Committee and the renewal
21 fee as required by G.S. 90-689.

22 (b) An application for renewal of a license that has been expired for less than
23 three years shall be accompanied by proof satisfactory to the Committee that the
24 applicant has current certification as defined by G.S. 90-682(1), has satisfied the
25 continuing education requirements established by the Committee and has paid the
26 renewal and late fees required by G.S. 90-689. A license that has been expired for more
27 than three years shall not be renewed, but the applicant may apply for a new license by
28 complying with the current requirements for licensure under this Article."

29 **SECTION 13.** Article 40 of Chapter 90 of the General Statutes is amended
30 by adding a new section to read:

31 **"§ 90-690.1. Maintenance of certification to maintain licensure.**

32 (a) After December 31, 2007, all licensed perfusionists who are licensed under
33 this Article shall maintain certification as defined in G.S. 90-682(1) in order to maintain
34 licensure. If certification shall lapse at any time, the Committee may initiate disciplinary
35 action under G.S. 90-691, or upon a finding consistent with G.S. 150B-3(c), may order
36 the summary suspension of the perfusionist's license.

37 (b) The provisions of this section shall not apply to perfusionists who were
38 licensed under Section 2 of S. L. 2005-267."

39 **SECTION 14.** G.S. 90-691 reads as rewritten:

40 **"§ 90-691. ~~Suspension, revocation, and refusal to renew.~~ Disciplinary authority.**

41 (a) The Committee may place on probation with or without conditions, impose
42 limitations and conditions on, publicly reprimand, assess monetary redress, issue public
43 letters of concern, require satisfactory completion of treatment programs or remedial or

1 educational training, deny, refuse to renew, suspend, or revoke an application or license
2 ~~or order probation or issue a reprimand~~ if the applicant or licensee:

- 3 (1) Gives false information or withholds material information from the
4 Committee in procuring or attempting to procure a license.
- 5 (2) Gives false information or withholds material information from the
6 Committee during the course of an investigation conducted by the
7 Committee.
- 8 (3) Has been convicted of or pled guilty or no contest to a crime that
9 indicates the person is unfit or incompetent to practice perfusion as
10 defined in this Article or that indicates the person has deceived,
11 defrauded, or endangered the public.
- 12 (4) Has a habitual substance abuse or mental impairment that interferes
13 with his or her ability to provide appropriate care as established by this
14 Article or rules adopted by the Committee. The Committee is
15 empowered and authorized to require a licensee to submit to a mental
16 or physical examination by persons designated by the Committee
17 before or after charges may be presented against the licensee, and the
18 results of the examination shall be admissible in evidence in a hearing
19 before the Committee.
- 20 (5) Has demonstrated gross negligence, incompetency, or misconduct in
21 the practice of perfusion as defined in this Article. The Committee
22 may, upon reasonable grounds, require a licensee to submit to inquiries
23 or examinations, written or oral, as the Committee deems necessary to
24 determine the professional qualifications of the licensee.
- 25 (6) Has had an application for licensure or a license to practice perfusion
26 in another jurisdiction denied, suspended, or revoked for reasons that
27 would be grounds for similar action in this State.
- 28 (7) Has willfully violated any provision of this Article or rules adopted by
29 the Committee.
- 30 (8) Has allowed his or her certification to lapse.

31 (b) The taking of any action authorized under subsection (a) of this section may
32 be ordered by the Committee after a hearing is held in accordance with Article 3A of
33 Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if
34 it finds that the reasons for revocation no longer exist and that the person can reasonably
35 be expected to perform the services authorized under this Article in a safe manner."

36 **SECTION 15.** G.S. 90-238 reads as rewritten:

37 "**§ 90-238. North Carolina State Board of Opticians created; appointment and**
38 **qualification of members.**

39 The North Carolina State Board of Opticians is created. The Board's duty is to carry
40 out the purposes and enforce the provisions of this Article. The Board shall consist of
41 seven members appointed by the Governor as follows:

- 42 (1) Five licensed dispensing opticians, each of whom shall serve
43 three-year terms;

1 (2) Two residents of North Carolina who are not licensed as dispensing
2 opticians, physicians, or optometrists, who shall serve three-year
3 terms.

4 Each member of the Board shall serve until the member's successor is appointed and
5 qualifies. No person shall serve on this Board for more than two complete consecutive
6 terms. Before beginning office, each member of the Board shall take all oaths
7 prescribed for other State officers in the manner provided by law, which oaths shall be
8 filed in the office of the Secretary of State. The Governor may remove any member of
9 the Board for good cause shown, may appoint members to fill unexpired terms, and
10 must make optician appointments from a list of three nominees for each vacancy
11 submitted by the Board as a result of an election conducted by the Board each year and
12 open to all licensees. In naming candidates for election, the Board must ensure that its
13 candidates reflect the composition of the State with regards to gender, ethnic, racial, and
14 age composition. If the Board fails to fulfill its requirements under this section, the
15 Governor may appoint a licensed optician to fill a vacancy on the Board."

16 **SECTION 16.** This act becomes effective October 1, 2007.