

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

2

HOUSE BILL 721
Committee Substitute Favorable 5/3/93

Short Title: Board of Medical Examiners Amendments.

(Public)

Sponsors:

Referred to:

April 5, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE MEDICAL PRACTICE
3 ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 90-2 reads as rewritten:

6 "**§ 90-2. Board of Examiners.**

7 (a) In order to properly regulate the practice of medicine and ~~surgery,~~ surgery for
8 the benefit and protection of the people of North Carolina, there is established a Board
9 of Medical Examiners of the State of North Carolina. The Board shall consist of ~~eight~~ 12
10 members all of whom shall be residents of North Carolina.

11 (1) Seven of the members shall be duly licensed physicians ~~elected and~~
12 ~~nominated to the Governor by the~~ selected for nomination by means of
13 election of the North Carolina Medical Society. These nominees shall
14 then be presented to the Governor, who shall either choose from these
15 nominees or reject one or all of the nominees. Upon rejection of any
16 nominee, the Governor shall so inform the North Carolina Medical
17 Society which shall hold a special election to select additional
18 nominees. The other member shall be a person chosen by the Governor to
19 represent the public at large.

20 (2) Of the remaining five members, all to be appointed by the Governor, at
21 least two shall be public members and at least one shall be a physician
22 assistant and one shall be a nurse practitioner. The A public member

1 shall not be a health care provider nor the spouse of a health care
2 provider. For purposes of board membership, 'health care provider'
3 means any licensed health care professional and any agent or
4 employee of any health care institution, health care insurer, health care
5 professional school, or a member of any allied health profession. For
6 purposes of this section, a person enrolled in a program to prepare him
7 to be a licensed health care professional or an allied health professional
8 shall be deemed a health care provider. For purposes of this section,
9 any person with significant financial interest in a health service or
10 profession is not a public member.

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

14 (c) In order to establish regularly overlapping terms, the terms of office of the
15 members ~~currently serving on the Board~~ shall expire as follows: ~~two on October 31,~~
16 ~~1982; two on October 31, 1983; three on October 31, 1986.~~ Terms of Board members
17 ~~shall expire in direct relation to their date of appointment by the society; the terms of the~~
18 ~~two members first appointed shall expire in 1982, and the terms of the three members~~
19 ~~last appointed shall expire in 1986.~~ two on October 31, 1993; four on October 31, 1994;
20 four on October 31, 1995; and two on October 31, 1996. No initial physician member
21 of the Board may serve another term until at least three years from the date of expiration
22 of his current term.

23 ~~The Governor shall appoint the public member not later than October 31, 1981.~~

24 (d) Any initial or regular member of the Board may be removed from office by
25 the Governor for good cause shown. Any vacancy in the initial or regular physician
26 membership of the Board shall be filled for the period of the unexpired term by the
27 Governor from a list of physicians submitted by the North Carolina Medical Society
28 Executive Council. Any vacancy in the public, physician assistant, or nurse practitioner
29 membership of the Board shall be filled by the Governor for the unexpired term.

30 (e) The Board of Medical Examiners shall have the power to acquire, hold, rent,
31 encumber, alienate, and otherwise deal with real property in the same manner as any
32 private person or corporation, subject only to approval of the Governor and the Council
33 of State as to the acquisition, rental, encumbering, leasing, and sale of real property.
34 Collateral pledged by the Board for an encumbrance is limited to the assets, income, and
35 revenues of the Board."

36 Sec. 2. G.S. 90-14 reads as rewritten:

37 "**§ 90-14. Revocation, suspension, annulment or denial of license.**

38 (a) The Board shall have the power to deny, annul, suspend, or revoke a license,
39 or other authority to practice medicine in this State, issued by the Board to any person
40 who has been found by the Board to have committed any of the following acts or
41 conduct, or for any of the following reasons:

- 42 (1) Immoral or dishonorable conduct;
- 43 (2) Producing or attempting to produce an abortion contrary to law;

- 1 (3) Made false statements or representations to the Board, or who has
2 willfully concealed from the Board material information in connection
3 with his application for a license;
- 4 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 5 (5) Being unable to practice medicine with reasonable skill and safety to
6 patients by reason of illness, drunkenness, excessive use of alcohol,
7 drugs, chemicals, or any other type of material or by reason of any
8 physical or mental abnormality. The Board is empowered and
9 authorized to require a physician licensed by it to submit to a mental or
10 physical examination by physicians designated by the Board before or
11 after charges may be presented against him, and the results of
12 examination shall be admissible in evidence in a hearing before the
13 Board;
- 14 (6) Unprofessional conduct, including, but not limited to, any departure
15 from, or the failure to conform to, the standards of acceptable and
16 prevailing medical practice, or the ethics of the medical profession,
17 irrespective of whether or not a patient is injured thereby, or the
18 committing of any act contrary to honesty, justice, or good morals,
19 whether the same is committed in the course of his practice or
20 otherwise, and whether committed within or without North Carolina;
- 21 (7) Conviction in any court of a crime involving moral turpitude, or the
22 violation of a law involving the practice of medicine, or a conviction
23 of a felony; provided that a felony conviction shall be treated as
24 provided in subsection (c) of this section;
- 25 (8) By false representations has obtained or attempted to obtain practice,
26 money or anything of value;
- 27 (9) Has advertised or publicly professed to treat human ailments under a
28 system or school of treatment or practice other than that for which he
29 has been educated;
- 30 (10) Adjudication of mental incompetency, which shall automatically
31 suspend a license unless the Board orders otherwise;
- 32 (11) Lack of professional competence to practice medicine with a
33 reasonable degree of skill and safety for patients. In this connection the
34 Board ~~may consider repeated acts of a physician indicating his failure to~~
35 ~~properly treat a patient and may require such~~ any physician to submit to
36 inquiries or examinations, written or oral, by members of the Board or
37 by other physicians licensed to practice medicine in this State, as the
38 Board deems necessary to determine the professional qualifications of
39 such licensee;
- 40 (12) Promotion of the sale of drugs, devices, appliances or goods for a
41 patient, or providing services to a patient, in such a manner as to
42 exploit the patient for financial gain of the physician; and upon a
43 finding of the exploitation for financial gain, the Board may order
44 restitution be made to the payer of the bill, whether the patient or the

- 1 insurer, by the physician; provided that a determination of the amount
2 of restitution shall be based on credible testimony in the record;
- 3 (13) Suspension or revocation of a license to practice medicine in any other
4 state, or territory of the United States, or other country;
- 5 (14) The failure to respond, within a reasonable period of time and in a
6 reasonable manner as determined by the Board, to inquiries from the
7 Board concerning any matter affecting the license to practice
8 medicine.

9 For any of the foregoing reasons, the Board may deny the issuance of a license to an
10 applicant or revoke a license issued to him, may suspend such a license for a period of
11 time, and may impose conditions upon the continued practice after such period of
12 suspension as the Board may deem advisable, may limit the accused physician's practice
13 of medicine with respect to the extent, nature or location of his practice as the Board
14 deems advisable. The Board may, in its discretion and upon such terms and conditions
15 and for such period of time as it may prescribe, restore a license so revoked or
16 rescinded.

17 (b) The Board shall refer to the State Medical Society Physician Health and
18 Effectiveness Committee all physicians whose health and effectiveness have been
19 significantly impaired by alcohol, drug addiction or mental illness.

20 (c) A felony conviction shall result in the automatic revocation of a license
21 issued by the Board, unless the Board orders otherwise or receives a request for a
22 hearing from the person within 60 days of receiving notice from the Board, after the
23 conviction, of the provisions of this subsection. If the Board receives a timely request
24 for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

25 (c1) The Board may impose a civil penalty, not to exceed two thousand dollars
26 (\$2,000), for each violation of this Article. The proceeds of any civil penalties collected
27 under this provision shall be deposited into the General Fund of the State of North
28 Carolina.

29 (d) The Board and its members and staff may release confidential or nonpublic
30 information to any health care licensure board in this State or another state about the
31 issuance, denial, annulment, suspension, or revocation of a license, or the voluntary
32 surrender of a license by a Board-licensed physician, including the reasons for the
33 action, or an investigative report made by the Board. The Board shall notify the
34 physician within 60 days after the information is transmitted. A summary of the
35 information that is being transmitted shall be furnished to the physician. If the
36 physician requests, in writing, within 30 days after being notified that such information
37 has been transmitted, he shall be furnished a copy of all information so transmitted. The
38 notice or copies of the information shall not be provided if the information relates to an
39 ongoing criminal investigation by any law-enforcement agency, or authorized
40 Department of Human Resources personnel with enforcement or investigative
41 responsibilities.

42 (e) The Board and its members and staff shall not be held liable in any civil or
43 criminal proceeding for exercising, in good faith, the powers and duties authorized by
44 law."

1 Sec. 3. G.S. 90-14.9 reads as rewritten:

2 **"§ 90-14.9. Appeal bond; stay of Board order.**

3 The person seeking the review shall file with the clerk of the reviewing court a copy
4 of the notice of appeal and an appeal bond of two hundred dollars (\$200.00) at the same
5 time the notice of appeal is filed with the Board. ~~At any time before or during the review~~
6 ~~proceeding the aggrieved person may apply to the reviewing court for an order staying the~~
7 ~~operation of the Board decision pending the outcome of the review, which the court may grant~~
8 ~~or deny in its discretion. At no time shall the reviewing court enter an order staying the~~
9 Board decision pending the outcome of the review."

10 Sec. 4. G.S. 90-14.11 reads as rewritten:

11 **"§ 90-14.11. Appeal; appeal bond.**

12 Any party to the review proceeding, including the Board, may appeal from the
13 decision of the superior court under rules of procedure applicable in other civil cases.
14 No appeal bond shall be required of the Board. ~~The appealing party may apply to the~~
15 ~~superior court for a stay of that court's decision or a stay of the Board's decision, whichever~~
16 ~~shall be appropriate, pending the outcome of the appeal."~~

17 Sec. 5. G.S. 90-14.13 reads as rewritten:

18 **"§ 90-14.13. Reports of disciplinary action by health care institutions; immunity**
19 **from liability.**

20 The chief administrative officer of every licensed hospital or other health care
21 institution in the State shall, after consultation with the chief of staff of such institution,
22 report to the Board any revocation, suspension, or limitation of a physician's privileges
23 to practice in that institution. Each such institution shall also report to the Board
24 resignations from practice in that institution by persons licensed under this Article. The
25 Board shall report all violations of this subsection known to it to the licensing agency
26 for the institution involved.

27 The chief administrative officer of each insurance company providing professional
28 liability insurance for physicians who practice medicine in North Carolina, the
29 administrative officer of the Liability Insurance Trust Fund Council created by G.S.
30 116-220, and the administrative officer of any trust fund operated by a hospital
31 authority, group, or provider shall report to the Board within 30 days:

- 32 (1) Any award of damages or settlement affecting or involving a physician
33 or professional corporation it insures, or
34 (2) Any cancellation or nonrenewal of its professional liability coverage of
35 a physician, physician or professional corporation, if the cancellation or
36 nonrenewal was for cause.

37 The Board may request details about any action and the officers shall promptly
38 furnish the requested information. The reports required by this section are privileged
39 and shall not be open to the public. The Board shall report all violations of this
40 paragraph to the Commissioner of Insurance.

41 Any person making a report required by this section shall be immune from any
42 criminal prosecution or civil liability resulting therefrom unless such person knew the
43 report was false or acted in reckless disregard of whether the report was false."

44 Sec. 6. G.S. 90-18 reads as rewritten:

"§ 90-18. Practicing without license; practicing defined; penalties.

No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless he shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, he shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ~~not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00)~~, up to one hundred thousand dollars (\$100,000) or imprisoned at the discretion of the court for each and every offense.

Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person: Provided, that the following cases shall not come within the definition above recited:

- (1) The administration of domestic or family remedies in cases of emergency.
- (2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.
- (3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.
- (4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.
- (5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.
- (6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.
- (7) The practice of midwifery as defined in G.S. 90-178.2.
- (8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.
- (9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.
- (10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.
- (11) The practice of medicine or surgery by any reputable physician or surgeon in a neighboring state coming into this State for consultation with a resident registered physician. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

1 (12) Any person practicing radiology as hereinafter defined shall be
2 deemed to be engaged in the practice of medicine within the meaning
3 of this Article. 'Radiology' shall be defined as, that method of medical
4 practice in which demonstration and examination of the normal and
5 abnormal structures, parts or functions of the human body are made by
6 use of X ray. Any person shall be regarded as engaged in the practice
7 of radiology who makes or offers to make, for a consideration, a
8 demonstration or examination of a human being or a part or parts of a
9 human body by means of fluoroscopic exhibition or by the shadow
10 imagery registered with photographic materials and the use of X rays;
11 or holds himself out to diagnose or able to make or makes any
12 interpretation or explanation by word of mouth, writing or otherwise of
13 the meaning of such fluoroscopic or registered shadow imagery of any
14 part of the human body by use of X rays; or who treats any disease or
15 condition of the human body by the application of X rays or radium.
16 Nothing in this subdivision shall prevent the practice of radiology by
17 any person licensed under the provisions of Articles 2, 7, 8, and 12A
18 of this Chapter.

19 (13) Any act, task or function performed by an assistant to a person
20 licensed as a physician by the Board of Medical Examiners when
21 a. Such assistant is approved by and annually registered with the
22 Board as one qualified by training or experience to function as
23 an assistant to a physician, except that no more than two
24 assistants may be currently registered for any physician, and
25 b. Such act, task or function is performed at the direction or under
26 the supervision of such physician, in accordance with rules and
27 regulations promulgated by the Board, and
28 c. The services of the assistant are limited to assisting the
29 physician in the particular field or fields for which the assistant
30 has been trained, approved and registered;

31 Provided that this subdivision shall not limit or prevent any physician
32 from delegating to a qualified person any acts, tasks or functions
33 which are otherwise permitted by law or established by custom.

34 (14) The practice of nursing by a registered nurse engaged in the practice of
35 nursing and the performance of acts otherwise constituting medical
36 practice by a registered nurse when performed in accordance with
37 rules and regulations developed by a joint subcommittee of the Board
38 of Medical Examiners and the Board of Nursing and adopted by both
39 boards."

40 Sec. 7. G.S. 90-15.1 reads as rewritten:

41 **"§ 90-15.1. Registration every two years with Board.**

42 Every person heretofore or hereafter licensed to practice medicine by said Board of
43 Medical Examiners shall, during the month of January, 1958, and during the month of
44 January in every even-numbered year thereafter, register with the secretary-treasurer of

1 said Board his name and office and residence address and such other information as the
2 Board may deem necessary and shall pay a registration fee fixed by the Board not in
3 excess of ~~one-two~~ hundred dollars (~~\$100.00~~) (~~\$200.00~~). In the event a physician fails to
4 register as herein provided he shall pay an additional amount of twenty dollars (\$20.00)
5 to the Board. Should a physician fail to register and pay the fees imposed, and should
6 such failure continue for a period of 30 days, the license of such physician may be
7 suspended by the Board, after notice and hearing at the next regular meeting of the
8 Board. Upon payment of all fees and penalties which are due, the license of the
9 physician may be reinstated, subject to the Board requiring the physician to appear
10 before the Board for an interview and to comply with other licensing requirements.

11 The Board shall require the completion of 18 hours of Board-approved continuing
12 medical education every three years."

13 Sec. 8. G.S. 90-15 reads as rewritten:

14 **"§ 90-15. License fee; salaries, fees, and expenses of Board.**

15 Each applicant for a license by examination shall pay to the treasurer of the Board of
16 Medical Examiners of the State of North Carolina a fee which shall be prescribed by
17 said Board in an amount not exceeding the sum of four hundred dollars (\$400.00) plus
18 the cost of test materials before being admitted to the examination. Whenever any
19 license is granted without examination, as authorized in G.S. 90-13, the applicant shall
20 pay to the treasurer of the Board a fee in an amount to be prescribed by the Board not in
21 excess of two hundred fifty dollars (\$250.00). Whenever a limited license is granted as
22 provided in G.S. 90-12, the applicant shall pay to the treasurer of the Board a fee not to
23 exceed one hundred fifty dollars (\$150.00), except where a limited license to practice in
24 a medical education and training program approved by the Board for the purpose of
25 education or training is granted, the applicant shall pay a fee of twenty-five dollars
26 (\$25.00). A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a
27 duplicate license. All fees shall be paid in advance to the treasurer of the Board of
28 Medical Examiners of the State of North Carolina, to be held by him as a fund for the
29 use of said Board. The compensation and expenses of the members and officers of the
30 said Board and all expenses proper and necessary in the opinion of the Board to the
31 discharge of its duties under and to enforce the laws regulating the practice of medicine
32 or surgery shall be paid out of said fund, upon the warrant of the said Board and all
33 expenses proper and necessary in the opinion of the officers and members of said Board
34 shall be fixed by the Board but shall not exceed ~~one-two~~ hundred dollars (~~\$100.00~~)
35 (~~\$200.00~~) per day per member for time spent in the performance and discharge of his
36 duties as a member of said Board, and reimbursement for travel and other necessary
37 expenses incurred in the performance of his duties as a member of said Board. Any
38 unexpended sum or sums of money remaining in the treasury of said Board at the
39 expiration of the terms of office of the members thereof shall be paid over to their
40 successors in office.

41 For the initial and annual registration of an assistant to a physician, the Board may
42 require the payment of a fee not to exceed a reasonable amount."

43 Sec. 9. This act is effective upon ratification. The terms of the new
44 appointed positions created by G.S. 90-2(a)(2) in Section 1 of this act shall commence

- 1 November 1, 1993. The terms of the members serving on the Board as of the effective
- 2 date of this act shall not be altered as a result of Section 1 of this act.