

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 818*
Committee Substitute Favorable 5/4/07

Short Title: Amend Practice of Medicine Laws.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS PERTAINING TO THE PRACTICE OF
3 MEDICINE.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 90-1A. Definitions.**

8 The following definitions apply in this Article:

9 (1) Board. – The North Carolina Medical Board.

10 (2) Hearing officer. – Any current or past member of the Board who is a
11 physician, physician assistant, or nurse practitioner and has an active
12 license or approval to practice medical acts, tasks, or functions issued
13 by the Board, or any current or retired judge of the Office of
14 Administrative Hearings, a State district court, a State superior court,
15 the North Carolina Court of Appeals, the North Carolina Supreme
16 Court, or of the federal judiciary who has an active license to practice
17 law in North Carolina and who is a member in good standing of the
18 North Carolina State Bar.

19 (3) Integrative medicine. – A diagnostic or therapeutic treatment that may
20 not be considered a conventionally accepted medical treatment and
21 that a licensed physician in the physician's professional opinion
22 believes may be of potential benefit to the patient, so long as the
23 treatment poses no greater risk of harm to the patient than the
24 comparable conventional treatments.

25 (4) License. – An authorization issued by the Board to a physician or
26 physician assistant to practice medical acts, tasks, or functions.

27 (5) The practice of medicine or surgery. – The practice of medicine or
28 surgery includes any of the following acts:

- 1 a. Advertising, holding out to the public, or representing in any
2 manner that the individual is authorized to practice medicine in
3 this State.
- 4 b. Offering or undertaking to prescribe, order, give, or administer
5 any drug or medicine for the use of any other individual.
- 6 c. Offering or undertaking to prevent or diagnose, correct, or treat
7 in any manner or by any means, methods, or devices any
8 disease, illness, pain, wound, fracture, infirmity, defect, or
9 abnormal physical or mental condition of any individual,
10 including the management of pregnancy or parturition.
- 11 d. Offering or undertaking to perform any surgical operation on
12 any individual.
- 13 e. Using the designation 'Doctor,' 'Doctor of Medicine,' 'Doctor of
14 Osteopathy,' 'Doctor of Osteopathic Medicine,' 'Physician,'
15 'Surgeon,' 'Physician and Surgeon,' 'Dr.,' 'M.D.,' 'D.O.,' or any
16 combination thereof in the conduct of any occupation or
17 profession pertaining to the prevention, diagnosis, or treatment
18 of human disease or condition, unless the designation
19 additionally contains the description of or reference to another
20 branch of the healing arts for which the individual holds a valid
21 license in this State or the use of the designation 'Doctor' or
22 'Physician' is otherwise specifically permitted by law.
- 23 f. Cosmetic procedures employing lasers or other means that
24 involve the revision, destruction, incision, or structural
25 alteration of human tissue, unless otherwise permitted by law.
- 26 g. The performance of any act, within or without this State,
27 described in this subdivision by use of any electronic or other
28 means, including the Internet or telephone."

29 **SECTION 2.** G.S. 90-2.1 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 **"§ 90-5.1. Powers and duties of the Board.**

33 (a) The Board shall:

- 34 (1) Administer this Article.
35 (2) Issue interpretations of this Article.
36 (3) Adopt, amend, or repeal rules as may be necessary to carry out and
37 enforce the provisions of this Article.
38 (4) Require an applicant or licensee to submit to the Board evidence of the
39 applicant's or licensee's continuing competence in the practice of
40 medicine.
41 (5) Regulate the retention and disposition of medical records, whether in
42 the possession of a licensee or non-licensee. In the case of the death of
43 a licensee, the rules may provide for the disposition of the medical
44 records by the estate of the licensee. This subsection shall not apply to

1 records created or maintained by persons licensed under other Articles
2 of this Chapter or to medical records maintained in the normal course
3 of business by licensed health care institutions.

4 (6) Appoint a temporary or permanent custodian for medical records
5 abandoned by a licensee.

6 (7) Develop educational programs to facilitate licensee awareness of
7 provisions contained in this Article and public awareness of the role
8 and function of the Board.

9 (8) Develop and implement methods to identify dyscompetent physicians
10 and physicians who fail to meet acceptable standards of care.

11 (9) Develop and implement methods to assess and improve physician
12 practice.

13 (10) Develop and implement methods to ensure the ongoing competence of
14 licensees.

15 (b) Nothing in subsection (a) of this section shall restrict or otherwise limit
16 powers and duties conferred on the Board in other sections of this Article."

17 **SECTION 4.** G.S. 90-6(a) is recodified as G.S. 90-8.1; G.S. 90-6(b) and (c),
18 respectively, are recodified as G.S. 90-8.2(a) and (b), respectively; G.S. 90-12.1 is
19 recodified as G.S. 90-12.4; G.S. 90-12.2 is recodified as G.S. 90-12.5; G.S. 90-15 is
20 recodified as G.S. 90-13.1; and G.S. 90-15.1 is recodified as G.S. 90-13.2.

21 **SECTION 5.** G.S. 90-8.1, as recodified in Section 4 of this act, reads as
22 rewritten:

23 "**§ 90-8.1. Rules governing applicants for license, examinations, etc.; appointment**
24 **of subcommittees.licensure.**

25 (a) The North Carolina Medical Board is empowered to ~~prescribe such~~adopt
26 rules as it may deem proper, governing applicants for license, admission to
27 examinations, the conduct of applicants during examinations, and the conduct of
28 examinations proper.that prescribe additional qualifications for an applicant, including
29 education and examination requirements and application procedures."

30 **SECTION 6.** G.S. 90-8.2, as recodified in Section 4 of this act, reads as
31 rewritten:

32 "**§ 90-8.2. Appointment of subcommittees.**

33 (a) The North Carolina Medical Board shall appoint and maintain a
34 subcommittee to work jointly with a subcommittee of the Board of Nursing to develop
35 rules to govern the performance of medical acts by registered nurses, including the
36 determination of reasonable fees to accompany an application for approval not to
37 exceed one hundred dollars (\$100.00) and for renewal of approval not to exceed fifty
38 dollars (\$50.00). ~~The fee for reactivation of an inactive incomplete application shall be~~
39 ~~five dollars (\$5.00).~~ Rules developed by this subcommittee from time to time shall
40 govern the performance of medical acts by registered nurses and shall become effective
41 when adopted by both the North Carolina Medical Board and the Board of Nursing. The
42 North Carolina Medical Board shall have responsibility for securing compliance with
43 these rules.

1 (b) The North Carolina Medical Board shall appoint and maintain a
2 subcommittee of four licensed physicians to work jointly with a subcommittee of the
3 North Carolina Board of Pharmacy to develop rules to govern the performance of
4 medical acts by clinical pharmacist practitioners, including the determination of
5 reasonable fees to accompany an application for approval not to exceed one hundred
6 dollars (\$100.00) and for renewal of approval not to exceed fifty dollars (\$50.00). The
7 fee for reactivation of an inactive incomplete application shall be five dollars (\$5.00).
8 Rules recommended by the subcommittee shall be adopted in accordance with Chapter
9 150B of the General Statutes by both the North Carolina Medical Board and the North
10 Carolina Board of Pharmacy and shall not become effective until adopted by both
11 Boards. The North Carolina Medical Board shall have responsibility for ensuring
12 compliance with these rules."

13 **SECTION 7.** G.S. 90-9 and G.S. 90-10 are repealed.

14 **SECTION 8.** Article 1 of Chapter 90 of the General Statutes is amended by
15 adding the following new sections to read:

16 **"§ 90-9.1. Requirements for licensure as a physician under this Article.**

17 (a) Except as provided in G.S. 90-9.2, to be eligible for licensure as a physician
18 under this Article, an applicant shall submit proof satisfactory to the Board that the
19 applicant:

20 (1) Has passed each part of an examination described in G.S. 90-10.1;

21 (2) Is a graduate of:

22 a. A medical college approved by the Liaison Commission on
23 Medical Education, the Committee for the Accreditation of
24 Canadian Medical Schools, or an osteopathic college approved
25 by the American Osteopathic Association and has successfully
26 completed one year of training in a medical education program
27 approved by the Board after graduation from medical school; or

28 b. A medical college approved by the Liaison Commission on
29 Medical Education, the Committee for the Accreditation of
30 Canadian Medical Schools, or an osteopathic college approved
31 by the American Osteopathic Association, is a dentist licensed
32 to practice dentistry under Article 2 of Chapter 90 of the
33 General Statutes, and has been certified by the American Board
34 of Oral and Maxillofacial Surgery after having completed a
35 residency in an Oral and Maxillofacial Surgery Residency
36 program approved by the Board before completion of medical
37 school; and

38 (3) Is of good moral character.

39 (b) No license may be granted to any applicant who graduated from a medical or
40 osteopathic college that has been disapproved by the Board pursuant to rules adopted by
41 the Board.

42 (c) The Board may, by rule, require an applicant to comply with other
43 requirements or submit additional information the Board deems appropriate.

44 **"§ 90-9.2. Requirements for graduates of foreign medical schools.**

1 (a) To be eligible for licensure under this section, an applicant who is a graduate
2 of a medical school not approved by the Liaison Commission on Medical Education, the
3 Committee for the Accreditation of Canadian Medical Schools, or the American
4 Osteopathic Association shall submit proof satisfactory to the Board that the applicant:

5 (1) Has successfully completed three years of training in a medical
6 education program approved by the Board after graduation from
7 medical school;

8 (2) Is of good moral character;

9 (3) Has a currently valid standard certificate of Educational Commission for
10 Foreign Medical Graduates (ECFMG); and

11 (4) Is able to communicate in English.

12 (b) The Board may waive ECFMG certification if the applicant:

13 (1) Has passed the ECFMG examination and successfully completed an
14 approved Fifth Pathway Program. The applicant is required to provide
15 the original ECFMG Certification Status Report from the ECFMG; or

16 (2) Has been licensed in another state on the basis of written examination
17 before the establishment of ECFMG in 1958.

18 (c) The Board may, by rule, require an applicant to comply with other
19 requirements or submit additional information the Board deems appropriate.

20 **"§ 90-9.3. Requirements for licensure as a physician assistant.**

21 (a) To be eligible for licensure as a physician assistant, an applicant shall submit
22 proof satisfactory to the Board that the applicant:

23 (1) Has successfully completed an educational program for physician
24 assistants or surgeon assistants accredited by the Committee on Allied
25 Health Education and Accreditation or by the Committee's predecessor
26 or successor entities;

27 (2) Holds or previously held a certificate issued by the National
28 Commission on Certification of Physician Assistants; and

29 (3) Is of good moral character.

30 (b) Before initiating practice of medical acts, tasks, or functions as a physician
31 assistant, the physician assistant shall provide the Board the name, address, and
32 telephone number of the physician who will supervise the physician assistant in the
33 relevant medical setting.

34 (c) The Board may, by rule, require an applicant to comply with other
35 requirements or submit additional information the Board deems appropriate. The Board
36 may set fees for physician assistants pursuant to rules adopted by the Board.

37 **"§ 90-10.1. Examinations accepted by the Board.**

38 The Board may administer or accept the following examinations for licensure:

39 (1) A State Board licensing examination.

40 (2) The National Board of Medical Examiners (NBME) examination or its
41 successor.

42 (3) The United States Medical Licensing Examination (USMLE) of this
43 section or its successor.

44 (4) The Federation Licensing Examination (FLEX) or its successor.

1 (5) Other examinations the Board deems equivalent to the examinations
2 described in subdivisions (1) through (3) of this section pursuant to
3 rules adopted by the Board."

4 **SECTION 9.** G.S. 90-11 reads as rewritten:

5 "**§ 90-11. Qualifications of applicant for license. Criminal background checks.**

6 (a) ~~Every applicant for a license to practice medicine or to perform medical acts,~~
7 ~~tasks, and functions as a physician assistant in the State shall satisfy the North Carolina~~
8 ~~Medical Board that the applicant is of good moral character and meets the other~~
9 ~~qualifications for the issuance of a license before any such license is granted by the~~
10 ~~Board to the applicant.~~

11 (b) The Department of Justice may provide a criminal record check to the Board
12 for a person who has applied for a license through the Board. The Board shall provide to
13 the Department of Justice, along with the request, the fingerprints of the applicant, any
14 additional information required by the Department of Justice, and a form signed by the
15 applicant consenting to the check of the criminal record and to the use of the
16 fingerprints and other identifying information required by the State or national
17 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of
18 Investigation for a search of the State's criminal history record file, and the State Bureau
19 of Investigation shall forward a set of the fingerprints to the Federal Bureau of
20 Investigation for a national criminal history check. The Board shall keep all information
21 pursuant to this subsection privileged, in accordance with applicable State law and
22 federal guidelines, and the information shall be confidential and shall not be a public
23 record under Chapter 132 of the General Statutes.

24 The Department of Justice may charge each applicant a fee for conducting the
25 checks of criminal history records authorized by this subsection."

26 **SECTION 10.** G.S. 90-12 and G.S. 90-13 are repealed.

27 **SECTION 11.** Article 1 of Chapter 90 of the General Statutes is amended by
28 adding the following new sections to read:

29 "**§ 90-12A. Limited license to practice in a medical education and training**
30 **program.**

31 (a) As provided in rules adopted by the Board, the Board may issue a limited
32 license known as a 'resident's training license' to a physician not otherwise licensed by
33 the Board who is participating in a graduate medical education training program.

34 (b) A resident's training license shall become inactive at the time its holder ceases
35 to be a resident in a training program or obtains any other license to practice medicine
36 issued by the Board. The Board shall retain jurisdiction over the holder of the inactive
37 license.

38 "**§ 90-12.1A. Limited volunteer license.**

39 (a) The Board may issue a 'military limited volunteer license' to an applicant
40 who:

41 (1) Has a license to practice medicine and surgery in another state;

42 (2) Produces a letter from the state of licensure indicating the applicant is
43 in good standing; and

1 (3) Is authorized to treat personnel enlisted in a branch of the United
2 States armed services or veterans.

3 (b) The Board may issue a 'retired limited volunteer license' to an applicant who
4 is a retired physician and has allowed his or her license to practice medicine and surgery
5 in this State or another state to become inactive.

6 (c) A physician holding a limited license under this section shall comply with the
7 continuing medical education requirements pursuant to rules adopted by the Board.

8 (d) The Board shall issue a limited license under this section within 30 days after
9 an applicant provides the Board with information satisfying the requirements of this
10 section.

11 (e) The holder of a limited license under this section may practice medicine and
12 surgery only at clinics that specialize in the treatment of indigent patients. The holder of
13 the limited license may not receive compensation for services rendered at clinics
14 specializing in the care of indigent patients.

15 (f) The holder of a limited license issued pursuant to this section who practices
16 medicine or surgery at places other than clinics that specialize in the treatment of
17 indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be
18 fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for
19 each offense. The Board, in its discretion, may revoke the limited license after due
20 notice is given to the holder of the limited license.

21 (g) The Board may, by rule, require an applicant for a limited license under this
22 section to comply with other requirements or submit additional information the Board
23 deems appropriate.

24 **"§ 90-12.2A. Special purpose license.**

25 (a) The Board may issue a special purpose license to practice medicine to an
26 applicant who:

27 (1) Holds a full and unrestricted license to practice in at least one other
28 jurisdiction; and

29 (2) Does not have any current or pending disciplinary or other action
30 against him or her by any medical licensing agency in any state or
31 other jurisdiction.

32 (b) The holder of the special purpose license practicing medicine or surgery
33 beyond the limitations of the license shall be guilty of a Class 3 misdemeanor and, upon
34 conviction, shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty
35 dollars (\$50.00) for each offense. The Board, at its discretion, may revoke the special
36 license after due notice is given to the holder of the special purpose license.

37 (c) The Board may adopt rules and set fees as appropriate to implement the
38 provisions of this section.

39 **"§ 90-12.3. Medical school faculty license.**

40 (a) The Board may issue a medical school faculty license to practice medicine
41 and surgery to a physician who:

42 (1) Holds a full-time appointment as either a lecturer, assistant professor,
43 associate professor, or full professor at one of the following medical
44 schools:

- a. Duke University School of Medicine;
- b. The University of North Carolina at Chapel Hill School of Medicine;
- c. Wake Forest University School of Medicine; or
- d. East Carolina University School of Medicine; and

(2) Is not subject to disciplinary order or other action by any medical licensing agency in any state or other jurisdiction.

(b) The holder of the medical school faculty license issued under this section shall not practice medicine or surgery outside the confines of the medical school or an affiliate of the medical school. The holder of the medical school faculty license practicing medicine or surgery beyond the limitations of the license shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. The Board, at its discretion, may revoke the special license after due notice is given to the holder of the medical school faculty license.

(c) The Board may adopt rules and set fees related to issuing medical school faculty licenses. The Board may, by rule, set a time limit for the term of a medical school facility license."

SECTION 12. G.S. 90-13.1, as recodified in Section 4 of this act, reads as rewritten:

"§ 90-13.1. ~~License fee; salaries, fees, and expenses of Board fees.~~

(a) Each applicant for a license to practice medicine and surgery in this State under either G.S. ~~90-9, 90-10, or 90-13~~90-9.1 or 90-9.2 shall pay to the North Carolina Medical Board an application fee of three hundred fifty dollars (\$350.00).

(b) ~~Whenever Each applicant for a limited license is granted as provided into practice in a medical education and training program under G.S. 90-12, the applicant~~90-12A shall pay to the Board a fee ~~not to exceed~~of one hundred fifty ~~dollars (\$100.00).~~ ~~(\$150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of one hundred dollars (\$100.00), and~~

(c) ~~where An applicant for a limited volunteer license to practice medicine and surgery only at clinics that specialize in the treatment of indigent patients is granted, the applicant~~under G.S. 90-12.1A shall not pay a fee.

(d) A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a duplicate license.

(e) All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board. ~~The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars (\$200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the~~

1 ~~Board at the expiration of the terms of office of the members of the Board shall be paid~~
2 ~~over to their successors in office.~~

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

5 **SECTION 13.** G.S. 90-13.2, as recodified in Section 4 of this act, reads as
6 rewritten:

7 **"§ 90-13.2. Registration every year with Board.**

8 (a) Every person licensed to practice medicine by the North Carolina Medical
9 Board shall register annually with the Board within 30 days of the person's birthday.

10 (b) A person who registers with the Board shall report to the Board the person's
11 name and office and residence address and any other information required by the Board,
12 and shall pay ~~a~~an annual registration fee of one hundred seventy-five dollars (\$175.00),
13 except those who have a limited license to practice in a medical education and training
14 program approved by the Board for the purpose of education or training shall pay a
15 registration fee of one hundred twenty-five dollars (\$125.00) and those who have a
16 limited volunteer license shall pay an annual registration fee of twenty-five dollars
17 (\$25.00). However, licensees who have a limited license to practice for the purpose of
18 education and training under G.S. 90-21A shall not be required to pay more than one
19 annual registration fee for each year of training.

20 (c) A physician who is not actively engaged in the practice of medicine in North
21 Carolina and who does not wish to register the license may direct the Board to place the
22 license on inactive status.

23 (d) For purposes of annual registration, the Board shall use a simplified
24 registration form which allows registrants to confirm information on file with the Board.

25 (e) A physician who fails to register as required by this section shall pay an
26 additional fee of fifty dollars (\$50.00) to the Board. The license of any physician who
27 fails to register and who remains unregistered for a period of 30 days after certified
28 notice of the failure is automatically inactive. The Board shall retain jurisdiction over
29 the holder of the inactive license.

30 (f) Except as provided in ~~G.S. 90-12(d),90-12.1A,~~ a person whose license is
31 inactive shall not practice medicine in North Carolina nor be required to pay the annual
32 registration fee.

33 (g) Upon payment of all accumulated fees and penalties, the license of the
34 physician may be reinstated, subject to the Board requiring the physician to appear
35 before the Board for an interview and to comply with other licensing requirements. The
36 penalty may not exceed the maximum fee for a license under ~~G.S. 90-13.90-13.1."~~

37 **SECTION 14.** Article 1 of Chapter 90 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 90-13.3. Salaries, fees, expenses of the Board.**

40 (a) The compensation and expenses of the members and officers of the Board
41 and all expenses proper and necessary in the opinion of the Board to the discharge of its
42 duties under and to enforce the laws regulating the practice of medicine or surgery shall
43 be paid out of the fund, upon the warrant of the Board.

1 (b) The per diem compensation of Board members shall not exceed two hundred
2 dollars (\$200.00) per day per member for time spent in the performance and discharge
3 of duties as a member. Any unexpended sum of money remaining in the treasury of the
4 Board at the expiration of the terms of office of the members of the Board shall be paid
5 over to their successors in office."

6 **SECTION 15.** G.S. 90-14(a) reads as rewritten:

7 "**§ 90-14. ~~Revocation, suspension, annulment or denial of license~~Disciplinary**
8 **Authority.**

9 (a) The Board shall have the power to place on probation with or without
10 conditions, impose limitations and conditions on, publicly reprimand, assess monetary
11 redress, issue public letters of concern, mandate free medical services, require
12 satisfactory completion of treatment programs or remedial or educational training, fine,
13 deny, annul, suspend, or revoke a license, or other authority to practice medicine in this
14 State, issued by the Board to any person who has been found by the Board to have
15 committed any of the following acts or conduct, or for any of the following reasons:

- 16 (1) Immoral or dishonorable conduct.
- 17 (2) Producing or attempting to produce an abortion contrary to law.
- 18 (3) Made false statements or representations to the Board, ~~or who has~~
19 ~~willfully -concealed from the Board material information in connection~~
20 ~~with an application for a license, an application, request or petition for~~
21 ~~reinstatement or reactivation of a license, an annual registration of a~~
22 ~~license, or an investigation or inquiry by the Board.~~
- 23 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 24 (5) Being unable to practice medicine with reasonable skill and safety to
25 patients by reason of illness, drunkenness, excessive use of alcohol,
26 drugs, chemicals, or any other type of material or by reason of any
27 physical or mental abnormality. The Board is empowered and
28 authorized to require a physician licensed by it to submit to a mental or
29 physical examination by physicians designated by the Board before or
30 after charges may be presented against the physician, and the results of
31 the examination shall be admissible in evidence in a hearing before the
32 Board.
- 33 (6) Unprofessional conduct, including, but not limited to, departure from,
34 or the failure to conform to, the standards of acceptable and prevailing
35 medical practice, or the ethics of the medical profession, irrespective
36 of whether or not a patient is injured thereby, or the committing of any
37 act contrary to honesty, justice, or good morals, whether the same is
38 committed in the course of the physician's practice or otherwise, and
39 whether committed within or without North Carolina. The Board shall
40 not revoke the license of or deny a license to a person solely because
41 of that person's practice of a therapy that is experimental,
42 nontraditional, or that departs from acceptable and prevailing medical
43 practices unless, by competent evidence, the Board can establish that

- 1 the treatment has a safety risk greater than the prevailing treatment or
2 that the treatment is generally not effective.
- 3 (7) Conviction in any court of a crime involving moral turpitude, or the
4 violation of a law involving the practice of medicine, or a conviction
5 of a felony; provided that a felony conviction shall be treated as
6 provided in subsection (c) of this section.
- 7 (8) By false representations has obtained or attempted to obtain practice,
8 money or anything of value.
- 9 (9) Has advertised or publicly professed to treat human ailments under a
10 system or school of treatment or practice other than that for which the
11 physician has been educated.
- 12 (10) Adjudication of mental incompetency, which shall automatically
13 suspend a license unless the Board orders otherwise.
- 14 (11) Lack of professional competence to practice medicine with a
15 reasonable degree of skill and safety for ~~patients~~patients or failing to
16 maintain acceptable standards of one or more areas of professional
17 physician practice. In this connection the Board may consider repeated
18 acts of a physician indicating the physician's failure to properly treat a
19 patient. The Board may, upon reasonable grounds, require a physician
20 to submit to inquiries or examinations, written or oral, as the Board
21 deems necessary to determine the professional qualifications of such
22 licensee. In order to annul, suspend, deny, or revoke a license of an
23 accused person, the Board shall find by the greater weight of the
24 evidence that the care provided was not in accordance with the
25 standards of practice for the procedures or treatments administered.
- 26 (11a) Not actively practiced medicine or practiced as a physician assistant,
27 or having not maintained continued competency, as determined by the
28 Board, for the two-year period immediately preceding the filing of an
29 application for an initial license from the Board or a request, petition,
30 motion, or application to reactivate an inactive, suspended, or revoked
31 license previously issued by the Board. The Board is authorized to
32 adopt any rules or regulations it deems necessary to carry out the
33 provisions of this subdivision.
- 34 (12) Promotion of the sale of drugs, devices, appliances or goods for a
35 patient, or providing services to a patient, in such a manner as to
36 exploit the patient, and upon a finding of the exploitation, the Board
37 may order restitution be made to the payer of the bill, whether the
38 patient or the insurer, by the physician; provided that a determination
39 of the amount of restitution shall be based on credible testimony in the
40 record.
- 41 (13) Having a license to practice medicine or the authority to practice
42 medicine revoked, suspended, restricted, or acted against or having a
43 license to practice medicine denied by the licensing authority of any
44 jurisdiction. For purposes of this subdivision, the licensing authority's

1 acceptance of a license to practice medicine voluntarily relinquished
2 by a physician or relinquished by stipulation, consent order, or other
3 settlement in response to or in anticipation of the filing of
4 administrative charges against the physician's license, is an action
5 against a license to practice medicine.

6 (14) The failure to respond, within a reasonable period of time and in a
7 reasonable manner as determined by the Board, to inquiries from the
8 Board concerning any matter affecting the license to practice
9 medicine.

10 (15) The failure to complete an amount not to exceed 150 hours of
11 continuing medical education during any three consecutive calendar
12 years pursuant to rules adopted by the Board.

13 The Board may, in its discretion and upon such terms and conditions and for such
14 period of time as it may prescribe, restore a license so revoked or otherwise acted upon,
15 except that no license that has been revoked shall be restored for a period of two years
16 following the date of revocation."

17 **SECTION 16.** G.S. 90-14.2 reads as rewritten:

18 "**§ 90-14.2. Hearing before disciplinary action, ~~revocation or suspension of a~~
19 ~~license.~~**

20 Before the Board shall ~~revoke, restrict or suspend~~ take disciplinary action against any
21 license granted by it, the licensee shall be given a written notice indicating the general
22 nature of the charges, accusation, or complaint made against him, which notice may be
23 prepared by a committee or one or more members of the Board designated by the Board,
24 and stating that such licensee will be given an opportunity to be heard concerning such
25 charges or complaint at a time and place stated in such notice, or at a time and place to
26 be thereafter designated by the Board, and the Board shall hold a public hearing not less
27 than 30 days from the date of the service of such notice upon such licensee, at which
28 such licensee may appear personally and through counsel, may cross examine witnesses
29 and present evidence in his own behalf. A physician who is mentally incompetent shall
30 be represented at such hearing and shall be served with notice as herein provided by and
31 through a guardian ad litem appointed by the clerk of the court of the county in which
32 the physician has his residence. Such licensee or physician may, if he desires, file
33 written answers to the charges or complaints preferred against him within 30 days after
34 the service of such notice, which answer shall become a part of the record but shall not
35 constitute evidence in the case."

36 **SECTION 17.** G.S. 90-14.4 is repealed.

37 **SECTION 18.** G.S. 90-14.5 reads as rewritten:

38 "**§ 90-14.5. Use of hearing committee and ~~depositions~~, depositions; appointment of
39 hearing officers.**

40 (a) The Board, in its discretion, may designate in writing three or more ~~of its~~
41 ~~members~~ hearing officers to conduct hearings as a hearing committee to take evidence.

42 (b) Evidence and testimony may be presented at hearings before the Board or a
43 hearing committee in the form of depositions before any person authorized to administer

1 oaths in accordance with the procedure for the taking of depositions in civil actions in
2 the superior court.

3 (c) The hearing committee shall submit a recommended decision that contains
4 findings of fact and conclusions of law to the Board. Before the Board makes a final
5 decision, it shall give each party an opportunity to file written exceptions to the
6 recommended decision made by the hearing committee and to present oral arguments to
7 the Board. A quorum of the Board will issue a final decision.

8 (d) Hearing officers are entitled to receive compensation and reimbursement as
9 authorized by this Article."

10 **SECTION 19.** G.S. 90-14.6(b) reads as rewritten:

11 "(b) Subject to the North Carolina Rules of Civil Procedure and Rules of
12 Evidence, in proceedings held pursuant to this Article, the ~~licensee-individual~~ under
13 investigation may call witnesses, including medical practitioners licensed in the United
14 States, ~~with expertise in the same field of practice as the licensee under investigation,~~
15 ~~and the Board shall consider this testimony.~~States with training and experience in the
16 same field of practice as the individual under investigation and familiar with the
17 standard of care among members of the same health care profession in North Carolina.
18 Witnesses shall not be restricted to experts certified by the American Board of Medical
19 Specialties."

20 **SECTION 20.** G.S. 90-14.8 reads as rewritten:

21 "**§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.**
22 **revoking or suspending a license.**

23 A physician whose license is revoked or suspended by the Board may obtain a
24 review of the decision of the Board in the Superior Court of Wake County ~~or in the~~
25 ~~superior court in the county in which the hearing was held or upon agreement of the~~
26 ~~parties to the appeal in any other superior court of the State,~~ upon filing with the
27 secretary of the Board a written notice of appeal within 20 days after the date of the
28 service of the decision of the Board, stating all exceptions taken to the decision of the
29 Board and indicating the court in which the appeal is to be heard.

30 Within 30 days after the receipt of a notice of appeal as herein provided, the Board
31 shall prepare, certify and file with the clerk of ~~the superior court in the county to which~~
32 ~~the appeal is directed~~the Superior Court of Wake County the record of the case
33 comprising a copy of the charges, notice of hearing, transcript of testimony, and copies
34 of documents or other written evidence produced at the hearing, decision of the Board,
35 and notice of appeal containing exceptions to the decision of the Board."

36 **SECTION 21.** G.S. 90-14.10 reads as rewritten:

37 "**§ 90-14.10. Scope of review.**

38 Upon the review of the Board's decision ~~revoking or suspending~~taking disciplinary
39 action on a license, the case shall be heard by the judge without a jury, upon the record,
40 except that in cases of alleged omissions or errors in the record, testimony thereon may
41 be taken by the court. The court may affirm the decision of the Board or remand the
42 case for further proceedings; or it may reverse or modify the decision if the substantial
43 rights of the accused physician have been prejudiced because the findings or decisions
44 of the Board are in violation of substantive or procedural law, or are not supported by

1 competent, material, and substantial evidence admissible under this Article, or are
2 arbitrary or capricious. At any time after the notice of appeal has been filed, the court
3 may remand the case to the Board for the hearing of any additional evidence which is
4 material and is not cumulative and which could not reasonably have been presented at
5 the hearing before the Board."

6 **SECTION 22.** G.S. 90-16 reads as rewritten:

7 **"§ 90-16. Self-reporting requirements; confidentiality of Board investigative**
8 **information; cooperation with law enforcement; patient protection;**
9 **Board to keep public records.**

10 (a) The North Carolina Medical Board shall keep a regular record of its
11 proceedings ~~in a book kept for that purpose, together~~ with the names of the members of
12 the Board present, the names of the applicants for license, and other information as to its
13 actions. ~~The North Carolina Medical Board shall cause to be entered in a separate book~~
14 ~~the name of each applicant to whom a license is issued to practice medicine or surgery,~~
15 ~~along with any information pertinent to such issuance.~~ The North Carolina Medical
16 Board shall publish the names of those licensed ~~in three daily newspapers published in~~
17 ~~the State of North Carolina,~~ within 30 days after granting the same. ~~A transcript of any~~
18 ~~such entry in the record books, or certificate that there is not entered therein the name~~
19 ~~and proficiency or date of granting such license of a person charged with the violation~~
20 ~~of the provisions of this Article, certified under the hand of the secretary and the seals of~~
21 ~~the North Carolina Medical Board, shall be admitted as evidence in any court of this~~
22 ~~State when it is otherwise competent.~~license.

23 (b) The Board may in a closed session receive evidence involving or concerning
24 the treatment of a patient who has not expressly or impliedly consented to the public
25 disclosure of such treatment as may be necessary for the protection of the rights of such
26 patient or of the accused physician and the full presentation of relevant evidence.

27 (c) All records, papers, investigative files, investigative reports, other
28 investigative information and other documents containing information in the possession
29 of or received or gathered by the Board, or its members or employees as a result of
30 investigations, inquiries or interviews conducted in connection with a licensing,
31 complaint or, disciplinary matter, or report of professional liability insurance awards or
32 settlements pursuant to G.S. 90-14.13, shall not be considered public records within the
33 meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not
34 subject to discovery, subpoena, or other means of legal compulsion for release to any
35 person other than the Board, its employees or agents involved in the application for
36 license or discipline of a license holder, except as provided in subsection (d) of this
37 section. For purposes of this subsection, investigative information includes information
38 relating to the identity of, and a report made by, a physician or other person performing
39 an expert review for the ~~Board.~~Board and transcripts of any deposition taken by Board
40 counsel in preparation for or anticipation of a hearing held pursuant to this Article but
41 not admitted into evidence at the hearing.

42 (d) The Board shall provide the licensee or applicant with access to all
43 information in its possession that the Board intends to offer into evidence in presenting
44 its case in chief at the contested hearing on the matter, subject to any privilege or

1 restriction set forth by rule, statute, or legal precedent, upon written request from a
2 licensee or applicant who is the subject of a complaint or investigation, or from the
3 licensee's or applicant's counsel, unless good cause is shown for delay. The Board is not
4 required to provide any of the following:

5 (1) A Board investigative report.

6 (2) The identity of a non-testifying complainant.

7 (3) Attorney-client communications, attorney work product, or other
8 materials covered by a privilege recognized by the Rules of Civil
9 Procedure or the Rules of Evidence.

10 (e) Information furnished to a licensee or applicant, or counsel for a licensee or
11 applicant, under subsection (d) of this section shall be subject to discovery or subpoena
12 between and among the parties in a civil case in which the licensee is a party.

13 (f) Any notice or statement of charges against any licensee, or any notice to any
14 licensee of a hearing in any proceeding shall be a public record within the meaning of
15 Chapter 132 of the General Statutes, notwithstanding that it may contain information
16 collected and compiled as a result of any such investigation, inquiry or interview; and
17 provided, further, that if any such record, paper or other document containing
18 information theretofore collected and compiled by the Board, as hereinbefore provided,
19 is received and admitted in evidence in any hearing before the Board, it shall thereupon
20 be a public record within the meaning of Chapter 132 of the General Statutes.

21 (g) In any proceeding before the Board, in any record of any hearing before the
22 Board, and in the notice of the charges against any licensee (notwithstanding any
23 provision herein to the contrary) the Board may withhold from public disclosure the
24 identity of a patient who has not expressly or impliedly consented to the public
25 disclosure of treatment by the accused physician.

26 (h) If investigative information in the possession of the Board, its employees, or
27 agents indicates that a crime may have been committed, the Board ~~shall~~may report the
28 information to the appropriate law enforcement ~~agency~~agency or district attorney of the
29 district in which the offense was committed.

30 (i) The Board shall cooperate with and assist a law enforcement agency or
31 district attorney conducting a criminal investigation or prosecution of a licensee by
32 providing information that is relevant to the criminal investigation or prosecution to the
33 investigating ~~agency~~agency or district attorney. Information disclosed by the Board to
34 an investigative agency or district attorney remains confidential and may not be
35 disclosed by the investigating agency except as necessary to further the investigation.

36 (j) All persons licensed under this Article shall self-report to the Board within 30
37 days of arrest or indictment any of the following:

38 (1) Any felony arrest or indictment.

39 (2) Any arrest for driving while impaired or driving under the influence.

40 (3) Any arrest or indictment for the possession, use, or sale of any
41 controlled substance.

42 (k) The Board, its members and staff, may release confidential or nonpublic
43 information to any health care licensure board in this State or another state or authorized
44 Department of Health and Human Services personnel with enforcement or investigative

1 responsibilities about the issuance, denial, annulment, suspension, or revocation of a
2 license, or the voluntary surrender of a license by a licensee of the Board, including the
3 reasons for the action, or an investigative report made by the Board. The Board shall
4 notify the licensee within 60 days after the information is transmitted. A summary of the
5 information that is being transmitted shall be furnished to the licensee. If the licensee
6 requests in writing within 30 days after being notified that the information has been
7 transmitted, the licensee shall be furnished a copy of all information so transmitted. The
8 notice or copies of the information shall not be provided if the information relates to an
9 ongoing criminal investigation by any law enforcement agency or authorized
10 Department of Health and Human Services personnel with enforcement or investigative
11 responsibilities."

12 **SECTION 23.** G.S. 90-18 reads as rewritten:

13 "**§ 90-18. Practicing without license; ~~practicing defined;~~ penalties.**

14 (a) No person shall perform any act constituting the practice of medicine or
15 surgery, as defined in this Article, or any of the branches thereof, ~~nor in any case~~
16 ~~prescribe for the cure of diseases~~ unless the person shall have been first licensed and
17 registered so to do in the manner provided in this Article, and if any person shall
18 practice medicine or surgery without being duly licensed and registered, as provided in
19 this Article, the person shall not be allowed to maintain any action to collect any fee for
20 such services. The person so practicing without license shall be guilty of a Class 1
21 misdemeanor, except that if the person so practicing without a license is an out-of-state
22 practitioner who has not been licensed and registered to practice medicine or surgery in
23 this State, the person shall be guilty of a Class I felony.

24 (b) ~~Any person shall be regarded as practicing medicine or surgery within the~~
25 ~~meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to~~
26 ~~treat, operate or attempt to operate on, or prescribe for or administer to, or profess to~~
27 ~~treat any human ailment, physical or mental, or any physical injury to or deformity of~~
28 ~~another person. A person who resides in any state or foreign country and who, by use of~~
29 ~~any electronic or other mediums, performs any of the acts described in this subsection,~~
30 ~~including prescribing medication by use of the Internet or a toll free telephone number,~~
31 ~~shall be regarded as practicing medicine or surgery and shall be subject to the provisions~~
32 ~~of this Article and appropriate regulation by the North Carolina Medical Board.~~

33 (c) The following shall not constitute practicing medicine or surgery as defined
34 in subsection (b) of this section:this Article:

- 35 (1) The administration of domestic or family ~~remedies in cases of~~
36 ~~emergency remedies.~~
- 37 (2) The practice of dentistry by any legally licensed dentist engaged in the
38 practice of dentistry and dental surgery.
- 39 (3) The practice of pharmacy by any legally licensed pharmacist engaged
40 in the practice of pharmacy.
- 41 (3a) The provision of drug therapy management by a licensed pharmacist
42 engaged in the practice of pharmacy pursuant to an agreement that is
43 physician, pharmacist, patient, and disease specific when performed in
44 accordance with rules and rules developed by a joint subcommittee of

1 the North Carolina Medical Board and the North Carolina Board of
2 Pharmacy and approved by both Boards. Drug therapy management
3 shall be defined as: (i) the implementation of predetermined drug
4 therapy which includes diagnosis and product selection by the patient's
5 physician; (ii) modification of prescribed drug dosages, dosage forms,
6 and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be
7 pursuant to an agreement that is physician, pharmacist, patient, and
8 disease specific.

9 (4) The practice of medicine and surgery by any surgeon or physician of
10 the United States army, navy, or public health service in the discharge
11 of his official duties.

12 (5) The treatment of the sick or suffering by mental or spiritual means
13 without the use of any drugs or other material means.

14 (6) The practice of optometry by any legally licensed optometrist engaged
15 in the practice of optometry.

16 (7) The practice of midwifery as defined in G.S. 90-178.2.

17 (8) The practice of ~~chiropractic~~ chiropractic medicine and surgery by any
18 legally licensed ~~chiropractic physician~~ chiropractic physician when engaged in the
19 practice of ~~chiropractic~~ chiropractic, and ~~without the use of any drug-podiatry as~~
20 defined in Article 12A of this Chapter.

21 (9) The practice of osteopathy by any legally licensed osteopath when
22 engaged in the practice of osteopathy as defined by law, and especially
23 G.S. 90-129.

24 (10) The practice of chiropractic by any legally licensed chiropractor when
25 engaged in the practice of chiropractic as defined by law, and without
26 the use of any drug or surgery.

27 (11) The practice of medicine or surgery by any nonregistered reputable
28 physician or surgeon who comes into this State, either in person or by
29 use of any electronic or other mediums, on an irregular basis, to
30 consult with a resident registered physician or to consult with
31 personnel at a medical school about educational or medical training.
32 This proviso shall not apply to physicians resident in a neighboring
33 state and regularly practicing in this State.

34 (11a) The practice of medicine or surgery by any physician who comes into
35 this State to practice medicine or surgery so long as:

- 36 a. The physician or surgeon has an oral or written agreement with
37 a sports team to provide general or emergency medical care to
38 the team members, coaching staff, or families traveling with the
39 team for a specific sporting event taking place in this State; and
40 b. The physician or surgeon does not provide care or consultation
41 to any person residing in this State other than an individual
42 described in sub-subdivision a. of this subdivision.

43 The exemption shall remain in force while the physician or surgeon is
44 traveling with the team. The exemption shall not exceed 10 days per

1 individual sporting event. However, the executive director of the
2 Board may grant a physician or surgeon additional time for exemption
3 of up to 20 additional days per individual sporting event.

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

22 (13) The performance of any medical acts, tasks, and functions by a
23 licensed physician assistant at the direction or under the supervision of
24 a physician in accordance with rules adopted by the Board. This
25 subdivision shall not limit or prevent any physician from delegating to
26 a qualified person any acts, tasks, and functions that are otherwise
27 permitted by law or established by custom. The Board shall authorize
28 physician assistants licensed in this State or another state to perform
29 specific medical acts, tasks, and functions during a disaster.

30 (14) The practice of nursing by a registered nurse engaged in the practice of
31 nursing and the performance of acts otherwise constituting medical
32 practice by a registered nurse when performed in accordance with
33 rules and regulations developed by a joint subcommittee of the North
34 Carolina Medical Board and the Board of Nursing and adopted by both
35 boards.

36 (15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist
37 under the provisions of Article 25 of this Chapter.

38 (16) The practice of acupuncture by a licensed acupuncturist in accordance
39 with the provisions of Article 30 of this Chapter.

40 (17) The use of an automated external defibrillator as provided in
41 G.S. 90-21.15.

42 (18) The practice of medicine by any nonregistered physician residing in
43 another state or foreign country who is contacted by one of the
44 physician's regular patients for treatment by use of the Internet or a

1 toll-free telephone number while the physician's patient is temporarily
2 in this State.

3 (19) The practice of medicine or surgery by any physician who comes into
4 this State to practice medicine or surgery at a camp that specializes in
5 providing therapeutic recreation for individuals with chronic illnesses,
6 as long as all the following conditions are satisfied:

- 7 a. The physician provides documentation to the medical director
8 of the camp that the physician is licensed and in good standing
9 to practice medicine in another state.
10 b. The physician provides services only at the camp or in
11 connection with camp events or camp activities that occur off
12 the grounds of the camp.
13 c. The physician receives no compensation for the services.
14 d. The physician provides those services within this State for no
15 more than 30 days per calendar year.
16 e. The camp has a medical director who holds an unrestricted
17 license to practice medicine and surgery issued under this
18 Article."

19 **SECTION 24.** G.S. 90-18.1(a) reads as rewritten:

20 "(a) Any person who is licensed under the provisions of G.S. ~~90-18.1~~90-9.3 to
21 perform medical acts, tasks, and functions as an assistant to a physician may use the title
22 "physician assistant". Any other person who uses the title in any form or holds out to be
23 a physician assistant or to be so licensed, shall be deemed to be in violation of this
24 Article."

25 **SECTION 25.** G.S. 90-18.1 is amended by adding the following new
26 subsections to read:

27 "(g) Any person who is licensed under G.S. 90-9.3 to perform medical acts, tasks,
28 and functions as an assistant to a physician shall comply with each of the following:

- 29 (1) Maintain a current and active license to practice in this State.
30 (2) Maintain an active registration with the Board.
31 (3) Have a current Intent to Practice form filed with the Board.

32 (h) A physician assistant serving active duty in the United States military is
33 exempt from the requirements of subdivision (g)(3) of this section.

34 (i) A physician assistant's license shall become inactive any time the holder fails
35 to comply with the requirements of subsection (g) of this section. A physician assistant
36 with an inactive license shall not practice medical acts, tasks, or functions. The Board
37 shall retain jurisdiction over the holder of the inactive license."

38 **SECTION 26.** G.S. 90-21 is repealed.

39 **SECTION 27.** This act is effective when it becomes law.