

Article 1D.

Health Program for Medical Professionals.

**§ 90-21.22. Health program for medical professionals.**

(a) The North Carolina Medical Board (Board) may enter into agreements with the North Carolina Medical Society (Society), the North Carolina Academy of Physician Assistants (Academy), and the North Carolina Physicians Health Program (Program) for the purposes of identifying, reviewing, and evaluating the ability of licensees of the Board who have been referred to the Program to function in their professional capacity and to coordinate regimens for treatment and rehabilitation. The agreement shall include guidelines for all items outlined below:

- (1) The assessment, referral, monitoring, support, and education of licensees of the Board by reason of a physical or mental illness, a substance use disorder, or professional sexual misconduct.
- (2) Procedures for the Board to refer licensees to the Program.
- (3) Criteria for the Program to report licensees to the Board.
- (4) A procedure by which licensees may obtain review of recommendations by the Program regarding assessment or treatment.
- (5) Periodic reporting of statistical information by the Program to the Board, the Society, and the Academy.
- (6) Maintaining the confidentiality of nonpublic information.

(b) Repealed by Session Laws 2016-117, s. 2(n), effective October 1, 2016.

(c) The North Carolina Physicians Health Program (Program) is an independent organization for medical professionals that provides screening, referral, monitoring, educational, and support services. The Board, Society, and the Academy may provide funds for the administration of the Program.

(d) The Program shall report immediately to the Board detailed information about any licensee of the Board who meets any of the following criteria:

- (1) The licensee constitutes an imminent danger to patient care by reason of mental illness, physical illness, substance use disorder, professional sexual misconduct, or any other reason.
- (2) The licensee refuses to submit to an assessment as ordered by the Board, has entered into a monitoring contract and fails to comply with the terms of the Program's monitoring contract, or is still unsafe to practice medicine after treatment.
- (3) Repealed by Session Laws 2016-117, s. 2(n), effective October 1, 2016.

(e) Any information acquired, created, or used in good faith by the Program pursuant to this section is privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than to the Board, the Program, or their employees or consultants. No person participating in good faith in the Program shall be required in a civil case to disclose the fact of participation in the Program or any information acquired or opinions, recommendations, or evaluations acquired or developed solely in the course of participating in the Program pursuant to this section.

(f) Activities conducted in good faith pursuant to the agreement authorized by subsection (a) of this section shall not be grounds for civil action under the laws of this State.

(g) Upon the written request of a licensee, the Program shall provide the licensee and the licensee's legal counsel with a copy of a written assessment of the licensee prepared as part of the licensee's participation in the Program. In addition, the licensee shall be entitled to a copy of any

written assessment created by a treatment provider or facility at the recommendation of the Program, to the extent permitted by State and federal laws and regulations. Any information furnished to a licensee pursuant to this subsection shall be inadmissible in evidence and shall not be subject to discovery in any civil proceeding. However, this subsection shall not be construed to make information, documents, or records otherwise available for discovery or use in a civil action immune from discovery or use in a civil action merely because the information, documents, or records were included as part of the Program's assessment of the licensee or were the subject of information furnished to the licensee pursuant to this subsection. For purposes of this subsection, a civil action or proceeding shall not include administrative actions or proceedings conducted in accordance with Article 1 of Chapter 90 and Chapter 150B of the General Statutes.

(h) The Board has authority to adopt, amend, or repeal rules as may be necessary to carry out and enforce the provisions of this section. (1987, c. 859, s. 15; 1993, c. 176, s. 1; 1995, c. 94, s. 23; 2006-144, s. 8; 2016-117, s. 2(n).)

#### **§ 90-21.22A. Medical review and quality assurance committees.**

(a) As used in this section, the following terms mean:

- (1) "Medical review committee." – A committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. "Medical review committee" does not mean a medical review committee established under G.S. 131E-95.
- (2) "Quality assurance committee." – Risk management employees of an insurer licensed to write medical professional liability insurance in this State, who work in collaboration with health care providers licensed under this Chapter, and insured by that insurer, to evaluate and improve the quality of health care services.

(b) A member of a duly appointed medical review or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review or quality assurance committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, 131E-309, or 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General Statutes, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings

of the committee. A member of the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles 1 through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62. (1997-519, s. 4.3; 1998-227, s. 3; 2002-179, s. 18; 2004-149, s. 2.6.)

### **§ 90-21.23. Election by State.**

For the purpose of making applicable in the State the early opt-in provisions of Title 4 of the "Health Care Quality Improvement Act of 1986," P.L. 99-660, the State elects to exercise on October 1, 1987, the provisions of Title 4, Section 411(c)(2)(A) of that act to promote good faith professional review activities. (1987, c. 859, s. 19.)