

§ 90-14. Disciplinary Authority.

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

- (1) Immoral or dishonorable conduct.
- (2) Producing or attempting to produce an abortion contrary to law.
- (3) Made false statements or representations to the Board, or willfully concealed from the Board material information in connection with an application for a license, an application, request or petition for reinstatement or reactivation of a license, an annual registration of a license, or an investigation or inquiry by the Board.
- (4) Repealed by Session Laws 1977, c. 838, s. 3.
- (5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require an applicant or licensee to submit to a mental or physical examination by physicians or physician assistants, or mental examinations by other licensed health care providers acting within the scope of their practice as allowed by law designated by the Board during the pendency of a license application and before or after charges may be presented against the applicant or licensee, and the results of the examination shall be admissible in evidence in a hearing before the Board. Failure to comply with an order pursuant to this subsection may be considered unprofessional conduct as defined in G.S. 90-14(a)(6).
- (6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person, or discipline a licensee in any manner, solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.
- (7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.
- (8) By false representations has obtained or attempted to obtain practice, money or anything of value.
- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which the physician has been educated.

- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients or failing to maintain acceptable standards of care. In this connection the Board may consider repeated acts of an applicant or licensee's failure to treat a patient properly. The Board may, upon reasonable grounds, require an applicant or licensee to submit to inquiries or examinations, written or oral, as the Board deems necessary to determine the professional qualifications of that applicant or licensee. Failure to comply with an order pursuant to this subsection may be considered unprofessional conduct as defined in G.S. 90-14(a)(6). In order to annul, suspend, deny, or revoke a license of an accused person, the Board shall find by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered.
- (11a) Not actively practiced as a licensee, or having not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for an initial license from the Board or the filing of a request, petition, motion, or application to reactivate or reinstate an inactive, suspended, or revoked license previously issued by the Board. The Board is authorized to adopt any rules or regulations it deems necessary to carry out the provisions of this subdivision.
- (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order the licensee pay restitution to the payer of the bill, whether the patient or the insurer, provided that a determination of the amount of restitution shall be based on credible testimony in the record.
- (13) Having a license revoked, suspended, restricted, or acted against or having a license to practice denied by the licensing authority of any jurisdiction, including Canada, the United Kingdom, and Australia. For purposes of this subdivision, the licensing authority's acceptance of a license to practice voluntarily relinquished by a licensee or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the licensee's license, or an inactivation or voluntary surrender of a license while under investigation is an action against a license to practice.
- (14) The failure to comply with an order issued under this Article or the failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.
- (15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.
- (16) A violation of any provision of this Article.
- (17) Failure to make reports as required by this Article.

(b) The Board shall refer to the North Carolina Physicians Health Program all licensees whose health and effectiveness have been significantly impaired by alcohol, drug addiction or mental illness. Sexual misconduct shall not constitute mental illness for purposes of this subsection.

(c) Except as provided in subsection (c1) of this section, a felony conviction shall result in the automatic revocation of a license issued by the Board, unless the Board orders otherwise or receives a request for a hearing from the person within 60 days of receiving notice from the Board, after the conviction, of the provisions of this subsection. If the Board receives a timely request for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

(c1) A felony conviction under Article 7B of Chapter 14 of the General Statutes shall result in the automatic denial or revocation of a license issued by the Board, and that denial or revocation shall be permanent, and the applicant or licensee shall be ineligible for reapplication, relicensure, reinstatement, or restoration under subsection (c2) of this section.

(c2) Except as provided in subsection (c1) of this section, where the Board has exercised its authority pursuant to this section to revoke a license, the holder of the revoked license will not be eligible to make an application for reinstatement before two years from the effective date of the revocation.

(d) Repealed by Session Laws 2006-144, s. 4, effective October 1, 2006, and applicable to acts or omissions that occur on or after that date.

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

(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, assessing, monitoring, or providing an expert medical opinion to the Board regarding the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice.

(g) Prior to taking action against any licensee for providing care not in accordance with the standards of care for the procedures or treatments administered, the Board shall whenever practical consult with a licensee who routinely utilizes or is familiar with the same modalities and who has an understanding of the standards of practice for the modality administered. Information obtained as result of the consultation shall be available to the licensee at the informal nonpublic precharge conference.

(h) No investigation of a licensee shall be initiated upon the direction of a single member of the Board without another Board member concurring. A Board member shall not serve as an expert in determining the basis for the initiation of an investigation.

(i) At the time of first communication from the Board or agent of the Board to a licensee regarding a complaint or investigation, the Board shall provide notice in writing to the licensee that informs the licensee: (i) of the existence of any complaint or other information forming the basis for the initiation of an investigation; (ii) that the licensee may retain counsel; (iii) how the Board will communicate with the licensee regarding the investigation or disciplinary proceeding in accordance with subsections (m) and (n) of this section; (iv) that the licensee has a duty to respond to inquiries from the Board concerning any matter affecting the license, and all information supplied to the Board and its staff will be considered by the Board in making a determination with regard to the matter under investigation; (v) that the Board will complete its investigation within six months or provide an explanation as to why it must be extended; and (vi) that if the Board makes a decision to initiate public disciplinary proceedings, the licensee may request in writing an informal nonpublic precharge conference.

(j) After the Board has made a nonpublic determination to initiate disciplinary proceedings, but before public charges have been issued, the licensee requesting so in writing, shall be entitled to an informal nonpublic precharge conference. At least five days prior to the informal nonpublic precharge conference, the Board will provide to the licensee the following: (i) all relevant information obtained during an investigation, including exculpatory evidence except for information that would identify an anonymous complainant; (ii) the substance of any written expert opinion that the Board relied upon, not including information that would identify an anonymous complainant or expert reviewer; (iii) notice that the licensee may retain counsel, and if the licensee retains counsel all communications from the Board or agent of the Board regarding the disciplinary proceeding will be made through the licensee's counsel; (iv) notice that if a Board member initiated the investigation then that Board member will not participate in the adjudication of the matter before the Board or hearing committee; (v) notice that the Board may use an administrative law judge or designate hearing officers to conduct hearings as a hearing committee to take evidence; (vi) notice that the hearing shall proceed in the manner prescribed in Article 3A of Chapter 150B of the General Statutes and as otherwise provided in this Article; and (vii) any Board member who serves as a hearing officer in this capacity shall not serve as part of the quorum that determines the final agency decision. The provisions of this section do not apply where the Board has exercised its authority under G.S. 150B-3(c) and issued an order of summary suspension.

(k) When the Board has made a determination that the public health, safety, or welfare requires emergency action, the Board may seek to require of a licensee the taking of any action adversely impacting the licensee's medical practice or license without first giving notice of the proposed action, the basis for the proposed action, and information required under subsection (i) of this section.

(l) The Board shall complete any investigation initiated pursuant to this section no later than six months from the date of first communication required under subsection (i) of this section, unless the Board provides to the licensee a written explanation of the circumstances and reasons for extending the investigation.

(m) If a licensee retains counsel to represent the licensee in any matter related to a complaint, investigation, or proceeding, the Board shall communicate to the licensee through the licensee's counsel.

(n) Notwithstanding subsection (m) of this section, if the licensee has retained counsel, the Board may serve to both the licensee and the licensee's counsel orders to produce, appear, submit to assessment, examination, or orders following a hearing, or provide notice that the Board will not be taking any further action against a licensee. (C.S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2; 1969, c. 612, s. 4; c. 929, s. 6; 1975, c. 690, s. 4; 1977, c. 838, s. 3; 1981, c. 573, ss. 9, 10; 1987, c. 859, ss. 6-10; 1993, c. 241, s. 1; 1995, c. 405, s. 4; 1997-443, s. 11A.118(a); 1997-481, s. 1; 2000-184, s. 5; 2003-366, ss. 3, 4; 2006-144, s. 4; 2007-346, s. 14; 2009-363, ss. 2, 3; 2009-558, ss. 1.2, 1.3, 1.4; 2016-117, s. 2(j); 2019-191, s. 26.)