

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80100-LD-54A (02/09)

Short Title: Abolish Health Care Discovery Prohibitions.

(Public)

Sponsors: Representative Faison.

Referred to:

1 **A BILL TO BE ENTITLED**
2 AN ACT TO ABOLISH CURRENT PROHIBITIONS AGAINST DISCOVERY OF
3 INFORMATION AND MATERIALS OBTAINED IN PEER REVIEW
4 PROCEEDINGS FOR CERTAIN HEALTH CARE PROVIDERS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 90-14(a)(5) reads as rewritten:

7 "(5) Being unable to practice medicine with reasonable skill and safety to
8 patients by reason of illness, drunkenness, excessive use of alcohol,
9 drugs, chemicals, or any other type of material or by reason of any
10 physical or mental abnormality. The Board is empowered and
11 authorized to require a physician licensed by it to submit to a mental or
12 physical examination by physicians designated by the Board before or
13 after charges may be presented against the physician, and the results of
14 the examination shall be admissible in evidence in a hearing before the
15 Board.Board and are subject to discovery in a civil action."

16 **SECTION 2.** G.S. 90-21.22 reads as rewritten:

17 **"§ 90-21.22. Peer review agreements.**

18 (a) The North Carolina Medical Board may, under rules adopted by the Board in
19 compliance with Chapter 150B of the General Statutes, enter into agreements with the
20 North Carolina Medical Society and its local medical society components, and with the
21 North Carolina Academy of Physician Assistants for the purpose of conducting peer
22 review activities. Peer review activities to be covered by such agreements shall include
23 investigation, review, and evaluation of records, reports, complaints, litigation and other
24 information about the practices and practice patterns of physicians licensed by the
25 Board, and of physician assistants approved by the Board, and shall include programs
26 for impaired physicians and impaired physician assistants. Agreements between the

1 Academy and the Board shall be limited to programs for impaired physicians and
2 physician assistants and shall not include any other peer review activities.

3 (b) Peer review agreements shall include provisions for the society and for the
4 Academy to receive relevant information from the Board and other sources, conduct the
5 investigation and review in an expeditious manner, ~~provide assurance of confidentiality~~
6 ~~of nonpublic information and of the review process~~, make reports of investigations and
7 evaluations to the Board, and to do other related activities for promoting a coordinated
8 and effective peer review process. Peer review agreements shall include provisions
9 assuring due process. Peer review agreements shall not include provisions that prohibit
10 the discovery in a civil action of information or materials obtained from peer review
11 activities.

12 (c) Each society ~~which that~~ enters a peer review agreement with the Board shall
13 establish and maintain a program for impaired physicians licensed by the Board. The
14 Academy, after entering a peer review agreement with the Board, shall either enter an
15 agreement with the North Carolina Medical Society for the inclusion of physician
16 assistants in the Society's program for impaired physicians, or shall establish and
17 maintain the Academy's own program for impaired physician assistants. The purpose of
18 the programs shall be to identify, review, and evaluate the ability of those physicians
19 and physician assistants to function in their professional capacity and to provide
20 programs for treatment and rehabilitation. The Board may provide funds for the
21 administration of impaired physician and impaired physician assistant programs and
22 shall adopt rules with provisions for definitions of impairment; guidelines for program
23 elements; procedures for receipt and use of information of suspected impairment;
24 procedures for intervention and referral; monitoring treatment, rehabilitation,
25 post-treatment support and performance; reports of individual cases to the Board; and
26 periodic reporting of statistical ~~information; assurance of confidentiality of nonpublic~~
27 ~~information and of the review process.~~information.

28 (d) Upon investigation and review of a physician licensed by the Board, or a
29 physician assistant approved by the Board, or upon receipt of a complaint or other
30 information, a society ~~which that~~ enters a peer review agreement with the Board, or the
31 Academy if it has a peer review agreement with the Board, as appropriate, shall report
32 immediately to the Board detailed information about any physician or physician
33 assistant licensed or approved by the Board if:

- 34 (1) The physician or physician assistant constitutes an imminent danger to
35 the public or to himself by reason of impairment, mental illness,
36 physical illness, the commission of professional sexual boundary
37 violations, or any other reason;
- 38 (2) The physician or physician assistant refuses to cooperate with the
39 program, refuses to submit to treatment, or is still impaired after
40 treatment and exhibits professional incompetence; or
- 41 (3) It reasonably appears that there are other grounds for disciplinary
42 action.

43 (e) Any confidential patient information ~~and other nonpublic information~~
44 acquired, created, or used in good faith by the Academy or a society pursuant to this

1 section shall remain confidential and shall not be subject to discovery or subpoena in a
2 civil case. Any other nonpublic information acquired, created, or used in good faith by
3 the Academy or a society pursuant to this section is subject to discovery or subpoena in
4 a civil case. ~~No~~A person participating in good faith in the peer review or impaired
5 physician or impaired physician assistant programs of this section ~~shall~~may be required
6 in a civil case to disclose any information acquired or opinions, recommendations, or
7 evaluations acquired or developed solely in the course of participating in any
8 agreements pursuant to this section.

9 (f) Peer review activities conducted in good faith pursuant to any agreement
10 under this section shall not be grounds for civil action under the laws of this State and
11 are deemed to be State directed and sanctioned and shall constitute State action for the
12 purposes of application of antitrust laws."

13 **SECTION 3.** G.S. 90-21.22A(c) reads as rewritten:

14 "(c) The proceedings of a medical review or quality assurance committee, the
15 records and materials it produces, and the materials it considers shall ~~be confidential and~~
16 not be considered public records within the meaning of G.S. 132-1, 131E-309, or
17 58-2-100; and shall not be 58-2-100. The proceedings of a medical review or quality
18 assurance committee, the records and materials it produces, and the materials it
19 considers are subject to discovery or introduction into evidence in any civil action
20 against a provider of health care services who directly provides services and is licensed
21 under this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General
22 Statutes, an ambulatory surgical facility licensed under Chapter 131E of the General
23 Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General
24 Statutes or that is owned or operated by the State, which civil action results from
25 matters that are the subject of evaluation and review by the committee. ~~No~~A person
26 who was in attendance at a meeting of the committee ~~shall~~may be required to testify in
27 any civil action as to any evidence or other matters produced or presented during the
28 proceedings of the committee or as to any findings, recommendations, evaluations,
29 opinions, or other actions of the committee or its members. ~~However, information,~~
30 ~~documents, or records otherwise available are not immune from discovery or use in a~~
31 ~~civil action merely because they were presented during proceedings of the~~
32 ~~committee. Unless the patient waives confidentiality as to the confidential patient~~
33 ~~information, any patient information acquired, created, or used in good faith by the~~
34 ~~committee shall remain confidential and shall not be subject to discovery or subpoena in~~
35 ~~a civil action, and no person who was in attendance at a meeting of the committee shall~~
36 ~~be required to testify in any civil action as to any evidence or other matters that would~~
37 ~~reveal confidential patient information. Documents otherwise available as public~~
38 ~~records within the meaning of G.S. 132-1 do not lose their status as public records~~
39 ~~merely because they were presented or considered during proceedings of the committee.~~
40 A member of the committee may testify in a civil action ~~but cannot and~~may be asked
41 about the person's testimony before the committee or any opinions formed as a result of
42 the committee hearings."

43 **SECTION 4.** G.S. 90-85.41 reads as rewritten:

1 **"§ 90-85.41. Board agreements with special peer review organizations for**
2 **impaired pharmacy personnel.**

3 (a) The North Carolina Board of Pharmacy may, under rules adopted by the
4 Board in compliance with Chapter 150B of the General Statutes, enter into agreements
5 with special impaired pharmacy personnel peer review organizations. Peer review
6 activities to be covered by such agreements shall include investigation, review and
7 evaluation of records, reports, complaints, litigation, and other information about the
8 practices and practice patterns of pharmacy personnel licensed or registered by the
9 Board, as such matters may relate to impaired pharmacy personnel. Special impaired
10 pharmacy personnel peer review organizations may include a statewide supervisory
11 committee and various regional and local components or subgroups.

12 (b) Agreements authorized under this section shall include provisions for the
13 impaired pharmacy personnel peer review organizations to receive relevant information
14 from the Board and other sources, conduct any investigation, review, and evaluation in
15 an expeditious manner, ~~provide assurance of confidentiality of nonpublic information~~
16 ~~and of the peer review process;~~ make reports of investigations and evaluations to the
17 Board, and to do other related activities for operating and promoting a coordinated and
18 effective peer review process. The agreements shall include provisions assuring basic
19 due process for pharmacy personnel that become involved. The agreements shall not
20 include provisions that prohibit the discovery in a civil action of information or
21 materials obtained from peer review activities.

22 (c) The impaired pharmacy personnel peer review organizations that enter into
23 agreements with the Board shall establish and maintain a program for impaired
24 pharmacy personnel licensed or registered by the Board for the purpose of identifying,
25 reviewing, and evaluating the ability of those pharmacists to function as pharmacists,
26 and pharmacy technicians to function as pharmacy technicians, and to provide programs
27 for treatment and rehabilitation. The Board may provide funds for the administration of
28 these impaired pharmacy personnel peer review programs. The Board shall adopt rules
29 to apply to the operation of impaired pharmacy personnel peer review programs, with
30 provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii)
31 procedures for receipt and use of information of suspected impairment; (iv) procedures
32 for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation,
33 post treatment support, and performance; (vi) reports of individual cases to the Board;
34 and (vii) periodic reporting of statistical ~~information; and (viii) assurance of~~
35 confidence~~lity of nonpublic information and of the peer review process.~~information.

36 (d) Upon investigation and review of a pharmacist licensed by the Board, or a
37 pharmacy technician registered with the Board, or upon receipt of a complaint or other
38 information, an impaired pharmacy personnel peer review organization that enters into a
39 peer review agreement with the Board shall report immediately to the Board detailed
40 information about any pharmacist licensed or pharmacy technician registered by the
41 Board, if:

- 42 (1) The pharmacist or pharmacy technician constitutes an imminent
43 danger to the public or himself or herself.

1 (2) The pharmacist or pharmacy technician refuses to cooperate with the
2 program, refuses to submit to treatment, or is still impaired after
3 treatment and exhibits professional incompetence.

4 (3) It reasonably appears that there are other grounds for disciplinary
5 action.

6 (e) Any confidential patient information ~~and other nonpublic information~~ acquired, created, or used in good faith by an impaired pharmacy personnel peer review
7 organization pursuant to this section shall remain confidential and shall not be subject to
8 discovery or subpoena in a civil case. Any other nonpublic information acquired,
9 created, or used in good faith by an impaired pharmacy personnel peer review
10 organization pursuant to this section is subject to discovery or subpoena in a civil case.
11 No-A person participating in good faith in an impaired pharmacy personnel peer review
12 program developed under this section ~~shall~~may be required in a civil case to disclose
13 any information (including opinions, recommendations, or evaluations) acquired or
14 developed solely in the course of participating in the program.

15 (f) Impaired pharmacy personnel peer review activities conducted in good faith
16 pursuant to any program developed under this section shall not be grounds for civil
17 action under the laws of this State, and the activities are deemed to be State directed and
18 sanctioned and shall constitute "State action" for the purposes of application of antitrust
19 laws."

20 **SECTION 5.** G.S. 131E-95(b) reads as rewritten:

21 "(b) The proceedings of a medical review committee, the records and materials it
22 produces and the materials it considers ~~shall be confidential and not considered~~are not public records within the meaning of G.S. 132-1, " 'Public records' defined", ~~and shall~~
23 ~~not be~~ but are subject to discovery or introduction into evidence in any civil action
24 against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the
25 General Statutes, or a provider of professional health services which results from
26 matters which are the subject of evaluation and review by the committee. No-A person
27 who was in attendance at a meeting of the committee ~~shall~~may be required to testify in
28 any civil action as to any evidence or other matters produced or presented during the
29 proceedings of the committee or as to any findings, recommendations, evaluations,
30 opinions, or other actions of the committee or its members. ~~However, information,~~
31 ~~documents, or records otherwise available are not immune from discovery or use in a~~
32 ~~civil action merely because they were presented during proceedings of the committee.~~
33 ~~However, any confidential patient information acquired, created, or used in good faith~~
34 ~~by the medical review committee shall remain confidential and shall not be subject to~~
35 ~~discovery or subpoena in a civil action, and no person who was in attendance at a~~
36 ~~meeting of the committee shall be required to testify in any civil action as to any~~
37 ~~evidence or other matters that would reveal confidential patient information.~~ Documents
38 otherwise available as public records within the meaning of G.S. 132-1 do not lose their
39 status as public records merely because they were presented or considered during
40 proceedings of the committee. A member of the committee or a person who testifies
41 before the committee may testify in a civil action ~~but cannot and~~may be asked about the
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1 person's testimony before the committee or any opinions formed as a result of the
2 committee hearings."

3 **SECTION 6.** This act becomes effective October 1, 2007, and applies to
4 actions filed on or after that date.