GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 859
SENATE BILL 240

AN ACT TO ADDRESS THE MEDICAL MALPRACTICE INSURANCE PROBLEM BY CHANGES IN COURT PROCEDURE, MEDICAL BOARD POWERS, AND PEER REVIEW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-21.11 is amended:

(1) by rewriting the catch line to read:

"**§ 90-21.11. Definitions."; and**

(2) by adding a new paragraph to read:

"As used in this Article, the term 'medical malpractice action' means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider."

Sec. 2. G.S. 1A-1, Rule 3, is amended by designating the text of the rule as subsection (a) and by adding a new subsection to read:

"(b) The clerk shall maintain as prescribed by the Administrative Office of the Courts a separate index of all medical malpractice actions, as defined in G.S. 90-21.11. Upon the commencement of a medical malpractice action, the clerk shall provide a current copy of the index to the senior regular resident judge of the district in which the action is pending."

Sec. 3. G.S. 1A-1, Rule 26, is amended by adding after subsection (f) a new subsection (f1) to read:

"(f1) Medical malpractice discovery conference. In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

(1) Rule on all motions;

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;

(3) Establish by order an appropriate discovery schedule designated so that, unless good cause is shown at the conference for a longer time,

and subject to further orders of the court, discovery shall be completed within 150 days after the order is issued; nothing herein shall be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 36, so long as trial or any hearing before the court is not thereby delayed; and

(4) Approve any consent order which may be presented by counsel for the parties relating to parts (2) and (3) of this subsection, unless the court finds that the terms of the consent order are unreasonable.

If a party fails to identify an expert witness as ordered, the court shall, upon motion by the moving party, impose an appropriate sanction, which may include dismissal of the action, entry of default against the defendant, or exclusion of the testimony of the expert witness at trial."

Sec. 4. G.S. 1A-1, Rule 16, is amended by designating the text of the rule as subsection (a) and adding a new subsection to read:

"(b) In a medical malpractice action as defined in G.S. 90-21.11, at the close of the discovery period scheduled pursuant to Rule 26(f1), the judge shall schedule a final conference. After the conference, the judge shall refer any consent order calendaring the case for trial to the senior resident superior court judge or the chief district court judge, who shall approve the consent order unless he finds that:

(1) the date specified in the order is unavailable,

(2) the terms of the order unreasonably delay the trial, or

(3) the ends of justice would not be served by approving the order.

If the senior resident superior court judge or the chief district court judge does not approve the consent order, he shall calendar the case for trial.

In calendaring the case, the court shall take into consideration the nature and complexity of the case, the proximity and convenience of witnesses, the needs of counsel for both parties concerning their respective calendars, the benefits of an early disposition and such other matters as the court may deem proper."

Sec. 5. G.S. 90-8 is rewritten to read:

"**§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other materials.–**The president and secretary of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and to summon and to issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board, and to order that any documents or other material concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason in law the subpoena is invalid."

Sec. 6. G.S. 90-14 is amended as follows:

(a) by rewriting G.S. 90-14(a)(7) to read:

"(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;" and

(b) by adding a new subsection to read:

"(c) 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."

Sec. 7. G.S. 90-14 is amended by rewriting subsection (a)(12) to read:

"(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 for financial gain of the physician; and upon a finding of the exploitation for financial gain, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record;".

Sec. 8. G.S. 90-14(a) is amended by adding a new subdivision to read:

"(14) 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."

Sec. 9. G.S. 90-14 is amended by adding a new subsection to read:

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

Sec. 10. G.S. 90-14 is amended by adding a new subsection to read:

"(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."

Sec. 11. G.S. 90-14.13 is amended by inserting between the first and second paragraphs a new paragraph, to read:

"The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S.

116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) any award of damages or settlement affecting or involving a physician it insures, or

(2) any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

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

Sec. 12. The last sentence of G.S. 90-15.1 is rewritten to read:

"Upon payment of all fees and penalties which are due, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."

Sec. 13. The first sentence of G.S. 90-15 is rewritten to read:

"Each applicant for a license by examination shall pay to the treasurer of the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by said Board in an amount not exceeding the sum of four hundred dollars ($400.00) plus the cost of test materials before being admitted to the examination."

Sec. 14. The sixth sentence of G.S. 90-15 is amended by deleting "ten dollars ($10.00)" and substituting "one hundred dollars ($100.00)".

Sec. 15. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1D.

"Peer Review.

"**§ 90-21.22. Peer review agreements.–**(a) The Board of Medical Examiners may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina Medical Society and its local medical society components for the purpose of conducting peer review activities. Peer review activities to be covered by such agreements shall include investigation, review, and evaluation of records, reports, complaints, litigation and other information about the practices and practice patterns of physicians licensed by the Board, and shall include programs for impaired physicians.

(b) Peer review agreements shall include provisions for the society to receive relevant information from the Board and other sources, conduct the investigation and review in an expeditious manner, provide assurance of confidentiality of nonpublic information and of the review process, make reports of investigations and evaluations to the Board, and to do other related activities for promoting a coordinated and effective peer review process. Peer review agreements shall include provisions assuring due process.

(c) Each society which enters a peer review agreement with the Board shall establish and maintain a program for impaired physicians licensed by the Board for the purpose of identifying, reviewing, and evaluating the ability of those physicians to function as physicians and to provide programs for treatment and rehabilitation. The

Board may provide funds for the administration of impaired physician programs and shall adopt rules with provisions for definitions of impairment; guidelines for program elements; procedures for receipt and use of information of suspected impairment; procedures for intervention and referral; monitoring treatment, rehabilitation, post-treatment support and performance; reports of individual cases to the Board; periodic reporting of statistical information; assurance of confidentiality of nonpublic information and of the review process.

(d) Upon investigation and review of a physician licensed by the Board, or upon receipt of a complaint or other information, a society which enters a peer review agreement with the Board shall report immediately to the Board detailed information about any physician licensed by the Board if:

(1) the physician constitutes an imminent danger to the public or to himself;

(2) the physician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or

(3) it reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by a society pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. No person participating in good faith in the peer review or impaired physician programs of this section shall be required in a civil case to disclose any information acquired or opinions, recommendations, or evaluations acquired or developed solely in the course of participating in any agreements pursuant to this section.

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

Sec. 16. G.S. 131E-87 reads as rewritten:

"**§ 131E-87. Reports of disciplinary action; immunity from liability.** ~~The chief administrative officer of every licensed hospital in the State shall report to the appropriate occupational licensing board any revocation, suspension, or limitation of privileges to practice in that hospital~~ The chief administrative officer of each licensed hospital in the State shall report to the appropriate occupational licensing board the details, as prescribed by the board, of any revocation, suspension, or limitation of privileges of a health care provider to practice in that hospital. Each hospital shall also report to the board its medical staff resignations. Any person making a report required by this section shall be immune from any resulting criminal prosecution or civil liability unless the person knew the report was false or acted in reckless disregard of whether the report was false."

Sec. 17. Article 5 of Chapter 131E of the General Statutes is amended by adding a new Part E to read:

"Part E. Risk Management.

"**§ 131E-96. Risk management programs.–**(a) Each hospital shall develop and maintain a risk management program which is designed to identify, analyze, evaluate, and manage risks of injury to patients, visitors, employees, and property through loss reduction and prevention techniques and quality assurance activities, as prescribed in rules promulgated by the Commission.

(b) The Department shall not issue or renew a license under this Article unless the applicant is in compliance with this section."

Sec. 18. G.S. 131E-85 is amended by adding a new subsection to read:

"(e) The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the procedures followed in determining hospital privileges are in accordance with this Part and rules of the Department."

Sec. 19. 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.

Sec. 20. This act shall become effective October 1, 1987, and shall apply to disciplinary actions commenced and suits filed on or after that date.

In the General Assembly read three times and ratified this the 14th day of August, 1987.