

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1352

Short Title: Due Process/Physicians' & Patients' Rights. (Public)

Sponsors: Representatives Harrison, Fisher, Blue, Howard (Primary Sponsors); Bryant, Faison, Lucas, Luebke, Samuelson, Weiss, and Wray.

Referred to: Health, if favorable, Judiciary I.

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING DUE PROCESS FOR PHYSICIANS' AND PATIENTS' RIGHTS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 90-1.1 reads as rewritten:

5 "**§ 90-1.1. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Board. – The North Carolina Medical Board.
- 8 (2) Hearing officer. – Any current or past member of the Board who is a
9 physician, physician assistant, ~~or nurse practitioner~~ nurse practitioner, or any
10 licensee licensed by the Board who is requested to participate on a hearing
11 committee and has an active license or approval to practice medical acts,
12 tasks, or functions issued by the Board, or any current or retired judge of the
13 Office of Administrative Hearings, a State district court, a State superior
14 court, the North Carolina Court of Appeals, the North Carolina Supreme
15 Court, or of the federal judiciary who has an active license to practice law in
16 North Carolina and who is a member in good standing of the North Carolina
17 State Bar.
- 18 (3) Integrative medicine. – A diagnostic or therapeutic treatment that may not be
19 considered a conventionally accepted medical treatment and that a licensed
20 physician in the physician's professional opinion believes may be of
21 potential benefit to the patient, so long as the treatment poses no greater risk
22 of harm to the patient than the comparable conventional treatments.
- 23 (4) License. – An authorization issued by the Board to a physician or physician
24 assistant to practice medical acts, tasks, or functions.
- 25 (4a) Modality. – A therapeutic method or agent that involves a physical treatment
26 of a disorder.
- 27 (5) The practice of medicine or surgery. – The practice of medicine or surgery,
28 for purposes of this Article, includes any of the following acts:
- 29 a. Advertising, holding out to the public, or representing in any manner
30 that the individual is authorized to practice medicine in this State.
- 31 b. Offering or undertaking to prescribe, order, give, or administer any
32 drug or medicine for the use of any other individual.
- 33 c. Offering or undertaking to prevent or diagnose, correct, prescribe for,
34 administer to, or treat in any manner or by any means, methods, or
35 devices any disease, illness, pain, wound, fracture, infirmity, defect,



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1 or abnormal physical or mental condition of any individual, including
 2 the management of pregnancy or parturition.

3 d. Offering or undertaking to perform any surgical operation on any
 4 individual.

5 e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of
 6 Osteopathy," "Doctor of Osteopathic Medicine," "Physician,"
 7 "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any
 8 combination thereof in the conduct of any occupation or profession
 9 pertaining to the prevention, diagnosis, or treatment of human
 10 disease or condition, unless the designation additionally contains the
 11 description of or reference to another branch of the healing arts for
 12 which the individual holds a valid license in this State or the use of
 13 the designation "Doctor" or "Physician" is otherwise specifically
 14 permitted by law.

15 f. The performance of any act, within or without this State, described in
 16 this subdivision by use of any electronic or other means, including
 17 the Internet or telephone."

18 **SECTION 2.** G.S. 90-5.1(a) is amended by adding the following new subdivisions

19 to read:

20 "(a) The Board shall:

21 ...

22 (11) Hire independent counsel to advise the Board or hearing committee in all
 23 contested matters before the Board to avoid a conflict of interest with Board
 24 employees.

25 (12) Regulate the practice of medicine to protect the public from incompetent
 26 physicians and to allow physicians to practice the modalities of choice. A
 27 patient has the right to consent to treatment. The consent is presumed valid if
 28 the consent is obtained in writing from a patient or other person authorized
 29 to give consent for the patient, and the consent fully evidences the treatment
 30 of modality and the treatment's potential benefit or harm to the patient."

31 **SECTION 3.** G.S. 90-8 reads as rewritten:

32 **"§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other**
 33 **materials.**

34 The president and secretary of the Board may administer oaths to all persons appearing
 35 before it as the Board may deem necessary to perform its duties, and may summon and issue
 36 subpoenas for the appearance of any witnesses deemed necessary to testify concerning any
 37 matter to be heard before or inquired into by the Board. The Board may order that any patient
 38 records, documents or other material concerning any matter to be heard before or inquired into
 39 by the Board shall be produced before the Board or made available for inspection,
 40 notwithstanding any other provisions of law providing for the application of any
 41 physician-patient privilege with respect to such records, documents or other material. The
 42 licensee shall be advised by the Board or the Board's agents of the reason for the investigation
 43 and that the licensee has the right to consult with an attorney before submitting any records,
 44 documents, or other materials to the Board. All records, documents, or other material compiled
 45 by the Board are subject to the provisions of G.S. 90-16. Notwithstanding the provisions of
 46 G.S. 90-16, in any proceeding before the Board, in any record of any hearing before the Board,
 47 and in the notice of charges against any licensee, the Board shall withhold from public
 48 disclosure the identity of a patient including information relating to dates and places of
 49 treatment, or any other information that would tend to identify the patient, unless the patient or
 50 the representative of the patient expressly consents to the disclosure. Upon written request, the
 51 Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the production of

1 which is required does not relate to a matter in issue, or if the subpoena does not describe with
2 sufficient particularity the evidence the production of which is required, or if for any other
3 reason in law the subpoena is invalid."

4 **SECTION 4.** G.S. 90-14(a) reads as rewritten:

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

- 12 (1) Immoral or dishonorable conduct.
- 13 (2) Producing or attempting to produce an abortion contrary to law.
- 14 (3) Made false statements or representations to the Board, or willfully concealed
15 from the Board material information in connection with an application for a
16 license, an application, request or petition for reinstatement or reactivation of
17 a license, an annual registration of a license, or an investigation or inquiry by
18 the Board.
- 19 (4) Repealed by Session Laws 1977, c. 838, s. 3.
- 20 (5) Being unable to practice medicine with reasonable skill and safety to
21 patients by reason of illness, drunkenness, excessive use of alcohol, drugs,
22 chemicals, or any other type of material or by reason of any physical or
23 mental abnormality. The Board is empowered and authorized to require a
24 physician licensed by it to submit to a mental or physical examination by
25 physicians designated by the Board before or after charges may be presented
26 against the physician, and the results of the examination shall be admissible
27 in evidence in a hearing before the Board.
- 28 (6) Unprofessional conduct, including, but not limited to, departure from, or the
29 failure to conform to, the standards of acceptable ~~and prevailing~~ medical
30 practice, or the ethics of the medical profession, irrespective of whether or
31 not a patient is injured thereby, or the committing of any act contrary to
32 honesty, justice, or good morals, whether the same is committed in the
33 course of the physician's practice or otherwise, and whether committed
34 within or without North Carolina. The Board shall not revoke the license of
35 or deny a license to a ~~person solely licensee or discipline a licensee in any~~
36 manner because of that ~~person's licensee's~~ practice of a therapy that is
37 experimental, nontraditional, or that departs from acceptable and prevailing
38 medical practices unless, by competent evidence, the Board can establish
39 that the treatment has a safety risk greater than the prevailing treatment ~~or~~
40 and that the treatment is generally not effective.
- 41 (7) Conviction in any court of a crime involving moral turpitude, or the
42 violation of a law involving the practice of medicine, or a conviction of a
43 felony; provided that a felony conviction shall be treated as provided in
44 subsection (c) of this section.
- 45 (8) By false representations has obtained or attempted to obtain practice, money
46 or anything of value.
- 47 (9) Has advertised or publicly professed to treat human ailments under a system
48 or school of treatment or practice other than that for which the physician has
49 been educated.
- 50 (10) Adjudication of mental incompetency, which shall automatically suspend a
51 license unless the Board orders otherwise.

- 1 (11) Lack of professional competence to practice medicine with a reasonable
2 degree of skill and safety for patients or failing to maintain acceptable
3 standards of one or more areas of professional physician practice. In this
4 connection the Board may consider repeated acts of a physician indicating
5 the physician's failure to ~~properly treat a patient~~ patient within the standards
6 of acceptable medical practice for the modality used. The Board may, upon
7 reasonable grounds, require a physician to submit to inquiries or
8 examinations, written or oral, as the Board deems necessary to determine the
9 professional qualifications of such licensee. In order to annul, suspend, deny,
10 ~~or revoke a license of an accused person,~~ license, or discipline a licensee in
11 any manner, the Board shall find by the greater weight of the evidence that
12 the care provided was not in accordance with the standards of practice for
13 the procedures or treatments administered.
- 14 (11a) Not actively practiced medicine or practiced as a physician assistant, or
15 having not maintained continued competency, as determined by the Board,
16 for the two-year period immediately preceding the filing of an application
17 for an initial license from the Board or a request, petition, motion, or
18 application to reactivate an inactive, suspended, or revoked license
19 previously issued by the Board. The Board is authorized to adopt any rules
20 or regulations it deems necessary to carry out the provisions of this
21 subdivision.
- 22 (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or
23 providing services to a patient, in such a manner as to exploit the patient, and
24 upon a finding of the exploitation, the Board may order restitution be made
25 to the payer of the bill, whether the patient or the insurer, by the physician;
26 provided that a determination of the amount of restitution shall be based on
27 credible testimony in the record. No physician shall be disciplined for
28 exploitation, if the patient or other person authorized to give consent for the
29 patient has consented, in writing, to the treatment and the cost of treatment
30 before commencing the course of treatment.
- 31 (13) Having a license to practice medicine or the authority to practice medicine
32 revoked, suspended, restricted, or acted against or having a license to
33 practice medicine denied by the licensing authority of any jurisdiction. For
34 purposes of this subdivision, the licensing authority's acceptance of a license
35 to practice medicine voluntarily relinquished by a physician or relinquished
36 by stipulation, consent order, or other settlement in response to or in
37 anticipation of the filing of administrative charges against the physician's
38 license, is an action against a license to practice medicine.
- 39 (14) The failure to respond, within a reasonable period of time and in a
40 reasonable manner as determined by the Board, to inquiries from the Board
41 concerning any matter affecting the license to practice medicine.
- 42 (15) The failure to complete an amount not to exceed 150 hours of continuing
43 medical education during any three consecutive calendar years pursuant to
44 rules adopted by the Board.

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

49 **SECTION 5.** G.S. 90-14(g) reads as rewritten:

50 "(g) Prior to taking action against any licensee ~~who practices integrative medicine for~~
51 providing care not in accordance with the standards of practice for the procedures or treatments

1 administered, the Board shall consult with and obtain the expert opinion of a licensee of the
2 Board who practices integrative medicine routinely uses the same modalities of treatment and
3 who finds that the practitioner has not provided care in accordance with the standards of
4 practice for the care administered. The expert opinion shall be available to the licensee before
5 any informal meeting, but shall not be a public record under Chapter 132 of the General
6 Statutes."

7 **SECTION 6.** G.S. 90-14.5(a) reads as rewritten:

8 "(a) The Board, in its discretion, may designate in writing three or more hearing officers
9 to conduct hearings as a hearing committee to take evidence. The Board shall appoint a
10 non-Board member, as necessary, to ensure that at least one of the hearing officers is a
11 physician who routinely uses the same treatment modalities as the licensee."

12 **SECTION 7.** G.S. 90-14.8 reads as rewritten:

13 **"§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.**

14 A physician ~~whose license is revoked or suspended~~ disciplined in any manner or denied a
15 license by the Board may obtain a review of the decision of the Board in the Superior Court of
16 Wake County or in the county of residence of the licensee upon filing with the secretary of the
17 Board a written notice of appeal within 20 days after the date of the service of the decision of
18 the Board, stating all exceptions taken to the decision of the Board and indicating the court in
19 which the appeal is to be heard.

20 Within 30 days after the receipt of a notice of appeal as herein provided, the Board shall
21 prepare, certify and file with the clerk of the Superior Court of Wake County the record of the
22 case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of
23 documents or other written evidence produced at the hearing, decision of the Board, and notice
24 of appeal containing exceptions to the decision of the Board."

25 **SECTION 8.** G.S. 90-14.10 reads as rewritten:

26 **"§ 90-14.10. Scope of review.**

27 Upon the review of the Board's decision taking disciplinary action on a license, the case
28 shall be heard by the judge without a jury, ~~upon the record, except that in cases of alleged~~
29 ~~omissions or errors in the record, pursuant to~~ testimony thereon may be taken by the court.
30 Upon the consent of both parties, the case may be heard upon the record. The court may affirm
31 the decision of the Board or remand the case for further proceedings; or it may reverse or
32 modify the decision if the substantial rights of the accused physician have been prejudiced
33 because the findings or decisions of the Board are in violation of substantive or procedural law,
34 or are not supported by competent, material, and substantial evidence admissible under this
35 Article, or are arbitrary or capricious. At any time after the notice of appeal has been filed, the
36 court may remand the case to the Board for the hearing of any additional evidence which is
37 material and is not cumulative and which could not reasonably have been presented at the
38 hearing before the Board."

39 **SECTION 9.** G.S. 90-16(e1) reads as rewritten:

40 "(e1) When the Board receives a complaint regarding the care of a patient, the Board shall
41 inform the complainant of the disposition of the Board's inquiry into the complaint and the
42 Board's basis for that disposition. Upon written request of a patient, the Board may provide the
43 patient a licensee's written response to a complaint filed by the patient with the Board regarding
44 the patient's care. Upon written request of a complainant, who is not the patient but is
45 authorized by State and federal law to receive protected health information about the patient,
46 the Board may provide the complainant a licensee's written response to a complaint filed with
47 the Board regarding the patient's care. Any information furnished to the patient or complainant
48 pursuant to this subsection shall be inadmissible in evidence in any civil proceeding. However,
49 information, documents, or records otherwise available are not immune from discovery or use
50 in a civil action merely because they were included in the Board's review or were the subject of
51 information furnished to the patient or complainant pursuant to this subsection. When the

1 Board receives a complaint, the Board shall immediately make the licensee aware of the nature
2 of the complaint, the complainant, and the substance of the complaint. As soon as practicable,
3 the Board shall provide the licensee the opportunity to review the complaint with the
4 complainant. The Board shall not initiate an investigation pursuant to an anonymous complaint
5 unless the basis of the complaint constitutes grounds for summary suspension of a licensee's
6 license."

7 **SECTION 10.** This act is effective when it becomes law.