

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 958

Short Title: Disciplinary Proceedings/NC Medical Board. (Public)

Sponsors: Senator Nesbitt.

Referred to: Judiciary I.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING DISCIPLINARY PROCEEDINGS OF THE NORTH CAROLINA
MEDICAL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-14 is amended by adding the following new subsections to read:

"(h) An individual Board member may not initiate an investigation against a licensee. An investigation shall be initiated upon cause as determined by the Board or a hearing committee designated by the Board. The Board shall inform a licensee of any exculpatory evidence discovered during an investigation.

(i) The Board shall complete any investigation initiated pursuant to this section no later than six months from the date the investigation was initiated unless the Board provides to the licensee a written explanation of the circumstances and reasons for extending the investigation."

SECTION 2. G.S. 90-14.2 reads as rewritten:

"§ 90-14.2. **Hearing before disciplinary action.**

Before the Board shall take disciplinary action against any license granted by it, the licensee shall be given a written notice indicating the general nature of the ~~charges, accusation, or~~ complaint made against him, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that ~~such the~~ licensee will be given an opportunity to be heard concerning ~~such charges or the~~ complaint at a time and place stated in ~~such the~~ notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of ~~such~~ notice upon ~~such the~~ licensee, at which ~~such the~~ licensee may appear personally and through counsel, may cross examine witnesses and present evidence in his own behalf. If a licensee retains counsel to appear on the licensee's behalf in any matter before the Board, the Board shall communicate to the licensee through the licensee's counsel. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician has his residence. Such licensee or physician may, if he desires, file written answers to the charges or complaints preferred against him within 30 days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case."

SECTION 3. G.S. 90-14.5(a) reads as rewritten:

"(a) The Board, in its discretion, may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. A hearing committee shall be composed of a majority of Board licensees, no more than one public member, and at least one



1 physician licensed in the same or similar specialty as the licensee against whom the complaint
2 has been filed."

3 **SECTION 4.** G.S. 90-14.6 reads as rewritten:

4 "**§ 90-14.6. Evidence admissible.**

5 (a) Except as otherwise provided in proceedings held pursuant to this Article the Board
6 shall admit and hear evidence in the same manner and form as prescribed by law for civil
7 actions. A complete record of such evidence shall be made, together with the other proceedings
8 incident to ~~such~~the hearing.

9 (b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in
10 proceedings held pursuant to this Article, the individual under investigation may call witnesses,
11 including medical practitioners licensed in the United States with training and experience in the
12 same field of practice as the individual under investigation and familiar with the community
13 standard of care among members of the same health care profession in North Carolina.
14 Witnesses shall not be restricted to experts certified by the American Board of Medical
15 Specialties. The Board may call expert witnesses to testify on behalf of the Board in accordance
16 with G.S. 8C-1, Rule 702.

17 (b1) The Board shall require two concurring expert opinions before taking disciplinary
18 action against a licensee in a quality of care action and any exceptions to the requirement shall
19 be established pursuant to rules adopted by the Board. A Board member may not offer an
20 expert opinion in investigation proceedings. The Board shall document and make available to
21 the licensee against who the complaint has been filed the qualifications of the experts offering
22 opinions. The Board shall present all expert opinions in the Board's possession at the initial
23 conference with the licensee.

24 (c) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence,
25 statements contained in medical or scientific literature shall be competent evidence in
26 proceedings held pursuant to this Article. Documentary evidence may be received in the form
27 of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are
28 available for examination by the parties. Upon timely request, a party shall be given an
29 opportunity to compare the copy with the original if available.

30 (d) When evidence is not reasonably available under the Rules of Civil Procedure and
31 Rules of Evidence to show relevant facts, then the most reliable and substantial evidence
32 available shall be admitted."

33 **SECTION 5.** G.S. 90-14.8 reads as rewritten:

34 "**§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.**

35 (a) A physician whose license is revoked or suspended by the Board may obtain a
36 review of the decision of the Board in the Superior Court of Wake County upon filing with the
37 secretary of the Board a written notice of appeal within 20 days after the date of the service of
38 the decision of the Board, stating all exceptions taken to the decision of the Board and
39 indicating the court in which the appeal is to be heard.

40 (b) Within 30 days after the receipt of a notice of appeal as herein provided, the Board
41 shall prepare, certify and file with the clerk of the Superior Court of Wake County the record of
42 the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies
43 of documents or other written evidence produced at the hearing, decision of the Board, and
44 notice of appeal containing exceptions to the decision of the Board.

45 (c) A physician appealing a decision by the Board to revoke or suspend the physician's
46 license may file notice for a change of venue to the county where the event occurred in
47 accordance with the North Carolina Rules of Civil Procedure."

48 **SECTION 6.** G.S. 90-14.10 reads as rewritten:

49 "**§ 90-14.10. Scope of review.**

50 Upon the review of the Board's decision taking disciplinary action on a license, the case
51 shall be heard by the judge without a jury, upon the ~~record, except that in cases of alleged~~

1 ~~omissions or errors in the record, testimony thereon may be~~record and testimony taken by the
2 ~~court.~~court challenging findings of fact by the Board. The court may affirm the decision of the
3 Board or remand the case for further proceedings; or it may reverse or modify the decision if
4 the substantial rights of the accused physician have been prejudiced because the findings or
5 decisions of the Board are in violation of substantive or procedural law, or are not supported by
6 competent, material, and substantial evidence admissible under this Article, or are arbitrary or
7 capricious. At any time after the notice of appeal has been filed, the court may remand the case
8 to the Board for the hearing of any additional evidence which is material and is not cumulative
9 and which could not reasonably have been presented at the hearing before the Board."

10 **SECTION 7.** G.S. 90-14.13(a) reads as rewritten:

11 "(a) The chief administrative officer of every licensed hospital or other health care
12 institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred
13 providers, as defined in G.S. 58-50-56, and all other provider organizations that issue
14 credentials to physicians who practice medicine in the State, shall, after consultation with the
15 chief of staff of that institution, report to the Board the following actions involving a
16 physician's privileges to practice in that institution within 30 days of the date that the action
17 takes effect:

- 18 (1) A summary revocation, summary suspension, or summary limitation of
19 ~~privileges,~~privileges in matters related to professional competence or
20 conduct, regardless of whether the action has been finally determined.
- 21 (2) A revocation, suspension, or limitation of privileges in matters related to
22 professional competence or conduct that has been finally determined by the
23 governing body of the institution.
- 24 (3) A resignation from practice or voluntary reduction of ~~privileges,~~privileges
25 made during an active investigation or a peer review proceeding.
- 26 (4) Any action reportable pursuant to Title IV of P.L. 99-660, the Health Care
27 Quality Improvement Act of 1986, as amended, not otherwise reportable
28 under subdivisions (1), (2), or (3) of this subsection."

29 **SECTION 8.** The North Carolina Medical Board (Medical Board) shall publish
30 rules adopted by the Medical Board and procedures used by the Medical Board, as related to
31 the following:

- 32 (1) Any requirement that the Medical Board adhere to the North Carolina Rules
33 of Civil Procedure and the North Carolina Rules of Evidence in conducting
34 disciplinary proceedings.
- 35 (2) Any requirement that members of the Medical Board are subject to judicial
36 standards.
- 37 (3) All procedures, including investigation procedures, not subject to Chapter
38 150B of the General Statutes must be published and available to applicants
39 and licensees.
- 40 (4) Any requirement for a six-month time limit on investigations conducted by
41 the Medical Board unless the Medical Board provides the licensee with the
42 explanation of the circumstances and reasons for extending the investigation.
- 43 (5) Any procedures developed to replace criminal phraseology with civil
44 phraseology, such as replacing the word "charges" with the word
45 "complaint."
- 46 (6) Any requirement that an individual Medical Board member may not initiate
47 an investigation of a licensee alone, but must have cause as determined by
48 the Medical Board or a hearing committee designated by the Medical Board.

49 **SECTION 9.** This act is effective when it becomes law.