

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 958
Judiciary I Committee Substitute Adopted 5/12/09

Short Title: Disciplinary Proceedings/NC Medical Board.

(Public)

Sponsors:

Referred to:

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) No investigation of a licensee shall be initiated upon the direction of a single member of the Board. Investigations of licensees shall be initiated by a committee of the Board upon cause as determined by such committee. The term 'investigation' as used in this subsection shall not include the initial communication between an investigator and a complainant or an investigator and the licensee that is subject of the complaint or that licensee's counsel to assess the merits of the complaint. When such committee determines that an investigation of a licensee should be undertaken, the licensee shall be advised with particularity as to the reason(s) for the investigation being undertaken. The Board shall inform a licensee of any exculpatory evidence discovered during an investigation.

(i) At the time an investigation is initiated against a licensee, the Board shall provide to the licensee in writing a notice that informs the licensee: (i) of the existence of any complaint or other information forming the basis for initiation of an investigation as required by G.S. 90-14(h); (ii) that the licensee has the right to counsel; (iii) that if the licensee retains counsel all communications from the Board regarding the investigation will be made via the licensee's counsel; (iv) the Board will provide to the licensee all exculpatory evidence developed in the course of the investigation; (v) that the licensee has a right to an informal conference with the Board to discuss the matter(s) giving rise to the investigation prior to initiation of any formal disciplinary proceeding by the Board; (vi) that any statements made by the licensee to a Board investigator, agent, or consultant during the course of the investigation may be used against the licensee in any hearing that might result from the investigation; (vii) that the Board must complete its investigation within six months or provide an explanation as to why it must be extended; and (viii) any Board member involved in the investigation will not participate in the adjudication of any matter before the Board affecting the licensee.

(j) 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.

(k) No Board member who is a member of the committee described in subsection (h) of this section may thereafter participate in any way in the ultimate decision or adjudication by the Board affecting the licensee who is the subject of the investigation.

(l) The Board shall not 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



1 action and the basis therefor to the licensee and affording the licensee an informal conference to
2 discuss his/her practice and the reason(s) for the proposed action."

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

4 "**§ 90-14.2. Hearing before disciplinary action.**

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

22 (b) In conducting hearings, the Board shall retain independent counsel to provide
23 advice, as necessary, to the Board or any hearing committee constituted under G.S. 90-14.5(a)
24 concerning matters of procedure and evidence."

25 **SECTION 3.** G.S. 90-14.5 reads as rewritten:

26 "**§ 90-14.5. Use of hearing committee and depositions; appointment of hearing officers.**

27 (a) The Board, in its discretion, may designate in writing three or more hearing officers
28 to conduct hearings as a hearing committee to take evidence. A hearing committee shall be
29 composed of a majority of Board licensees, including no more than one public member. The
30 Board shall make a reasonable effort to include on the panel at least one physician licensed in
31 the same or similar specialty as the licensee against whom the complaint has been filed. If a
32 licensee who is to be the subject of a hearing shall so request in writing within 30 days after
33 being served with a notice of hearing, the hearing shall be conducted before the full Board,
34 excepting those Board members who may not participate in a hearing as otherwise provided
35 herein.

36 (b) Evidence and testimony may be presented at hearings before the Board or a hearing
37 committee in the form of depositions before any person authorized to administer oaths in
38 accordance with the procedure for the taking of depositions in civil actions in the superior
39 court.

40 (c) The hearing committee shall submit a recommended decision that contains findings
41 of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall
42 give each party an opportunity to file written exceptions to the recommended decision made by
43 the hearing committee and to present oral arguments to the Board. No member of the Board
44 who was involved in the investigation of the complaint or as a member of the hearing
45 committee described in subsection (a) of this section may participate as a member of the
46 quorum of the Board that issues a final decision on the hearing committee's recommended
47 decision. A quorum of the Board will issue a final decision.

48 (d) Hearing officers are entitled to receive per diem compensation and reimbursement
49 for expenses as authorized by the Board. The per diem compensation shall not exceed the
50 amount allowed by G.S. 90-13.3."

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

1 **"§ 90-14.6. Evidence admissible.**

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

6 (b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in
7 proceedings held pursuant to this Article, the individual under investigation may call witnesses,
8 including medical practitioners licensed in the United States with training and experience in the
9 same field of practice as the individual under investigation and familiar with the ~~standard of~~
10 ~~care standards of practice among~~ members of the same health care profession ~~in North~~
11 ~~Carolina~~, with similar training and experience situated in the same or similar communities at
12 the time of the alleged act giving rise to the complaint against the individual under
13 investigation. Witnesses shall not be restricted to experts certified by the American Board of
14 Medical Specialties. Any expert witness called to testify on behalf of the Board shall meet the
15 qualifications of G.S. 8C-1, Rule 702.

16 (b1) The Board shall require two concurring expert opinions before taking disciplinary
17 action against a licensee in a quality of care action and any exceptions to the requirement shall
18 be established pursuant to rules adopted by the Board. A Board member may not serve as an
19 expert in investigation proceedings. A second expert reviewer shall review the first expert's
20 preliminary report and other information associated with the complaint. The review by the
21 second expert shall be independent of the first review, without knowledge by the second expert
22 of the identity of the first expert and without any communication between the two experts.
23 However, the second expert shall not be subject to the limitations in subsection (b) of this
24 section that require similar training and experience situated in the same or similar communities.
25 The Board shall document and make available to the licensee against whom the complaint has
26 been filed the qualifications of the experts offering opinions. The Board shall present all expert
27 opinions in the Board's possession at the initial conference with the licensee.

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

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

37 (e) Any final decision of the Board shall be based upon a preponderance of the
38 evidence admitted in the hearing."

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

40 **"§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.**

41 (a) A physician against whom the Board imposes any public disciplinary sanction as
42 authorized under G.S. 90-14(a) may appeal such action.

43 (b) A physician against whom any public disciplinary sanction is imposed by the Board
44 whose license is revoked or suspended by the Board may obtain a review of the decision of the
45 Board in the Superior Court of Wake CountyCounty, or the county in which the physician
46 resides, upon filing with the secretary of the Board a written notice of appeal within 20 days
47 after the date of the service of the decision of the Board, stating all exceptions taken to the
48 decision of the Board and indicating the court in which the appeal is to be heard.

49 (c) Within 30 days after the receipt of a notice of appeal as herein provided, the Board
50 shall prepare, certify and file with the clerk of the Superior Court of Wake CountyCounty, or
51 the county in which the physician resides, the record of the case comprising a copy of the

1 charges, notice of hearing, transcript of testimony, and copies of documents or other written
2 evidence produced at the hearing, decision of the Board, and notice of appeal containing
3 exceptions to the decision of the Board."

4 **SECTION 6.** G.S. 90-14.13(a) reads as rewritten:

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

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

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