

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 349

Short Title: Confidentiality/Investigative Info/Optomtry. (Public)

Sponsors: Senators Purcell and Pate.

Referred to: Judiciary I.

March 16, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT ALLOWING THE NORTH CAROLINA STATE BOARD OF EXAMINERS IN  
3 OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS  
4 CONFIDENTIAL.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 6 of Chapter 90 of the General Statutes is amended by adding  
7 a new section to read:

8 "**§ 90-121.5. Confidentiality of investigative information.**

9 (a) The Board may, in a closed session, receive information or evidence involving or  
10 concerning the treatment of a patient who has not expressly or impliedly consented to the  
11 public disclosure of the treatment when necessary for the protection of the rights of the patient  
12 or the accused licensee and the full presentation of relevant evidence.

13 (b) All records, papers, investigative files, investigative notes, reports, other  
14 investigative information, and other documents containing information in the possession of or  
15 received, gathered, or completed by the Board, its members, staff, employees, attorneys, or  
16 consultants as a result of investigations, inquiries, assessments, or interviews conducted in  
17 connection with a license, complaint, assessment, potential impairment, or disciplinary matter,  
18 or report of professional liability insurance awards or settlements, shall not be considered  
19 public records within the meaning of Chapter 132 of the General Statutes. Such documents are  
20 privileged, confidential, and not subject to discovery, subpoena, or other means of legal  
21 compulsion for release to any person other than the Board or its employees or consultants  
22 involved in the application for licensure, impairment assessment, or discipline of a licensee,  
23 except as provided in subsection (c) of this section. However, any notice or statement of  
24 charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in  
25 any proceeding, or any decision rendered in connection with a hearing in any proceeding shall  
26 be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding  
27 that the documentation may contain information collected and compiled as a result of the  
28 investigation, inquiry, or hearing. Identifying information concerning the treatment of or  
29 delivery of services to a patient or client who has not consented to the public disclosure of the  
30 treatment or services may be deleted. If any record, paper, or other document containing  
31 information collected and compiled by or on behalf of the Board is received and admitted in  
32 evidence in any hearing before the Board, the documents shall be a public record within the  
33 meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying  
34 information concerning the treatment of or delivery of professional services to a patient who  
35 has not consented to the public disclosure of the treatment or services.

36 For purposes of this subsection, 'investigative information' includes (i) formal or informal  
37 complaints received or information relating to the identity of, or a report made by, another



1 licensee or other person performing an expert review or similar analysis for the Board or (ii)  
2 transcripts of any deposition taken or affidavit or statement obtained by Board counsel in  
3 preparation for or anticipation of a hearing held pursuant to this Article but not admitted into  
4 evidence at the hearing.

5 (c) The Board, its members, attorneys, and staff may release confidential or nonpublic  
6 information to any health care licensure board in this State or another state or authorized  
7 Department of Health and Human Services personnel with enforcement or investigative  
8 responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other  
9 public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board  
10 of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action  
11 taken by the Board. The Board shall notify the licensee in writing within 60 days after the  
12 information is transmitted. A summary of the information that is being transmitted shall be  
13 furnished to the licensee. If the licensee requests in writing within 30 days after being notified  
14 that the information has been transmitted, the licensee shall be furnished a copy of all  
15 information transmitted but shall be liable for the reasonable expense of the copies. The notice  
16 or copies of the information shall not be provided if the information relates to an ongoing  
17 criminal investigation by any law enforcement agency or authorized Department of Health and  
18 Human Services personnel with enforcement or investigative responsibilities."

19 **SECTION 2.** This act is effective when it becomes law.