

March 26, 2009

**S 958. DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD.** Filed 3/25/09. *AMENDING DISCIPLINARY PROCEEDINGS FOR THE NORTH CAROLINA MEDICAL BOARD.*

Amends GS 90-14 (disciplinary authority), adding new subsections providing (1) that investigations must be initiated upon cause as determined by the North Carolina Medical Board (Board) or a hearing committee and that the Board must inform a licensee of any exculpatory evidence discovered during an investigation and (2) that the Board must complete an investigation within six months from initiation unless the Board explains, in writing, the reasons for extending the investigation. Amends various statutes in Article 1 of GS Chapter 90 pertaining to hearings to provide, among other things, for Board communication through a licensee's counsel; for the composition of hearings committees; for authority to the Board to call expert witnesses, in accordance with evidence Rule 702; and for a physician appealing a Board decision to file for change of venue. Amends GS 90-14.6 to provide that the Board must require two concurring expert opinions before taking disciplinary action against a licensee in a quality of care action and any exceptions to the requirement must be established pursuant to Board rules, that a Board member may not offer an expert opinion, that the Board must document and make available to the licensees the qualifications of the experts offering opinions, and that the Board shall present all expert opinions in the Board's possession at the initial conference. Amends GS 90-14.10 pertaining to review of a Board's decision and GS 90-14.13 pertaining to reports of disciplinary actions by health care institutions. Requires the Board to publish specified rules and procedures.

**Intro. by Nesbitt.**

GS 90

May 13, 2009

**S 958. DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD.** Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Rewrites proposed amendments to GS 90-14 to prohibit Medical Board (Board) investigations at direction of single board member. Requires investigations be initiated by a medical board committee upon cause as determined by the committee. Defines *investigations* to exclude initial communications between investigator and licensee that is the subject of the investigation. Requires licensee to be given particular reasons for the investigation and any exculpatory evidence. Requires detailed notice, with eight separate components of notice specified in the bill. Prohibits board member involved in the investigatory committee from participating in ultimate adjudication by the board. Requires the board to conduct informal conference with licensee to discuss any possible disciplinary actions before officially taking action. Adds amendment to GS 90-14.2 to require the board to retain independent counsel to advise it in conducting any hearings. Amends GS 90-14.5 to add a provision allowing licensee to have the full board conduct the hearing if requested 30 days in advance. Amends GS 90-14.6 to require the hearing board to include requirement that medical witnesses be familiar with the standards of practice for licensees with similar training and experience in similar communities (but not limited to NC). Requires Board to have two concurring experts, from outside the Board, before taking disciplinary action. Sets standard of proof for Board decisions as by preponderance of the evidence. Amends GS 90-14.8 to allow appeal from any public disciplinary action (not just revocations or suspensions), and allows appeal to be either to Wake County Superior Court or in the county where licensee resides. Deletes proposed amendment to GS 90-14.10. Deletes directions that Board publish various rules and procedures specified in the bill.

May 13, 2009

**S 958. DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD.** Filed 3/25/09. Senate amendment makes the following changes to 2nd edition. Amends proposed new subsection (b1) to GS 90-14.6 by removing the requirement that the board have two concurring expert opinions before taking disciplinary action against a licensee in a quality of care action, the requirement that the review by a second expert be independent of the first review, and the exception permitting the second expert not to have the similar training and experience situated in the same or similar communities.

May 14, 2009

**S 958. DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD.** Filed 3/25/09. Senate amendment makes the following changes to 2nd edition, as amended. Deletes language in GS 90-14.6 requiring a second expert reviewer to review the first expert's preliminary report. Qualifies new GS 90-14(l) by making it inapplicable if the conditions in GS 150B-3(c) exist.

July 27, 2009

**S 958. DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD.** Filed 3/25/09. House committee substitute makes the following changes to 3rd edition. Amends GS 90-1.1 to define *modality* as a method of medical treatment. Amends GS 90-14(a)(6) to prohibit the NC Medical Board (Board) from disciplining a licensee in any manner solely because of that person's practice of a therapy that is experimental, nontraditional, or departs from acceptable and prevailing medical practice unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective. Amends GS 90-14(g) to require that, prior to taking action against any licensee (was, any licensee who practices integrative medicine) for providing care not in accordance with the standards of practice for the procedures or treatments administered, the Board must *whenever practical* consult with a licensee who routinely utilizes or is familiar with the same modalities and who has an understanding of the standards of practice for the modality administered (was, a licensee who practices integrative medicine).

Modifies proposed GS 90-14(h) to clarify that no investigation may be initiated upon the direction of a single member of the Board *without another Board member concurring*. Prohibits a Board member from serving as an expert in determining the basis for the initiation of an investigation. Deletes that (1) investigations are to be initiated by a committee of the Board, (2) that the *investigation* must not include the initial communication between an investigator and a complainant or an investigator and the licensee or licensee's counsel to assess the merits of the complaint, and (3) the Board must inform the licensee of any exculpatory evidence discovered during an investigation.

Adds in proposed GS 90-14(i) that the *first communication* from the Board or agent of the Board to a licensee regarding a complaint or investigation must include that the licensee has a duty to respond to inquiries from the Board concerning any matter affecting the license, and all information supplied to the Board and its staff will be considered by the Board in making a determination with regard to the matter under investigation. Deletes that the notice must include that (1) 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 and (2) any Board member involved in the investigation will not participate in the adjudication of any matter before the Board affecting the licensee (instead, requires this to be included in the pre-charge conference notice). Makes other technical, clarifying, and conforming changes.

Adds a new subsection (j) to GS 90-14 to require that the Board provide the licensee with specified information at least five days prior to the informal non-public pre-charge conference requested by the licensee after the Board makes a non-public determination to initiate disciplinary proceedings against the licensee.

Clarifies in new GS 90-14(l) [was, located in subsection (j)] that the Board is required to complete any investigation initiated pursuant to the statute no later than six months *from the date of first communication*.

Also adds two new subsections to provide that (1) if a licensee retains counsel in any matter related to a complaint, investigation, or proceeding, the Board must communicate to the licensee

through the licensee's counsel and (2) if the Board has not made a non-public determination to initiate disciplinary proceedings, the Board may serve orders to produce, orders to appear, or provide notice that the Board will not be taking further action against a licensee to both the licensee and the licensee's counsel.

Makes other organizational and technical changes to GS 90-14.

Clarifies in proposed amended GS 90-14.2 that the written notice required by the statute includes information on the charges (was, complaint) against the licensee. Also replaces the term *physician* with *licensee*. Adds that once charges have been issued, neither counsel for the Board nor counsel for the respondent are to communicate ex parte, directly or indirectly, pertaining to a matter that is an issue of fact or a question of law with a hearing officer or Board member who is permitted to participate in a final decision in a disciplinary proceeding.

Deletes in proposed amended GS 90-14.5 that (1) no more than one public member may be on the hearing committee, (2) a licensee may request a hearing before the full Board under certain circumstances, and (3) no member of the Board who was involved in the investigation of the complaint may participate as a member of the quorum of the Board that issues the final decision. Adds that if a current or retired judge who is not a current or past Board member participates as a hearing officer, the Board may elect not to retain independent counsel for the hearing committee. Allows the Board to use an administrative law judge in lieu of a hearing committee so long as the Board has not alleged that the licensee failed to meet the applicable standard of medical care.

Requires in proposed amended GS 90-14.8 that (1) a written notice of appeal against a public disciplinary sanction against a licensee must be filed with the secretary of the Board within 30 (was, 20) days after the date of the service of the Board's decision and (2) the court must schedule and hear the case within six months of the filing of the appeal. Requires that within 30 days after the receipt of a notice of appeal the Board must prepare, certify, and file with the superior court clerk in the county where the notice of the appeal has been filed (was, Wake County or the county in which the physician resides) the record of the case, including specified documents. Makes conforming changes.

Amends GS 90-16(e1) to require that the Board provide the licensee with a copy of a complaint regarding the care of a patient as soon as practical or a summary of all substantial elements of the complaint, if providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation.

Deletes amendments to GS 90-14.13(a). Makes conforming changes to GS 90-14.6.

Changes the act's effective date to October 1, 2009, and applies to investigative or disciplinary actions initiated on or after that date (was, when the act becomes law).

September 1, 2009

**SL 2009-558 (S 958). DISCIPLINARY PROCEEDINGS/NC MEDICAL BOARD. AN ACT AMENDING DISCIPLINARY PROCEEDINGS OF THE NORTH CAROLINA MEDICAL BOARD.** Summarized in *Daily Bulletin* 3/26/09, 5/13/09, 5/14/09, and 7/27/09. Enacted August 28, 2009. Effective October 1, 2009.