

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 349  
Judiciary I Committee Substitute Adopted 6/7/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S349-PCS55323-TH-10

Short Title: Confidentiality/Optomerty/RE Closing Int.

(Public)

Sponsors:

Referred to:

March 16, 2011

A BILL TO BE ENTITLED

AN ACT WHICH ALLOWS THE NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS CONFIDENTIAL, REQUIRES LICENSEES TO COOPERATE WITH LAW ENFORCEMENT AGENCIES, AND REQUIRES LICENSEES TO SELF-REPORT CERTAIN INDICTMENTS, ARRESTS, MEDICAL JUDGMENTS, AWARDS, PAYMENTS, AND SETTLEMENTS; AND TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND AND TO PROVIDE FOR A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

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

**"§ 90-121.5. Confidentiality of investigative information; cooperation with law enforcement; self-reporting requirements.**

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

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, disciplinary matter, or report of professional liability insurance awards or settlements shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in this section. However, any notice or statement of charges against any



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1 licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or  
2 any decision rendered in connection with a hearing in any proceeding shall be a public record  
3 within the meaning of Chapter 132 of the General Statutes, notwithstanding that the  
4 documentation may contain information collected and compiled as a result of the investigation,  
5 inquiry, or hearing. Identifying information concerning the treatment of or delivery of services  
6 to a patient or client who has not consented to the public disclosure of the treatment or services  
7 may be deleted. If any record, paper, or other document containing information collected and  
8 compiled by or on behalf of the Board is received and admitted in evidence in any hearing  
9 before the Board, the documents shall be a public record within the meaning of Chapter 132 of  
10 the General Statutes, subject to any deletions of identifying information concerning the  
11 treatment of or delivery of professional services to a patient who has not consented to the  
12 public disclosure of the treatment or services.

13 For purposes of this subsection, "investigative information" includes (i) formal or informal  
14 complaints received or information relating to the identity of, or a report made by, another  
15 licensee or other person performing an expert review or similar analysis for the Board or (ii)  
16 transcripts of any deposition taken or affidavit or statement obtained by Board counsel in  
17 preparation for or anticipation of a hearing held pursuant to this Article but not admitted into  
18 evidence at the hearing.

19 (b1) When the Board receives a complaint regarding a licensee's care of a patient, the  
20 Board shall determine whether there is reasonable cause to believe that a licensee has violated a  
21 statute or rule governing the practice of optometry. In making such determination, the Board  
22 shall provide the licensee with a copy of the complaint and ask for a response. If providing a  
23 copy of the complaint identifies an anonymous complainant or compromises the integrity of an  
24 investigation, the Board shall provide the licensee with a summary of all substantial elements  
25 of the complaint. Upon written request of a patient, the Board may provide the patient a  
26 licensee's written response to a complaint filed by the patient with the Board regarding the  
27 patient's care. Upon written request of a complainant, who is not the patient but is authorized by  
28 State and federal law to receive protected health information about the patient, the Board may  
29 provide the complainant a licensee's written response to a complaint filed with the Board  
30 regarding the patient's care.

31 (b2) If information in the possession of the Board, its employees, or agents indicates that  
32 a crime may have been committed, the Board may report the information to the appropriate law  
33 enforcement agency or district attorney of the district in which the offense was committed.

34 (b3) The Board shall cooperate with and assist a law enforcement agency or district  
35 attorney conducting a criminal investigation or prosecution of a licensee by providing  
36 information that is relevant to the criminal investigation or prosecution to the investigating  
37 agency or district attorney. Information disclosed by the Board to an investigative agency or  
38 district attorney remains confidential and may not be disclosed by the investigating agency  
39 except as necessary to further the investigation.

40 (b4) All persons licensed under this Article shall self-report to the Board within 30 days  
41 of arrest or indictment any of the following:

42 (1) Any felony arrest or indictment.

43 (2) Any arrest for driving while impaired or driving under the influence.

44 (3) Any arrest or indictment for the possession, use, or sale of any controlled  
45 substance.

46 (c) The Board, its members, attorneys, and staff may release confidential or nonpublic  
47 information to any health care licensure board in this State or another state or authorized  
48 Department of Health and Human Services personnel with enforcement or investigative  
49 responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other  
50 public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board  
51 of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action

1 taken by the Board. The Board shall notify the licensee in writing within 60 days after the  
2 information is transmitted. A summary of the information that is being transmitted shall be  
3 furnished to the licensee. If the licensee requests in writing within 30 days after being notified  
4 that the information has been transmitted, the licensee shall be furnished a copy of all  
5 information transmitted but shall be liable for the reasonable expense of the copies. The notice  
6 or copies of the information shall not be provided if the information relates to an ongoing  
7 criminal investigation by any law enforcement agency or authorized Department of Health and  
8 Human Services personnel with enforcement or investigative responsibilities."

9 **SECTION 2.** Article 6 of Chapter 90 of the General Statutes is amended by adding  
10 a new section to read:

11 "**§ 90-121.6. Reporting and publication of judgments, awards, payments, and settlements.**

12 (a) All optometrists licensed or applying for licensure by the Board shall report to the  
13 Board:

14 (1) All medical malpractice judgments or awards affecting or involving the  
15 optometrist.

16 (2) All settlements in the amount of seventy-five thousand dollars (\$75,000) or  
17 more related to an incident of alleged medical malpractice affecting or  
18 involving the optometrist where the settlement occurred on or after May 1,  
19 2008.

20 (3) All settlements in the aggregate amount of seventy-five thousand dollars  
21 (\$75,000) or more related to any one incident of alleged medical malpractice  
22 affecting or involving the optometrist not already reported pursuant to  
23 subdivision (2) of this subsection where, instead of a single payment of  
24 seventy-five thousand dollars (\$75,000) or more occurring on or after May  
25 1, 2008, there is a series of payments made to the same claimant which, in  
26 the aggregate, equal or exceed seventy-five thousand dollars (\$75,000).

27 (b) The report required under subsection (a) of this section shall contain the following  
28 information:

29 (1) The date of the judgment, award, payment, or settlement.

30 (2) The city, state, and country in which the incident occurred that resulted in  
31 the judgment, award, payment, or settlement.

32 (3) The date the incident occurred that resulted in the judgment, award,  
33 payment, or settlement.

34 (c) The Board shall publish on the Board's Web site or other publication information  
35 collected under this section. The Board shall publish this information for seven years from the  
36 date of the judgment, award, payment, or settlement. The Board shall not release or publish  
37 individually identifiable numeric values of the reported judgment, award, payment, or  
38 settlement. The Board shall not release or publish the identity of the patient associated with the  
39 judgment, award, payment, or settlement. The Board shall allow the optometrist to publish a  
40 statement explaining the circumstances that led to the judgment, award, payment, or settlement,  
41 and whether the case is under appeal. The Board shall ensure these statements:

42 (1) Conform to the ethics of optometry.

43 (2) Not contain individually identifiable numeric values of the judgment, award,  
44 payment, or settlement.

45 (3) Not contain information that would disclose the patient's identity.

46 (d) The term "settlement" for the purpose of this section includes a payment made from  
47 personal funds, a payment by a third party on behalf of the optometrist, or a payment from any  
48 other source of funds.

49 (e) Nothing in this section shall limit the Board from collecting information needed to  
50 administer this Article."

1           **SECTION 3.** Chapter 45A of the General Statutes is amended by adding the  
2 following new section to read:

3 **"§ 45A-9. Interest on settlement agent's real estate trust and escrow accounts.**

4           (a) A settlement agent who maintains a trust or escrow account for purposes of  
5 receiving and disbursing closing funds and loan funds shall pay any interest earned on funds  
6 held in those accounts to the North Carolina State Bar to be used for the purposes authorized by  
7 the North Carolina State Bar under the Interest on Lawyers' Trust Account Program.

8           (b) The North Carolina State Bar shall adopt rules for the collection and disbursement  
9 of funds required to be paid to the North Carolina State Bar under subsection (a) of this  
10 section."

11           **SECTION 4.** G.S. 84-8 reads as rewritten:

12 **"§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students~~**  
13 **and ~~lawyers excepted.~~violations.**

14           (a) Any person, corporation, or association of persons violating any of the provisions of  
15 G.S. 84-4 to G.S. 84-7 through G.S. 84-6 or G.S. 84-9 shall be guilty of a Class 1 misdemeanor.

16           (b) No person shall be entitled to collect any fee for services performed in violation of  
17 G.S. 84-4 through G.S. 84-6, G.S. 84-9, or G.S. 84-10.1.

18           The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:

19           (1) Any law school conducting a legal clinic and receiving as its clientage only  
20 those persons unable financially to compensate for legal advice or services  
21 rendered and any law student permitted by the North Carolina State Bar to  
22 act as a legal intern in such a legal clinic.

23           (2) Any law student permitted by the North Carolina State Bar to act as a legal  
24 intern for a federal, state, or local government agency.

25           (3) Any lawyer licensed by another state and permitted by the North Carolina  
26 State Bar to represent indigent clients on a pro bono basis under the  
27 supervision of active members employed by nonprofit corporations qualified  
28 to render legal services pursuant to G.S. 84-5.1. This provision does not  
29 apply to a lawyer whose license has been suspended or revoked in any state."

30           **SECTION 5.** Article 1 of Chapter 84 of the General Statutes is amended by adding  
31 a new section to read:

32 **"§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

33           The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

34           (1) Any law school conducting a legal clinic and receiving as its clientage only  
35 those persons unable financially to compensate for legal advice or services  
36 rendered and any law student permitted by the North Carolina State Bar to  
37 act as a legal intern in such a legal clinic.

38           (2) Any law student permitted by the North Carolina State Bar to act as a legal  
39 intern for a federal, State, or local government agency.

40           (3) Any lawyer licensed by another state and permitted by the North Carolina  
41 State Bar to represent indigent clients on a pro bono basis under the  
42 supervision of active members employed by nonprofit corporations qualified  
43 to render legal services pursuant to G.S. 84-5.1. This provision does not  
44 apply to a lawyer whose license has been suspended or revoked in any state."

45           **SECTION 6.** G.S. 84-10 is repealed.

46           **SECTION 7.** Article 1 of Chapter 84 of the General Statutes is amended by adding  
47 a new section to read:

48 **"§ 84-10.1. Private cause of action for the unauthorized practice of law.**

49           If any person knowingly violates any of the provisions of G.S. 84-4 through G.S. 84-6 or  
50 G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by  
51 use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to

1 commit the unauthorized practice of law, in addition to any other liability imposed pursuant to  
2 this Chapter or any other applicable law, any person who is damaged by the unlawful acts set  
3 out in this section shall be entitled to maintain a private cause of action to recover damages and  
4 reasonable attorneys' fees."

5 **SECTION 8.** G.S. 84-21 reads as rewritten:

6 "**§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

7 (a) The Council shall adopt the rules pursuant to G.S. 45A-9.

8 (b) The rules and regulations adopted by the Council under this Article may be  
9 amended by the Council from time to time in any manner not inconsistent with this Article.  
10 Copies of all rules and regulations and of all amendments adopted by the Council shall be  
11 certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North  
12 Carolina Supreme Court upon its minutes, and published in the next ensuing number of the  
13 North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court  
14 may decline to have so entered upon its minutes any rules, regulations and amendments which  
15 in the opinion of the Chief Justice are inconsistent with this Article."

16 **SECTION 9.** Section 7 of this act becomes effective October 1, 2011. Sections 3  
17 and 8 of this act become effective January 1, 2012. Sections 4, 5, and 6 of this act become  
18 effective December 1, 2011, and apply to offenses committed on or after that date. The  
19 remainder of this act is effective when it becomes law.