

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 349
PROPOSED COMMITTEE SUBSTITUTE S349-PCS35269-RN-6

Short Title: Confidentiality/Investigative Info/Optomtry.

(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.

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
licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or
any decision rendered in connection with a hearing in any proceeding shall be a public record
within the meaning of Chapter 132 of the General Statutes, notwithstanding that the
documentation may contain information collected and compiled as a result of the investigation,
inquiry, or hearing. Identifying information concerning the treatment of or delivery of services
to a patient or client who has not consented to the public disclosure of the treatment or services
may be deleted. If any record, paper, or other document containing information collected and



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1 compiled by or on behalf of the Board is received and admitted in evidence in any hearing
2 before the Board, the documents shall be a public record within the meaning of Chapter 132 of
3 the General Statutes, subject to any deletions of identifying information concerning the
4 treatment of or delivery of professional services to a patient who has not consented to the
5 public disclosure of the treatment or services.

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

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

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

27 (b3) The Board shall cooperate with and assist a law enforcement agency or district
28 attorney conducting a criminal investigation or prosecution of a licensee by providing
29 information that is relevant to the criminal investigation or prosecution to the investigating
30 agency or district attorney. Information disclosed by the Board to an investigative agency or
31 district attorney remains confidential and may not be disclosed by the investigating agency
32 except as necessary to further the investigation.

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

35 (1) Any felony arrest or indictment.

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

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

39 (c) The Board, its members, attorneys, and staff may release confidential or nonpublic
40 information to any health care licensure board in this State or another state or authorized
41 Department of Health and Human Services personnel with enforcement or investigative
42 responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other
43 public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board
44 of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action
45 taken by the Board. The Board shall notify the licensee in writing within 60 days after the
46 information is transmitted. A summary of the information that is being transmitted shall be
47 furnished to the licensee. If the licensee requests in writing within 30 days after being notified
48 that the information has been transmitted, the licensee shall be furnished a copy of all
49 information transmitted but shall be liable for the reasonable expense of the copies. The notice
50 or copies of the information shall not be provided if the information relates to an ongoing

1 criminal investigation by any law enforcement agency or authorized Department of Health and
2 Human Services personnel with enforcement or investigative responsibilities."

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

5 **"§ 90-121.6. Reporting and publication of judgments, awards, payments, and settlements.**

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

8 (1) All medical malpractice judgments or awards affecting or involving the
9 optometrist.

10 (2) All settlements in the amount of seventy-five thousand dollars (\$75,000) or
11 more related to an incident of alleged medical malpractice affecting or
12 involving the optometrist where the settlement occurred on or after May 1,
13 2008.

14 (3) All settlements in the aggregate amount of seventy-five thousand dollars
15 (\$75,000) or more related to any one incident of alleged medical malpractice
16 affecting or involving the optometrist not already reported pursuant to
17 subdivision (2) of this subsection where, instead of a single payment of
18 seventy-five thousand dollars (\$75,000) or more occurring on or after May
19 1, 2008, there is a series of payments made to the same claimant which, in
20 the aggregate, equal or exceed seventy-five thousand dollars (\$75,000).

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

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

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

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

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

36 (1) Conform to the ethics of optometry.

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

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

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

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

45 **SECTION 3.** This act is effective when it becomes law.