HOUSE BILL 228: Modernize Laws Pertaining to NC Medical Board.

2019-2020 General Assembly

Committee:	House Health. If favorable, re-refer to Judiciary. If favorable, re-refer to Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	March 18, 2019
Introduced by:	Rep. Murphy	**Prepared by:**	Jason Moran-Bates
Analysis of:	PCS to First Edition H228-CSBC-10		Committee Staff

OVERVIEW: The Proposed Committee Substitute to House Bill 228 would require mandatory reporting for sexual offenses and drug diversion or theft, codify licensure fees for physician assistants and anesthesiologist assistants, clarify the Medical Board's disciplinary authority, and make other changes throughout the Medical Practice Act. Differences between the bill as introduced and the PCS are in bold font in the Bill Analysis section below.

CURRENT LAW: When necessary, the current law is underlined in the Bill Analysis for each section of the bill.

BILL ANALYSIS:

Section 1 of the PCS would add definitions for "licensee" and "inactive license" to G.S. 90-1.1. It would clarify that a license can enter an inactive status when a licensee requests inactive status, fails to register, or voluntarily surrenders a license, or when the Medical Board issues a disciplinary order. Currently, "licensee" and "inactive license" are not statutorily defined.

Section 2 would make a technical change to G.S. 90-2.

Section 3 would make technical changes to G.S.90-3.

Section 4 would require the Board to meet at least once per quarter at any location in North Carolina and allow the Board to have additional meetings as necessary. Current law requires the Board to meet once annually in Raleigh and to remain in session until all eligible applicants have been examined.

Section 5 would replace the word "physicians" with "licensees" in G.S. 90-5.1(a).

Section 6 would require licensees to report any graduate medical or osteopathic education to the Board. Current law only requires reporting of graduate education obtained at institutions accredited by certain accrediting agencies.

Section 7 would replace "physician or physician assistant" with "applicant or licensee" in G.S. 90-5.3.

Section 8 would add a new section to Article 1 of Chapter 90 creating an affirmative duty for licensees to report suspected sexual misconduct, fraudulent prescribing, and drug diversion, or theft to the Board. Licensees who failed to report such conduct would be subject to discipline, and any individuals who made

reports in good faith would be immune from civil liability. There is currently no statutory duty to report sexual misconduct, fraudulent prescribing, or drug diversion, misuse, or theft. **The PCS changes the reporting requirements so that individuals who staff the North Carolina Physicians Health Program would not be mandatory reporters under the new section; they would continue to be governed by the Program's reporting requirements in G.S. 90-21.22.**

Section 9 would repeal the requirement that the Board's secretary give a bond for the safekeeping and proper payment of all money that comes into the secretary's hands.

Section 10 would amend G.S. 90-8.1 to clarify that once an individual submits an application to the Board, that individual is under the Board's jurisdiction.

Section 11 would amend G.S. 90-9.1 to clarify that applicants for a physician license must pass a program of medical education that lasts at least 130 weeks. Applicants who are currently certified in a medical specialty recognized by the Board would also be eligible for licensure, provided they meet the education and examination requirements. Under current law, applicants must show they have graduated from an approved medical college and passed an exam acceptable to the Board to be licensed. **The PCS makes a slight change to the language in this section. The change does not have any substantive effect.**

Section 12 would change the physician licensure requirements for graduates of international medical schools in G.S. 90-9.2. Under the new requirements, applicants would have to complete two years of training or provide proof of certification by a specialty board recognized by the Board, as well as pass an exam acceptable to the Board. Under current law, international graduates must complete three years of training, but cannot use proof of specialist certification as a basis for licensure. Passing an exam is not required.

Section 13 would clarify that applicants are eligible for licensure as physician assistants if they complete an education program accredited by the Accreditation Review Commission on Education for the Physician Assistant and are certified by the National Commission on Certification of Physician Assistants or its successor entities. Currently, the education program must be accredited by the Committee on Allied Health Education and Accreditation and the certification cannot be issued by a successor entity.

Section 14 would amend G.S. 90-9.4 to remove the requirement that anesthesiologist assistant applicants must pass an exam administered by the National Commission of Certification on Anesthesiologist Assistants in order to be licensed. The requirement that they be certified by the Commission would remain, and passing an examination is a prerequisite to certification.

Section 15 would add a new section to Article 1 of Chapter 90 stating that the Board retains jurisdiction over inactive licenses, regardless of how they become inactive. It would also permit the Board to retain jurisdiction over the holder of an inactive license for all matters known or unknown to the Board at the time of inactivation of the license.

Section 16 would repeal the provision of G.S. 90-10.1 allowing the Board to accept a licensing exam administered by the medical board of another state for licensure of physicians in North Carolina. The United States Medical Licensing Exam, which is accepted in most states, will continue to be accepted by the Board.

Section 17 would allow the Board to collect a background check fee from applicants and to remit that fee to the Department of Public Safety.

Section 18 would amend G.S. 90-12.01 to require directors of graduate medical education programs to report to the Board any adverse actions taken against, and resignations made by, physicians in medical education training programs. **The PCS makes a slight change to the language in this section. The change does not have any substantive effect.**

Section 19 would change the maximum fine for individuals who practice outside the scope of their limited volunteer licenses to $500.00. The current fine is $25-$50. Practicing outside the scope of a limited volunteer license would continue to be a Class 3 criminal misdemeanor.

Section 20 would change the maximum fine for individuals who practice outside the scope of their retired limited volunteer licenses to $500.00. The current fine is $25-$50. Practicing outside the scope of a retired limited volunteer license would continue to be a Class 3 criminal misdemeanor.

Section 21 would change the maximum fine for individuals who practice outside the scope of their special purpose licenses to $500.00. The current fine is $25-$50. Practicing outside the scope of a special purpose license would continue to be a Class 3 criminal misdemeanor.

Section 22 would change the maximum fine for individuals who practice outside the scope of their medical school faculty licenses to $500.00. It would also amend G.S. 90-12.3 to automatically inactivate a medical school faculty license if the licensee ceased to hold a full-time faculty position, ceased to be employed full-time in a North Carolina medical school, or obtained any other license to practice medicine issued by the Board. The current fine is $25-$50. Practicing outside the scope of a medical school faculty license would continue to be a Class 3 criminal misdemeanor.

Section 23 would change the maximum fine for individuals who practice outside the scope of their physician assistant limited volunteer licenses to $500.00. The current fine is $25-$50. Practicing outside the scope of a physician assistant limited volunteer license would continue to be a Class 3 criminal misdemeanor.

Section 24 would change the maximum fine for individuals who practice outside the scope of their physician assistant retired limited volunteer licenses to $500.00. The current fine is $25-$50. Practicing outside the scope of a physician assistant retired limited volunteer license would continue to be a Class 3 criminal misdemeanor.

Section 25 would amend G.S. 90-13.1 to set the fee for a duplicate license at $75, the initial fee for an anesthesiologist assistant license at $230, and the initial fee for a physician assistant license at $230. Under current law, the fee for a duplicate license is $25 and the initial fee for an anesthesiologist assistant is $150. Currently there is no set statutory fee for initial licensure as a physician assistant.

Section 26 would amend G.S. 90-13.2 to set the annual license fees for physician assistants and anesthesiologist assistants at $140. It would also increase the fee for a failure to register to $75. The current fee for failure to register is $50.

Section 27 would add new provisions setting fees for issuance of corporate certificates. The initial fee would be $200. Annual renewal or reinstatement fees would be $100.

Section 28 would raise the per diem compensation of the Board to $300. Current per diem compensation is $200. It has not been changed since 1993.

Section 29 would amend G.S. 90-14, which deals with the discipline authority of the Board. Under the new provisions:

- Physician assistants could provide physical or mental health examinations of licensees, and licensed mental health professionals could conduct mental health examinations of licensees. Currently, only physicians may perform these exams.
- Failure to comply with a Board order for undergoing physical or mental examination would be grounds for discipline.

- The Board would be able to revoke or deny a license if a licensee practices in a manner that departs from acceptable and prevailing medical practices. Under current law, the Board must show the practice departed from acceptable and prevailing standards and had a greater risk than the prevailing treatment before taking disciplinary action.
- Failure to comply with a Board order to demonstrate professional qualifications would be grounds for discipline.
- A violation of any provision of Article 1 of Chapter 90 or failure to make any required reports would be grounds for discipline. Currently these acts are not grounds for discipline.
- A felony conviction of rape or another sexual offense would result in automatic denial or revocation of a license. Revocation would be permanent, with no chance of reinstatement. Licenses revoked on any other grounds would be eligible for reinstatement in two years.

Section 30 would allow appeals of decisions not to issue a license to be filed in Superior Court of the county where the Board is located. Currently, those appeals must be filed in Wake County Superior Court.

Section 31 would remove the requirement in G.S. 90-14.2 that notice of discipline must be prepared by a committee of the Board.

Section 32 would permit the Board to use an Administrative Law Judge in compliance with the Administrative Procedure Act in any cases against current or former Board members.

Section 33 would allow sworn depositions to be used as evidence in Board hearings. The Board would be permitted to receive testimony via telephone and videoconference at its discretion. Currently deposition, telephone, and videoconference testimony is not permitted in Board hearings.

Section 34 would allow appeals of disciplinary action taken by the Board to be filed in Superior Court of the county where the Board is located. Currently, those appeals must be filed in Wake County Superior Court.

Section 35 would amend G.S. 90-14.13 to change the malpractice reporting requirements. Under the new provisions, hospitals would have to report resignations that took place when the individual resigning was under investigation. In addition, licensees who do not have malpractice insurance provided by a North Carolina insurer would have to report damage awards and settlements within 30 days.

Section 36 would allow the Board to release confidential information to any state or federal investigative agency.

Section 37 would amend G.S. 90-18(c), which regulates the scope of practice of medicine. Under the new provisions, osteopathy and radiology (using radiant energy or radiation to treat illness) would be considered to be within the scope of practice of medicine. Under the current language of the statute, osteopathy is not considered to be the practice of medicine. This provision has been obsolete since 2009 when osteopaths became subject to the same licensure process as physicians. An out-of-state physician who communicates, using any means of communication, with one of the physician's regular patients who is temporarily in North Carolina, would not be practicing medicine. Currently, out-of-state physicians communicating with their patients who are temporarily in North Carolina are practicing medicine in North Carolina unless they use a toll-free phone number or the internet.

Section 38 would remove the requirement that prescriptions written by physician assistants include an identification number assigned by the Board. It would also remove the requirement that a hospital's policy regarding the tests and treatments that can be ordered by a physician assistant be approved in consultation with the nursing staff.

Section 39 would remove the requirement that prescriptions written by nurse practitioners include an identification number assigned by the Board.

Section 40 would allow State-required medical and physical examinations to be conducted by physician assistants and nurse practitioners, even if the statute or rule requires physicians to conduct the exam. Under current law, only physicians may conduct these exams unless the statute or rule specifically allows physician assistants or nurse practitioners to conduct them.

Section 41 would repeal G.S. 90-18.7, which requires the Board to establish rules for the disposal of pathological materials. In 2013, a law was passed giving DHHS this authority, so G.S. 90-18.7 is obsolete.

Section 42 would allow an anesthesiologist and any combination of a physician assistant, anesthesiologist assistant, and a certified nurse anesthetist to form a professional corporation. Currently, only an anesthesiologist and a certified nurse anesthetist may form a professional corporation.

Section 43 would allow a formerly licensed physician to serve on the Emergency Medical Services Disciplinary Committee. Under current law, only a current physician may serve on the committee.

Section 44 would amend G.S. 8-53 to extend doctor-patient confidentiality to anyone licensed under Article 1 of Chapter 90.

Section 45 would allow physicians to charge reasonable fees for copying records. Currently, fees may only be charged for copying records for personal injury and social security disability claims. **The PCS clarifies that medical records related to workers' compensation claims would continue to be subject to the fees established by the Industrial Commission.**

Section 46 would create a new crime of sexual contact or penetration under pretext of medical treatment. This crime would be a Class C felony, unless the conduct was covered under another provision of law requiring a greater penalty.

Section 47 would allow death certificates to be completed by any physician, physician assistant, or nurse practitioner who took reasonable efforts to determine the patient's cause of death. A physician, physician assistant, or nurse practitioner who completed a death certificate in good faith would be immune from civil liability. Under current law, only a treating physician, physician assistant, or nurse practitioner in charge of the patient's care at the time of death, chief medical officer of the hospital or facility in which the death occurred, or a physician performing an autopsy may complete a death certificate.

EFFECTIVE DATE: Section 2.(a) of the act would be effective October 31, 2019. Section 46 of the act would be effective December 1, 2019, and apply to offenses committed on or after that date. The remainder of the act would be effective October 1, 2019.