



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

2019-2020 General Assembly

Committee:		Date:	December 4, 2019
Introduced by:		Prepared by:	Jason Moran-Bates Staff Attorney
Analysis of:	S.L. 2019-191		

OVERVIEW: *S.L. 2019-191 modernizes the laws governing the North Carolina Medical Board (Board) and the practice of medicine including:*

- *Authorizing the Board to collect a background check fee from applicants and to remit that fee to the Department of Public Safety.*
- *Creating an affirmative duty for licensees to report suspected sexual misconduct, fraudulent prescribing, drug diversion, or theft to the Board.*
- *Requiring 130 weeks of medical education for a physician license.*
- *Increasing civil penalties for practice outside the scope of various limited purpose licenses.*
- *Removing geographic limits on where the Board can meet (currently, Raleigh) and allow the Superior Court in the county where the Board is located to hear appeals of decisions not to issue a license and appeals of disciplinary action (currently, Wake County Superior Court).*
- *Clarifying the Board's disciplinary authority including authority over applicants and inactive licenses.*
- *Authorizing reasonable fees for copying medical records based on the actual cost of copying.*
- *Creating a new criminal offense punishable as a Class C felony for sexual contact or penetration under pretext of medical treatment.*
- *Allowing 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.*
- *Removing the Board's authority to set fees by regulation and maintain fees set by regulation as of June 1, 2019.*

Technical changes to the composition of the Board's membership became effective October 31, 2019. The new criminal offenses became effective December 1, 2019, and applied to offenses committed on or after that date. The remainder of the act became effective October 1, 2019.

CURRENT LAW: Current law is underlined in the Bill Analysis for each section of the bill.

BILL ANALYSIS:

Definitions

Definitions for "licensee" and "inactive license" are added to the definition section of the medical practice Act. The bill clarifies that a license can enter an inactive status when a licensee requests inactive status,

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fails to register, voluntarily surrenders a license, or when the Board issues a disciplinary order. Currently, "licensee" and "inactive license" are not statutorily defined.

Board Meetings

The Board is required to meet at least once per quarter at any location in North Carolina and allows 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.

Reporting of Medical Education

Licenseses must 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.

Reporting of Sexual Misconduct

Licenseses must report suspected sexual misconduct, fraudulent prescribing, drug diversion, or theft to the Board. Licenseses who fail to report such conduct will be subject to discipline, and any individuals who make reports in good faith will be immune from civil liability. Individuals who staff the North Carolina Physicians Health Program will not be mandatory reporters under the new section; they will continue to be governed by the Program's reporting requirements in G.S. 90-21.22. There is currently no statutory duty to report sexual misconduct, fraudulent prescribing, or drug diversion, misuse, or theft.

Repeal of Bond Requirement

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 is repealed.

Jurisdiction of the Board

Once an individuals submit an application to the Board, they are under the Board's jurisdiction.

Medical Education Requirement

Applicants for a physician license must complete medical education that lasts at least 130 weeks. Applicants who are currently certified in a medical specialty recognized by the Board will 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.

International Medical School Education Requirements

The physician licensure requirements for graduates of international medical schools is amended. Under the new requirements, applicants will 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.

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Physician Assistant Licensure Requirements

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.

Anesthesiologist Licensure Requirements

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 is removed. The requirement that they be certified by the Commission remains, and passing an examination is a prerequisite to certification.

Jurisdiction over Inactive Licenses

The Board retains jurisdiction over inactive licenses, regardless of how they become inactive. The Board retains 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.

Repeal of Foreign State Medical Exam

The provision of the Medical practice Act allowing the Board to accept a licensing exam administered by the medical board of another state for licensure of physicians in North Carolina is repealed. The United States Medical Licensing Exam, which is accepted in most states, will continue to be accepted by the Board.

Background Check Fee

The Board may collect a background check fee from applicants and remit that fee to the Department of Public Safety.

Medical Resident Reporting Requirements

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.

Fines for Scope of practice Violations Changed

- The maximum fine for individuals who practice outside the scope of their limited volunteer licenses to \$500. The current fine is \$25-\$50. Practicing outside the scope of a limited volunteer license will continue to be a Class 3 criminal misdemeanor.
- The maximum fine for individuals who practice outside the scope of their retired limited volunteer licenses to \$500. The current fine is \$25-\$50. Practicing outside the scope of a retired limited volunteer license will continue to be a Class 3 criminal misdemeanor.

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- The maximum fine for individuals who practice outside the scope of their special purpose licenses to \$500. The current fine is \$25-\$50. Practicing outside the scope of a special purpose license will continue to be a Class 3 criminal misdemeanor.
- The maximum fine for individuals who practice outside the scope of their medical school faculty licenses to \$500. It also amends G.S. 90-12.3 to automatically inactivate a medical school faculty license if the licensee ceases to hold a full-time faculty position, ceases to be employed full-time in a North Carolina medical school, or obtains 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 will continue to be a Class 3 criminal misdemeanor.
- The maximum fine for individuals who practice outside the scope of their physician assistant limited volunteer licenses to \$500. The current fine is \$25-\$50. Practicing outside the scope of a physician assistant limited volunteer license will continue to be a Class 3 criminal misdemeanor.
- The maximum fine for individuals who practice outside the scope of their physician assistant retired limited volunteer licenses to \$500. The current fine is \$25-\$50. Practicing outside the scope of a physician assistant retired limited volunteer license will continue to be a Class 3 criminal misdemeanor.

Board's Disciplinary Authority

Section 26 amends G.S. 90-14, which deals with the discipline authority of the Board. Under the new provisions:

- Physician assistants may provide physical or mental health examinations of licensees, and licensed mental health professionals may 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 is grounds for discipline.
- Failure to comply with a Board order to demonstrate professional qualifications is grounds for discipline.
- A violation of any provision of Article 1 of Chapter 90 or failure to make any required reports is grounds for discipline. Currently, these acts are not grounds for discipline.
- A felony conviction of rape or another sexual offense will result in automatic denial or revocation of a license. Revocation is permanent, with no chance of reinstatement. Licenses revoked on any other grounds will be eligible for reinstatement in two years.

Appeals of Adverse Board Decisions

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

Notice of Discipline Requirement Removed

The requirement that notice of discipline must be prepared by a committee of the Board is removed.

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Administrative Hearing Changes

- The Board may use an Administrative Law Judge in compliance with the Administrative Procedure Act in any cases against current or former Board members.
- The use of sworn depositions as evidence in Board hearings is allowed. The Board is permitted to receive testimony via telephone and videoconference at its discretion. Currently deposition, telephone, and videoconference testimony is not permitted in Board hearings.
- Appeals of disciplinary action taken by the Board may be filed in Superior Court of the county where the Board is located. Currently, those appeals must be filed in Wake County Superior Court or the county in which the licensee resides.

Malpractice Reporting Requirements

The existing malpractice reporting requirements are amended. Under the new provisions, hospitals have to report resignations that took place when the individual resigning is under investigation. In addition, licensees who do not have malpractice insurance provided by a North Carolina insurer will have to report damage awards and settlements within 30 days.

Changes to the Scope of Practice of Medicine

Osteopathy and radiology (using radiant energy or radiation to treat illness) are 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, is not 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.

Physician Assistant Prescription Requirements

The requirement that prescriptions written by physician assistants include an identification number assigned by the Board is removed. 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 is also removed.

Nurse Practitioner Prescription Requirements

The requirement that prescriptions written by nurse practitioners include an identification number assigned by the Board is removed.

State-Required Medical Exams

State-required medical and physical examinations may be conducted by physician assistants and nurse practitioners, even if the statute or rule requires physicians to conduct the exam. Under current law, only

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physicians may conduct these exams unless the statute or rule specifically allows physician assistants or nurse practitioners to conduct them.

Repeal of Pathological Material Disposal Rule Requirement

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

Professional Medical Corporations

An anesthesiologist and any combination of a physician assistant, anesthesiologist assistant, and a certified nurse anesthetist may form a professional corporation. Currently, only an anesthesiologist and a certified nurse anesthetist may form a professional corporation.

Board membership

A former physician member of the Medical Board may serve on the Emergency Medical Services Disciplinary Committee.

Doctor-Patient Confidentiality

Doctor-patient confidentiality is extended to anyone licensed under the Medical Practice Act.

Record Copying Fees

Physicians may charge reasonable fees for copying records based on actual cost and clarifies that medical records related to workers' compensation claims will continue to be subject to the fees established by the Industrial Commission. Currently, fees may only be charged for copying records for personal injury and social security disability claims.

Criminalization of Sexual Contact Under Guise of Medical Treatment

A new crime of sexual contact or penetration under pretext of medical treatment is created. This crime is a Class C felony, unless the conduct is covered under another provision of law requiring a greater penalty.

Death Certificates

Death certificates may 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 completes a death certificate in good faith will 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.

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Fee Authority

The Board's authority to set fees by regulation is removed. Fees set by regulation as of June 1, 2019, will be maintained.

Technical Changes

Technical and conforming changes are made throughout the Medical Practice Act.

EFFECTIVE DATE: Technical changes to the composition of the Board's membership became effective October 31, 2019. The new criminal offenses became effective December 1, 2019, and applied to offenses committed on or after that date. The remainder of the act became effective October 1, 2019.

Brad Krehely and Greg Roney, both with the Legislative Analysis Division, contributed substantially to this summary.