

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-525
SENATE BILL 864**

AN ACT TO AMEND THE CHIROPRACTIC PRACTICE ACT TO REQUIRE CRIMINAL RECORD CHECKS ON APPLICANTS FOR LICENSURE AS CHIROPRACTIC PHYSICIANS, TO PROHIBIT CHIROPRACTORS FROM OFFERING ENTICEMENTS TO PROSPECTIVE PATIENTS, TO EXPAND THE GROUNDS FOR PROFESSIONAL DISCIPLINE OF CHIROPRACTORS; TO AMEND THE PERFUSIONIST LICENSURE ACT, AND TO MAKE CHANGES TO THE APPOINTING PROCESS FOR THE NORTH CAROLINA STATE BOARD OF OPTICIANS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-143.3. Criminal record checks of applicants for licensure.

(a) Any person applying for licensure as a chiropractic physician in this State shall provide to the Board a fingerprint card in a format acceptable to the Board and a form signed by the applicant consenting to a criminal record check and the use of the applicant's fingerprints and such other identifying information as may be required by the State or national data banks. The Board shall submit these documents to the Department of Justice, along with a request for a criminal record check of the applicant.

(b) Upon receipt of the Board's submission, the Department of Justice shall commence the requested criminal record check. The Department of Justice shall forward a set of the applicant's fingerprints to the State Bureau of Investigation for a search of the State's criminal records, and the State Bureau of Investigation shall forward a set of the applicant's fingerprints to the Federal Bureau of Investigation for a search of national criminal records. The Department of Justice may charge the licensure applicant a fee for performing the criminal record check.

(c) The Board shall keep all information obtained from criminal record checks privileged and confidential, in accordance with applicable State law and federal guidelines, and the information shall not be a public record under Chapter 132 of the General Statutes. If the Board refuses to issue a license based in whole or part on information obtained from a criminal record check, the Board may disclose the relevant information to the applicant but shall not provide a copy of the record check to the applicant.

(d) When acting in good faith and in conformity with this section, the Board, its officers, and employees shall be immune from civil liability for initially refusing licensure based on information contained in a criminal record check supplied by the Department of Justice, even if the information relied upon is later shown to be erroneous."

SECTION 2. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.22. Criminal record checks of applicants for licensure as chiropractic physicians.

The Department of Justice may provide to the State Board of Chiropractic Examiners from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure pursuant to Article 8 of Chapter 90 of the General

Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-154.4. Enticements prohibited.

(a) For purposes of this section, an enticement is anything of monetary value offered by a chiropractor to a prospective patient as an incentive to enter treatment. Except as permitted in subsection (b) of this section, it shall be an unlawful rebate, in violation of G.S. 90-154(b)(12), for a chiropractor to offer an enticement to a prospective patient if, at the time the offer is made, the chiropractor knows or has reason to believe that the prospective patient's treatment expenses will be paid in whole or part by an insurer or other third-party payor.

(b) Unless prohibited by other State or federal law, the following marketing practices shall not be construed as violations of subsection (a) of this section:

- (1) Free or reduced rates, services, examinations, or treatments advertised and delivered in conformity with G.S. 90-154.1.
- (2) Cash or point-of-service discounts not more than 30 percentage points lower than the charges customarily billed to third-party payors.
- (3) Prepaid wellness plans covering only services that can be performed entirely by the offering chiropractor or the chiropractor's staff within the confines of the chiropractor's office.
- (4) Merchandise with a value of not more than ten dollars (\$10.00) given to a prospective patient for promotional purposes."

SECTION 4. G.S. 90-154(b) is amended by adding a new subdivision to read:

"(b) Any one of the following is grounds for disciplinary action by the Board under subsection (a):

- ...
(21) Committing an act on or after October 1, 2007, which demonstrates a lack of good moral character which would have been a basis for denying a license under G.S. 90-143(b)(1), had it been committed before application for a license."

SECTION 5. G.S. 90-682(2) reads as rewritten:

"§ 90-682. Definitions.

The following definitions apply in this Article:

- ...
(2) Committee. – The North—Carolina—Perfusion—Advisory Committee—Perfusionist Advisory Committee of the North Carolina Medical Board.

....

SECTION 6. G.S. 90-682.1 reads as rewritten:

"§ 90-682.1. Medical Board approval required.

(a) The Committee shall report to the Medical Board all actions taken by the Committee pursuant to this Article, except for actions taken by the Committee pursuant to G.S. 90-684. No action by the Committee is effective unless the action is approved by

the Medical Board. The Medical Board may also rescind or ~~supercede,~~supersede, in whole or in part, any action taken by the Committee in carrying out the provisions of this Article, except for actions taken by the Committee pursuant to G.S. 90-684. In rescinding or superseding an action by the Committee, the Board may remand the matter back to the Committee with instructions to perform some act consistent with this Article or Article 1 of Chapter 90. Members of the Medical Board may be selected by the President of the Board to participate in the matter that is the subject of the Order remanding the matter back to the Committee.

(b) The Board may waive any requirements of this Article consistent with G.S. 90-12.2."

SECTION 7. G.S. 90-684 is amended by adding a new subsection to read:

"(h) Qualified Immunity. – The Committee and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law. A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, or providing an expert medical opinion to the Committee regarding the acts and omissions of a licensee or applicant that violates the provisions of G.S. 90-691(a) or any other provision of law relating to the fitness of a licensee or applicant to practice perfusion and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Committee in good faith and without fraud or malice in any proceeding involving a violation of G.S. 90-961(a) or any other law relating to the fitness of an applicant or licensee to practice perfusion, or for making a recommendation to the Committee in the nature of peer review, in good faith and without fraud and malice."

SECTION 8. G.S. 90-685 reads as rewritten:

"§ 90-685. Powers of the Committee.

The Committee shall have the power and duty to:

- (1) Administer this Article.
- (2) Issue interpretations of this Article.
- (3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
- (4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.
- (4a) Establish the standards for qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.
- (5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.
- (6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.
- (7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.
- (8) Establish continuing education requirements for licensees.
- (9) Establish a code of ethics for licensees.
- (10) Maintain a current list of all persons who have been licensed under this Article.
- (11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.

- (12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.
- (13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.
- (14) Summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Committee.
- (15) Order that any patient records, documents, or other material concerning any matter to be heard before or inquired into by the Committee shall be produced before the Committee or made available for inspection, notwithstanding any other provisions of law providing for the application of any physician-patient privilege with respect to such records, documents, or other material. The Committee shall withhold from public disclosure the identity of a patient, including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure.
- (16) Order a licensee whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness to attend and successfully complete a treatment program as deemed necessary and appropriate."

SECTION 9. Article 40 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-685.1. Confidentiality of Committee investigative information.

(a) All records, papers, investigative files, investigative reports, other investigative information, and other documents containing information in the possession of or received or gathered by the Committee or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with a licensing, complaint, or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Committee, its employees, or agents involved in the application for license or discipline of a license holder, except as provided in subsection (b) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a perfusionist, or other person performing an expert review for the Committee.

(b) The Committee shall provide the licensee or applicant with access to all information in its possession that the Committee intends to offer into evidence in presenting its case in chief at the contested hearing on the matter, subject to any privilege or restriction set forth by rule, statute, or legal precedent, upon written request from a licensee or applicant who is the subject of a complaint or investigation, or from the licensee's or applicant's counsel, unless good cause is shown for delay. The Committee is not required to provide any of the following:

- (1) A Committee investigative report.
- (2) The identity of a nontestifying complainant.
- (3) Attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Rules of Civil Procedure or the Rules of Evidence."

SECTION 10. G.S. 90-690 reads as rewritten:

"§ 90-690. Renewal of licenses.

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and

accompanied by proof satisfactory to the Committee that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has current certification as defined by G.S. 90-682(1), has satisfied the continuing education requirements established by the Committee and has paid the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may apply for a new license by complying with the current requirements for licensure under this Article."

SECTION 11. Article 40 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-690.1. Maintenance of certification to maintain licensure.

(a) After December 31, 2007, all licensed perfusionists who are licensed under this Article shall maintain certification as defined in G.S. 90-682(1) in order to maintain licensure. If certification shall lapse at any time, the Committee may initiate disciplinary action under G.S. 90-691, or upon a finding consistent with G.S. 150B-3(c), may order the summary suspension of the perfusionist's license.

(b) The provisions of this section shall not apply to perfusionists who were licensed under Section 2 of S. L. 2005-267."

SECTION 12. G.S. 90-691 reads as rewritten:

"§ 90-691. Suspension, revocation, and refusal to renew. Disciplinary authority.

(a) The Committee may place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, require satisfactory completion of treatment programs or remedial or educational training, deny, refuse to renew, suspend, or revoke an application or license ~~or order probation or issue a reprimand~~ if the applicant or licensee:

- (1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.
- (2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.
- (3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.
- (4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee. The Committee is empowered and authorized to require a licensee to submit to a mental or physical examination by persons designated by the Committee before or after charges may be presented against the licensee, and the results of the examination shall be admissible in evidence in a hearing before the Committee.
- (5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article. The Committee may, upon reasonable grounds, require a licensee to submit to inquiries or examinations, written or oral, as the Committee deems necessary to determine the professional qualifications of the licensee.
- (6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.
- (7) Has willfully violated any provision of this Article or rules adopted by the Committee.
- (8) Has allowed his or her certification to lapse.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner."

SECTION 13. G.S. 90-238 reads as rewritten:

"§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.

The North Carolina State Board of Opticians is created. The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

- (1) Five licensed dispensing opticians, each of whom shall serve three-year terms;
- (2) Two residents of North Carolina who are not licensed as dispensing opticians, physicians, or optometrists, who shall serve three-year terms.

Each member of the Board shall serve until the member's successor is appointed and qualifies. No person shall serve on this Board for more than two complete consecutive terms. Before beginning office, each member of the Board shall take all oaths prescribed for other State officers in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board each year and open to all licensees. In naming candidates for election, the Board must ensure that its candidates reflect the composition of the State with regards to gender, ethnic, racial, and age composition. If the Board fails to fulfill its requirements under this section, the Governor may appoint a licensed optician to fill a vacancy on the Board."

SECTION 14. The Revenue Laws Study Committee may study whether to continue the sales tax exemption for nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment.

SECTION 15. Sections 1 through 13 of this act become effective October 1, 2007. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:32 a.m. this 31st day of August, 2007