

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 642

Short Title: Med. Mal. Review Board. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

April 19, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE NORTH CAROLINA MEDICAL MALPRACTICE  
3 REVIEW BOARD.

4 The General Assembly of North Carolina enacts:

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

7 "Article 11.

8 "Medical Malpractice Review Board.

9 **"§ 90-21.71. Medical Malpractice Review Board established; purpose.**

10 There is established the Medical Malpractice Review Board (Board). The purpose of the  
11 Board shall be to review allegations of violations of the standard of health care by health care  
12 providers and reach a determination as to whether a violation has likely occurred.

13 **"§ 90-21.72. Membership; appointment; qualifications; terms; vacancies; chairperson;**  
14 **compensation.**

15 (a) The Board shall consist of 21 members appointed as follows:

16 (1) Seven members shall be appointed by the Governor, as follows:

- 17 a. Two health care providers licensed to practice their occupation in this  
18 State.  
19 b. Two attorneys licensed to practice law in this State.  
20 c. Three members of the public at large who are neither an attorney nor  
21 a physician.

22 (2) Seven members shall be appointed by the General Assembly upon the  
23 recommendation of the President Pro Tempore of the Senate, as follows:

- 24 a. Two health care providers licensed to practice their occupation in this  
25 State.  
26 b. Three attorneys licensed to practice law in this State.  
27 c. Two members of the public at large who are neither an attorney nor a  
28 physician.

29 (3) Seven members shall be appointed by the General Assembly upon the  
30 recommendation of the Speaker of the House of Representatives, as follows:

- 31 a. Three health care providers licensed to practice their occupation in  
32 this State.  
33 b. Two attorneys licensed to practice law in this State.  
34 c. Two members of the public at large who are neither an attorney nor a  
35 health care provider and who have no pecuniary interest in a health  
36 care facility.



1 After expiration of initial terms as set forth in subsection (b) of this section, members shall  
2 be appointed for three-year terms commencing on October 1 of the year in which they are  
3 appointed. Appointments shall be made by July 1 of the year in which the term commences.  
4 Members may be reappointed no more than two times consecutively. In case of death,  
5 incapacity, resignation, or vacancy for any other reason, the appointing authority originally  
6 appointing the vacating member shall within four weeks of the effective date of the vacancy  
7 name a successor to fill the remainder of the term.

8 (b) To ensure staggered terms, the following special provisions shall apply to the initial  
9 members of the Board:

10 (1) The members appointed under sub-subdivisions (a)(1)a., (a)(2)b., and  
11 (a)(3)c. of this section shall serve an initial term of one year.

12 (2) The members appointed under sub-subdivisions (a)(1)b., (a)(2)a., and  
13 (a)(3)a. of the section shall serve an initial term of two years.

14 (c) The members of the Board shall receive per diem and necessary travel and  
15 subsistence expenses in accordance with the provisions of G.S. 138-5.

16 (d) All clerical and other services required by the Board shall be supplied by the North  
17 Carolina Medical Board/Administrative Office of the Courts.

18 (e) The Governor shall appoint one of the members to serve as Chair of the Board. The  
19 Chair shall be responsible for appointing panels of seven Board members to review cases  
20 brought before the Board. Each panel shall consist of two physicians, two attorneys, two public  
21 members, and one other member chosen by the Chair. The Chair may designate a unique panel  
22 for each case or may designate standing panels to review multiple cases either randomly  
23 assigned or grouped according to criteria selected by the Chair.

24 **"§ 90-21.73. Review of medical malpractice actions.**

25 (a) Definitions. – The following definitions apply in this section:

26 (1) Determination. – A finding by the Board based on the greater weight of the  
27 evidence that care provided by the health care provider has violated the  
28 standard of health care.

29 (2) Health care provider. – Defined in G.S. 90-21.11.

30 (3) Medical malpractice action. – Defined in G.S. 90-21.11.

31 (4) Panel. – A group of seven Board members selected as set forth in  
32 G.S. 90-21.72(e). The Board's power to make and issue a Determination  
33 under this section is delegated to any panel.

34 (5) Standard of health care. – Defined in G.S. 90-21.12.

35 (b) Review Requirement. – Any complaint alleging medical malpractice by a health  
36 care provider in failing to comply with the standard of health care shall be dismissed unless the  
37 complainant has first presented his claim of violation of the standard of health care to a panel  
38 for review and obtained a Determination from the panel as set forth in this section.

39 (c) Matters Presented. – The panel shall consider only the issue of whether, based on  
40 the evidence presented by the complainant, it is more likely than not that the health care  
41 provider has violated the standard of health care. The panel may consider the evidence set forth  
42 in subsection (d) of this section as well as the written arguments of counsel. The panel may  
43 decline to release the written arguments of counsel to the opposing counsel upon a finding that  
44 the arguments contain confidential or proprietary information.

45 (d) Evidence Presented. – The complainant may submit medical records, affidavits of  
46 experts, and any other documentary evidence. The panel, the complainant, or the health care  
47 provider may procure the attendance of witnesses at depositions following the procedures of  
48 G.S. 1A-1, Rule 45, but may not re-depose any witness in any civil action arising out of the  
49 alleged failure to comply with the standard of health care unless the presiding judge finds good  
50 cause exists for allowing a re-deposition and issues a written order with respect to each witness

1 specifically allowing the re-deposition. The panel may request any additional documentary  
2 evidence from the parties it finds necessary to its deliberations.

3 (e) Panel Decision. – If the panel finds by the greater weight of the evidence that the  
4 health care provider has violated the standard of health care, it shall issue a written  
5 Determination. If the panel finds by the greater weight of the evidence that the health care  
6 provider has not violated the standard of health care, or that the existence of a violation is not  
7 determinable, it shall not issue a Determination. If the panel determines that the health care  
8 provider has failed to participate in good faith in a review proceeding under this section, it shall  
9 issue a default Determination which shall have the same effect as a Determination issued after a  
10 proceeding. For purposes of this subsection, "failure to participate in good faith" shall include,  
11 but not be limited to, the failure to provide information requested by the panel.

12 (f) Effect of Determination or Failure to Issue a Determination. – If the panel issues a  
13 Determination, then the complainant shall not be taxed costs on the basis of the complainant's  
14 failure to obtain a judgment in any subsequent civil action. If the panel declines to issue a  
15 Determination, then the complainant shall be taxed with all costs of the health care provider  
16 should the complainant fail to obtain a judgment in any subsequent civil action. For purposes of  
17 this subsection, "costs" shall include reasonable attorneys' fees.

18 (g) Statutes of Limitation and Repose. – Any statute of limitation or repose applicable  
19 in a medical malpractice action shall be tolled from the time a claim is presented to the Board  
20 in accordance with this section until the issuance of a Determination regarding that claim by the  
21 Board.

22 (h) Immunity From Discovery. – The findings and Determination of the Board, as well  
23 as any confidential patient information, written arguments of counsel, and other nonpublic  
24 information acquired, created, or used in good faith by the Board pursuant to this Article, shall  
25 not be subject to discovery or subpoena in any civil action alleging the violation of the standard  
26 of health care that was the subject of the Board's findings and Determination.

27 **SECTION 2.** This act is effective when it becomes law. Notwithstanding any  
28 other provision of this act, initial members of the Medical Malpractice Review Board created  
29 by Section 1 of this act shall be appointed by September 1, 2011, and their terms shall  
30 commence on October 1, 2011.