

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 349  
Judiciary I Committee Substitute Adopted 6/7/11

Short Title: Confidentiality/Investigative Info/Optomety.

(Public)

Sponsors:

Referred to:

March 16, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT WHICH ALLOWS THE NORTH CAROLINA STATE BOARD OF EXAMINERS  
3 IN OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS  
4 CONFIDENTIAL, REQUIRES LICENSEES TO COOPERATE WITH LAW  
5 ENFORCEMENT AGENCIES, AND REQUIRES LICENSEES TO SELF-REPORT  
6 CERTAIN INDICTMENTS, ARRESTS, MEDICAL JUDGMENTS, AWARDS,  
7 PAYMENTS, AND SETTLEMENTS.

8 The General Assembly of North Carolina enacts:

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

11 "§ 90-121.5. Confidentiality of investigative information; cooperation with law  
12 enforcement; self-reporting requirements.

13 (a) The Board may, in a closed session, receive information or evidence involving or  
14 concerning the treatment of a patient who has not expressly or impliedly consented to the  
15 public disclosure of the treatment when necessary for the protection of the rights of the patient  
16 or the accused licensee and the full presentation of relevant evidence.

17 (b) All records, papers, investigative files, investigative notes, reports, other  
18 investigative information, and other documents containing information in the possession of or  
19 received, gathered, or completed by the Board, its members, staff, employees, attorneys, or  
20 consultants as a result of investigations, inquiries, assessments, or interviews conducted in  
21 connection with a license, complaint, assessment, potential impairment, disciplinary matter, or  
22 report of professional liability insurance awards or settlements shall not be considered public  
23 records within the meaning of Chapter 132 of the General Statutes. Such documents are  
24 privileged, confidential, and not subject to discovery, subpoena, or other means of legal  
25 compulsion for release to any person other than the Board or its employees or consultants  
26 involved in the application for licensure, impairment assessment, or discipline of a licensee,  
27 except as provided in this section. However, any notice or statement of charges against any  
28 licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or  
29 any decision rendered in connection with a hearing in any proceeding shall be a public record  
30 within the meaning of Chapter 132 of the General Statutes, notwithstanding that the  
31 documentation may contain information collected and compiled as a result of the investigation,  
32 inquiry, or hearing. Identifying information concerning the treatment of or delivery of services  
33 to a patient or client who has not consented to the public disclosure of the treatment or services  
34 may be deleted. If any record, paper, or other document containing information collected and  
35 compiled by or on behalf of the Board is received and admitted in evidence in any hearing  
36 before the Board, the documents shall be a public record within the meaning of Chapter 132 of  
37 the General Statutes, subject to any deletions of identifying information concerning the



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1 treatment of or delivery of professional services to a patient who has not consented to the  
2 public disclosure of the treatment or services.

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

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

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

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

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

32 (1) Any felony arrest or indictment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Conform to the ethics of optometry.

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

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

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

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

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