

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS35233-LR-86 (03/21)

Short Title: Patient Advocacy & Protection Act.

(Public)

Sponsors: Senator Stein.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROHIBITING RETALIATION AGAINST ANY NURSE WHO MAKES A GOOD
3 FAITH REPORT CONCERNING PATIENT MEDICAL CARE OR WHO ENGAGES IN
4 PATIENT ADVOCACY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 21 of Chapter 95 of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 95-241.1. Retaliation against nurses prohibited.**

9 (a) The following definitions apply in this section:

10 (1) Good faith report. – A report made when the nurse believed in good faith
11 that the report was required or authorized by Article 9A of Chapter 90 of the
12 General Statutes and there was a reasonable factual or legal basis for that
13 belief.

14 (2) Hospital. – A hospital as defined by G.S. 131E-76(3).

15 (3) Nurse. – A registered nurse or licensed practical nurse licensed pursuant to
16 Article 9A of Chapter 90 of the General Statutes, the Nursing Practice Act.

17 (4) Patient advocacy. – Whenever a nurse acting in good faith promotes,
18 advocates for, or attempts to protect the health, safety, and rights of a
19 patient.

20 (5) Peer review. – The evaluation of (i) nursing services, (ii) the qualifications
21 of a nurse, (iii) the quality of patient care rendered by a nurse, and (iv) the
22 merits of a complaint concerning a nurse or nursing care. The term includes
23 a determination or recommendation regarding a complaint.

24 (b) No person or hospital may suspend, terminate, or otherwise discipline, discriminate
25 against, or retaliate against a nurse who makes a good faith report concerning patient medical
26 care or who engages in patient advocacy.

27 (c) No person or hospital may suspend, terminate, or otherwise discipline, discriminate
28 against, or retaliate against a person who advises a nurse of the nurse's rights under this section.

29 (d) A nurse who makes a good faith report concerning patient medical care or who
30 engages in patient advocacy, or any person who advises a nurse of that nurse's rights to make a
31 good faith report, is immune from civil and criminal liability that, in the absence of immunity,
32 might result from making the report or giving the advice.

33 (e) Any person may file a counterclaim in a pending action or prove a cause of action in
34 a subsequent lawsuit to recover defense costs, including reasonable attorneys' fees, and actual



1 and punitive damages, if the person is named as a defendant in a civil action or subjected to
2 other retaliatory action as a result of:

- 3 (1) Filing a good faith report.
- 4 (2) Patient advocacy.
- 5 (3) Requesting in good faith a nursing peer review determination; or
- 6 (4) Providing advice to a person regarding (i) filing a good faith report or (ii)
7 requesting in good faith a nursing peer review determination.
- 8 (5) A lawsuit or retaliatory action that is determined to be frivolous,
9 unreasonable, or taken in bad faith.

10 (f) A person suspected of violating this section may be reported to the appropriate
11 licensing board, and the Commissioner of Labor may impose a civil penalty not to exceed
12 twenty-five thousand dollars (\$25,000) against the person if the Commissioner finds a violation
13 of this section. The civil penalty imposed under this subsection is in addition to other penalties
14 the Department is authorized to impose. The Commissioner shall remit the clear proceeds of
15 civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in
16 accordance with G.S. 115C-457.2.

17 (g) A nurse who makes a good faith report concerning patient medical care or for the
18 purpose of patient advocacy, or any person who advises a nurse of that nurse's rights to make a
19 good faith report, has a cause of action against a person who violates this section and may
20 recover one or more of the following:

- 21 (1) The greater of actual damages, including damages for mental anguish even if
22 no other injury is shown or the amount of five thousand dollars (\$5,000).
- 23 (2) Exemplary damages.
- 24 (3) Courts costs.
- 25 (4) Reasonable attorneys' fees.

26 (h) A person who brings an action under this section has the burden of proof. It is a
27 rebuttable presumption that the person was suspended, terminated, or otherwise disciplined,
28 discriminated against, or retaliated against for making a good faith report or for engaging in
29 patient advocacy.

30 (i) A nurse authorized to practice at a facility owned or operated by or on behalf of a
31 State or local government entity who alleges a violation of this section may sue the State or
32 local government entity for the relief provided by this section and the sovereign immunity of
33 the State or local government entity from liability is waived for the limited purpose of allowing
34 the nurse to maintain a civil action to obtain that relief. The relief provided by this section is in
35 addition to any other remedies a nurse may have under State or federal law as a public
36 employee.

37 (j) In addition to the other requirements for eligibility for the protections established by
38 this section, a nurse first must seek recourse through the applicable internal quality control
39 process before securing these protections."

40 **SECTION 2.** G.S. 95-241(a) reads as rewritten:

41 "(a) No person shall discriminate or take any retaliatory action against an employee
42 because the employee in good faith does or threatens to do any of the following:

- 43 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
44 proceeding or other action, or testify or provide information to any person
45 with respect to any of the following:
 - 46 a. Chapter 97 of the General Statutes.
 - 47 b. Article 2A or Article 16 of this Chapter.
 - 48 c. Article 2A of Chapter 74 of the General Statutes.
 - 49 d. G.S. 95-28.1.
 - 50 e. Article 16 of Chapter 127A of the General Statutes.
 - 51 f. G.S. 95-28.1A.

- 1 g. Article 52 of Chapter 143 of the General Statutes.
- 2 h. Article 5F of Chapter 90 of the General Statutes.
- 3 i. G.S. 95-241.1."

4 **SECTION 3.** This act is effective when it becomes law and applies to reports made
5 on or after that date.