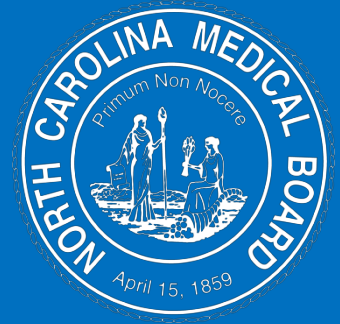


NORTH CAROLINA MEDICAL BOARD

Physician's Guide to Statutory Exceptions to the Duty of Confidentiality



Acknowledgements

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A North Carolina Physician's Guide to Statutory Exceptions to the Duty of Confidentiality

What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about.—The Hippocratic Oath

Confidentiality is the foundation upon which the patient-physician relationship is built. It inspires the trust and confidence necessary for a patient to unburden himself of some of life's most sensitive secrets to his physician, empowering a clinician to have all the facts at his disposal to diagnose and treat those entrusted to his care. It is a solemn professional duty to maintain these confidences, one that cannot be set aside lightly. However, in limited instances, the professional obligation to safeguard patient confidences is subject to certain exceptions that are ethically and legally justifiable because of overriding societal considerations. *AMA Code of Ethics, 5.051*. Physicians and other health care professionals in North Carolina are obligated under state law to break confidentiality and report certain patient conditions to government agencies and other parties, ostensibly to safeguard the public health.ⁱ Following is a comprehensive list of those situations where reporting is either mandatory or discretionary, a description of statutory immunity from civil or criminal liability that may protect a reporting clinician, and links to how and where to report.

MANDATORY REPORTING

Blindness

When a physician or optometrist determines that a patient is blind, the clinician must report this to the Department of Health and Human Services, Division of Services for the Blind within 30 days after the examination is conducted. N.C.G.S. 111-4

<http://www.ncdhhs.gov/dsb/aboutus/index.htm>

<http://info.dhhs.state.nc.us/olm/forms/dsb/dsb-2202-instructions.pdf>

<http://info.dhhs.state.nc.us/olm/forms/dsb/dsb-2202-ia.pdf>

Cancer/Certain Tumors

All health care providers who detect, diagnose, or treat cancer or benign brain or central nervous system tumors must report to the Central Cancer Registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated. Reports must be made within six months of diagnosis. Diagnostic and demographic information must be included in the report. N.C.G.S. 130A-209(a). A physician who makes a report to the central cancer registry shall be immune from civil or criminal liability. N.C.G.S. 130A-211

If a health care professional fails to report as required, then the Central Cancer Registry may conduct a site visit to the provider or require access to information in order to report it. The health care professional

may be required to reimburse the registry for its cost to access and report in an amount not to exceed one hundred dollars (\$100.00) per case. Thirty days after the expiration of the six-month reporting deadline, the registry shall send notice to each health care professional who has not submitted a report that failure to file within 30 days shall result in collection of the data by the registry and that liability for reimbursement shall be imposed. For good cause, the registry may grant an additional 30 days for reporting. N.C.G.S. 130A-209(b)

Central Cancer Registry

222 N. Dawson St.

Raleigh, NC 27603

(p) 919.715.0650

(f) 919.715.7294

http://www.schs.state.nc.us/SCHS/CCR/docs/4099_Generic.pdf

Child Abuse, Neglect, Dependency or Death

Any physician who has cause to suspect that any child is abused, neglected, dependent, or has died as the result of maltreatment, shall report the matter to the director of the department of social services in the county where the child resides or is found. The report may be made orally, by telephone, or in writing. The report must include information known to the reporting physician, including the following: the child's name and address; the name and address of the child's parent, guardian, or caretaker; the child's age; the names and ages of other children in the home; the present whereabouts of the child if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the physician making the report believes might be helpful in establishing the need for protective services or court intervention. N.C.G.S. 7B-301

Anyone who makes a report, cooperates with the county department of social services in a protective services assessment, testifies in any judicial proceeding resulting from a protective services report or assessment, or otherwise participates in the Child Protective Services program, is immune from any civil or criminal liability, provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed. N.C.G.S. 7B-309

No privilege shall be grounds for any physician failing to report that a child may have been abused, neglected, or dependent, even if the knowledge or suspicion is acquired in an official professional capacity, except when the knowledge or suspicion is gained by an attorney from that attorney's client during representation only in the abuse, neglect, or dependency case. N.C.G.S. 7B-310

Children and Non-Accidental Trauma

Cases involving recurrent illness or serious physical injury to any child under the age of 18 years where the illness or injury appears, in the physician's professional judgment, to be the result of

non-accidental trauma must be reported by the physician as soon as it becomes practicable before, during, or after completion of treatment. The report must be made by the physician to the chief of police or the police authorities of the city or town in which the hospital or other institution or place of treatment is located. If the hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report must be made to the sheriff of the respective county or to one of the sheriff's deputies. This reporting requirement is in addition to the duty set forth in G.S. 7B-301 to report child abuse, neglect, dependence, or the death of any child as the result of maltreatment to the director of the department of social services in the county where the child resides or is found. N.C.G.S. 90-21.20. Any physician involved in making a report, if done in good faith, will have immunity from civil or criminal liability. N.C.G.S. 90-21.20(d)

Communicable Diseases

A physician who has reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or communicable condition as set forth in 10A NCAC 41A .0101, must report information to the local health director of the county or district in which the physician is consulted (a list of local health departments is available at <http://www.ncalhd.org/county.htm>). N.C.G.S. 130A-135. A physician who makes a report will be immune from any civil or criminal liability. N.C.G.S. 130A-142.

Pursuant to 10A NCAC 41A .0101, the following diseases and conditions are declared to be dangerous to the public health and must be reported within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;
- (14) Escherichia coli, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis -- 7 days;

- (16) encephalitis, arboviral - 7 days;
- (17) foodborne disease, including *Clostridium perfringens*, staphylococcal, *Bacillus cereus*, and other and unknown causes - 24 hours;
- (18) gonorrhoea - 24 hours;
- (19) granuloma inguinale - 24 hours;
- (20) *Haemophilus influenzae*, invasive disease - 24 hours;
- (21) Hantavirus infection – 7 days;
- (22) Hemolytic-uremic syndrome – 24 hours;
- (23) Hemorrhagic fever virus infection – immediately;
- (24) hepatitis A - 24 hours;
- (25) hepatitis B - 24 hours;
- (26) hepatitis B carriage - 7 days;
- (27) hepatitis C, acute - 7 days;
- (28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (29) influenza virus infection causing death - 24 hours;
- (30) legionellosis - 7 days;
- (31) leprosy – 7 days;
- (32) leptospirosis - 7 days;
- (33) listeriosis – 24 hours;
- (34) Lyme disease - 7 days;
- (35) lymphogranuloma venereum - 7 days;
- (36) malaria - 7 days;
- (37) measles (rubeola) - 24 hours;
- (38) meningitis, pneumococcal - 7 days;
- (39) meningococcal disease - 24 hours;
- (40) monkeypox – 24 hours;
- (41) mumps - 7 days;
- (42) nongonococcal urethritis - 7 days;
- (43) novel influenza virus infection – immediately;
- (44) plague - immediately;
- (45) paralytic poliomyelitis - 24 hours;
- (46) pelvic inflammatory disease – 7 days;
- (47) psittacosis - 7 days;
- (48) Q fever - 7 days;
- (49) rabies, human - 24 hours;
- (50) Rocky Mountain spotted fever - 7 days;

- (51) rubella - 24 hours;
- (52) rubella congenital syndrome - 7 days;
- (53) salmonellosis - 24 hours;
- (54) severe acute respiratory syndrome (SARS) – 24 hours;
- (55) shigellosis - 24 hours;
- (56) smallpox –immediately;
- (57) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
- (58) streptococcal infection, Group A, invasive disease - 7 days;
- (59) syphilis - 24 hours;
- (60) tetanus - 7 days;
- (61) toxic shock syndrome - 7 days;
- (62) trichinosis -- - 7 days;
- (63) tuberculosis - 24 hours;
- (64) tularemia - immediately;
- (65) typhoid - 24 hours;
- (66) typhoid carriage (Salmonella typhi) - 7 days;
- (67) typhus, epidemic (louse-borne) - 7 days;
- (68) vaccinia – 24 hours;
- (69) vibrio infection (other than cholera) -- 24 hours;
- (70) whooping cough - 24 hours;
- (71) yellow fever - 7 days.

Reports of the diseases and conditions listed above must be made to the local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>). The initial report must be made by telephone for diseases and conditions required to be reported within 24 hours. In addition, the report must also be made on the communicable disease report card or in an electronic format provided by the Division of Public Health and must include the name and address of the patient, the name and address of the parent or guardian if the patient is a minor, and epidemiologic information. This secondary report must be made within seven days.

Forms or electronic formats provided by the Division of Public Health for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the following reportable diseases and conditions:

- (A) acquired immune deficiency syndrome (AIDS);
- (B) brucellosis;
- (C) cholera;
- (D) cryptosporidiosis;

- (E) cyclosporiasis;
- (F) E. coli 0157:H7 infection;
- (G) ehrlichiosis;
- (H) Haemophilus influenzae, invasive disease;
- (I) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura;
- (J) hepatitis A;
- (K) hepatitis B;
- (L) hepatitis B carriage;
- (M) hepatitis C;
- (N) human immunodeficiency virus (HIV) confirmed;
- (O) legionellosis;
- (P) leptospirosis;
- (Q) Lyme disease;
- (R) malaria;
- (S) measles (rubeola);
- (T) meningitis, pneumococcal;
- (U) meningococcal disease;
- (V) mumps;
- (W) paralytic poliomyelitis;
- (X) psittacosis;
- (Y) Rocky Mountain spotted fever;
- (Z) rubella;
- (AA) rubella congenital syndrome;
- (BB) tetanus;
- (CC) toxic shock syndrome;
- (DD) trichinosis;
- (EE) tuberculosis;
- (FF) tularemia;
- (GG) typhoid;
- (HH) typhoid carriage (Salmonella typhi);
- (II) vibrio infection (other than cholera); and
- (JJ) whooping cough.

Communicable disease report cards, surveillance forms, and electronic formats are available from the Division of Public Health and from local health departments. 10A NCAC 41A .0102

Communicable Disease Branch

Epidemiology Section
Division of Public Health
NC Department of Health and Human Services
1902 Mail Service Center
Raleigh, NC 27699-1902
(p) 919.733.3419
(f) (secure line) 919.715.4699

http://epi.publichealth.nc.gov/cd/docs/dhhs_2124.pdf

<http://epi.publichealth.nc.gov/cd/lhds/manuals/cd/forms.html>

Communicable Disease with Special Requirements -- Hepatitis B

Pregnant women and donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs must be tested for and reported to the local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>) if positive for hepatitis B infection. 10A NCAC 41A .0203(d). The attending physician of a child who is infected with hepatitis B virus and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting must notify the local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>). 10A NCAC 41A .0203(e)

http://epi.publichealth.nc.gov/cd/lhds/manuals/cd/reportforms/hep_b_carriage.pdf

Communicable Disease with Special Requirements -- HIV

The attending physician must notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. 10A NCAC 41A .0202(5). Furthermore, the attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting must notify the local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>). 10A NCAC 41A .0202(3). In addition to the reporting requirements already set forth for the HIV patient, if the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse, the physician must list the spouse on a form provided by the Division of Public Health and shall mail the form to the Division. 10A NCAC 41A .0202(2).

Communicable Disease Branch
Epidemiology Section
Division of Public Health
North Carolina Department of Health and Human Services

1902 Mail Service Center

Raleigh, NC 27699-1902

(p) 919.733.3419

(f) 919.733.0490

(f) 919.715.4699 (secure line)

<http://epi.publichealth.nc.gov/cd/hiv/providers/report.html>

Criminal Activity

Cases of wounds, injuries or illnesses which must be reported by physicians include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the treating physician that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears that the wound, injury or illness resulted from a criminal act of violence. N.C.G.S. 90-21.20(b)

Such cases of wounds, injuries or illnesses must be reported as soon as practicable before, during or after completion of treatment. The report must be made by the treating physician to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report must be made to the sheriff of the respective county or to one of his deputies. N.C.G.S. 90-21.20(a). Each report must state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries. N.C.G.S. 90-21.20(c). Any physician participating in good faith in the making of a report shall have immunity from civil or criminal liability. N.C.G.S. 90-21.20(d)

Disabled Adults

Any physician having reasonable cause to believe that a disabled adult is in need of protective services must report this information to the director of the county department of social services (here is a list of county directors: <http://www.ncdhhs.gov/dss/local/docs/directory.pdf>). The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information. N.C.G.S. 108A-102

Any physician who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability unless found to be acting maliciously or in bad faith. N.C.G.S. 108A-102(c)

Occupational Illness or Disease

A North Carolina physician treating a person for an occupational injury occurring while working on a farm or for an occupational disease or illness listed below must report the information to the Department of Health and Human Services. A physician who reports in good faith will be immune from civil liability.

N.C.G.S. 130A-459

Under 10A NCAC 41C .0702, the following diseases, illnesses, and injuries are declared to be dangerous to the public health and must be reported within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis – 15 working days;
- (2) silicosis – 15 working days;
- (3) elevated blood lead levels for adults aged 18 years of age and above – 15 working days;
- (4) serious and preventable injuries caused by tractors, farm equipment, or farm machinery that occur while working on a farm – 15 working days.

When a physician makes a report of a disease, illness, injury, or elevated blood lead level pursuant to G.S. 130A-456, the report must be made to the Occupational Health Section. 10A NCAC 41C .0703

Occupational Surveillance Unit

Occupational and Environmental Epidemiology Branch

Division of Public Health

North Carolina Department of Health and Human Services

1912 Mail Service Center

Raleigh, NC 27699-1912

(p) 919.733.1145

(f) 919.733.9555

<http://epi.publichealth.nc.gov/oii/Ohsp-01.pdf>

Pesticide-Related Illness or Injury

Physicians must report the following pesticide-related illness or injuries that are considered harmful to the public's health within the time period specified after the illness or injury is diagnosed: (1) acute pesticide-related illness or injury – 48 hours; (2) acute pesticide-related illness or injury resulting in death – immediately. 10A NCAC 41F .0102

A report of a pesticide-related illness or injury may be submitted in one of four ways. A physician may call the Division of Public Health at 1.800.200.7090 or 919.707.5900. A physician may also call the Carolinas Poison Center at 1.800.222.1222, option 5. The center will accept reporting and provide clinical advice. Alternatively, a report (link provided below) can be mailed or faxed to the following address:

Occupational Surveillance Unit

Occupational and Environmental Epidemiology Branch
Division of Public Health
North Carolina Department of Health and Human Services
1912 Mail Service Center
Raleigh, NC 27699-1912
(p) 919.733.1145
(f) 919.870.4810
http://epi.publichealth.nc.gov/pest/pdf/reporting_form

Smallpox Vaccination Irregularities

The attending physician of a person vaccinated against smallpox must report to the local health department (a list of local health departments is available at <http://www.ncalhd.org/county.htm>) the existence of any autoinoculation, generalized vaccinia, eczema vaccinatum, progressive vaccinia, and/or post vaccination encephalitis. The report must be made to the local health department within 24 hours. 10A NCAC 41A .0208.

Death

A physician is required to notify the County Medical Examiner of certain deaths. Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. N.C.G.S. 130A-383

Deaths Involving Communicable Disease Must Be Reported to Funeral Workers

A physician attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt is required to provide written notification to all individuals handling the body of the proper precautions to prevent infection. This written notification must be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician must notify the funeral service personnel verbally of the following precautions as soon as the physician becomes aware of the death. Persons handling bodies of persons who died and were known to have HIV infection, hepatitis B infection, Jakob-Creutzfeldt, or rabies shall be provided written notification to observe blood and body fluid precautions. N.C.G.S. 130A-395

Fetal Death (Spontaneous)

Each spontaneous fetal death occurring in the state at 20 or more completed weeks' gestation, as calculated from the first day of the last normal menstrual period until the day of delivery, must be reported within 10 days after delivery to the local registrar of the county in which the delivery occurred. The report shall be made on a form prescribed and furnished by the State Registrar. When a fetal death occurs outside of a hospital or other medical facility, the physician in attendance at or immediately after the delivery shall prepare and file the report. When a fetal death is attended by a person authorized to attend childbirth, the supervising physician shall prepare and file the report. Fetal deaths attended by lay midwives shall be treated as deaths without medical attendance and the medical examiner should prepare and file the report. N.C.G.S. 130A-114

Nuclear, Biological or Chemical Weapons

A health care professional must report that a condition or illness was caused by the use of a nuclear, biological or chemical weapon of mass destruction to the State Health Director (919.733.3421) or a local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>). N.C.G.S. 130A-476. A health care professional acting in good faith and without malice in disclosing this information is immune from civil or criminal liability. In any proceeding involving liability, good faith and lack of malice are presumed. However, if a health care provider willfully withholds information, the immunity from civil or criminal liability is not available if the health care professional had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

HIV/HEP-B IN HEALTH CARE WORKERS

All health care workers who perform or assist in surgical or obstetrical procedures or dental procedures and who know they are infected with HIV or hepatitis B are required to notify the State Health Director. The notification must be made in writing to the Chief, Communicable Disease Control Branch, 1902 Mail Service Center, Raleigh, NC 27699-1902. 10A NCAC 41A .0207(b)

DISCRETIONARY REPORTING

Impairment Affecting Driving

A physician may report, after consultation with the patient, information about a patient who has a mental or physical disability that the physician believes may affect the patient's ability to safely operate a motor vehicle to the Commissioner of Motor Vehicles. N.C.G.S. 20-9.1(a)

A physician disclosing or not disclosing information pursuant to this section is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of

disclosure provided that the physician was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. N.C.G.S. 20-9.1(c)

North Carolina Department of Transportation
Division of Motor Vehicles
1100 New Bern Ave.
Raleigh, NC 27697
919.715.7000

Impairment Affecting Pilots

A physician who reports to the Federal Aviation Administration (1.866.TELL.FAA) that a pilot or an applicant for a pilot's license suffers from or probably suffers from a physical disability or infirmity that the physician believes will or reasonably could affect the person's ability to safely operate an aircraft shall have immunity, civil or criminal, that might otherwise be imposed. A physician who testifies about a pilot's or an applicant's mental or physical disability or infirmity in any related administrative proceeding will also be immune from civil or criminal liability. N.C.G.S. 90-21.20A

Trends Suggesting Nuclear, Biological or Chemical Weapons

A health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director (919.733.3421) or a local health director (a list of local health departments is available at <http://www.ncalhd.org/county.htm>) any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. N.C.G.S. 130A-476

A physician disclosing or not disclosing such information is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. However, if a health care provider willfully does not disclose such information, the immunity from civil or criminal liability shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c)

ⁱ Health care professionals are also required to report certain instances of personal and professional conduct to their respective professional licensing agencies. Those reporting requirements do not fall within the purview of this article.