

The House Committee on Judiciary offers the following substitute to HB 156:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 31-7-8 of the Official Code of Georgia Annotated, relating to reports
2 of disciplinary actions against persons authorized to practice medicine, osteopathy, podiatry,
3 or dentistry in this state, so as to change confidentiality provisions concerning disciplinary
4 actions against providers; to amend Title 43 of the Official Code of Georgia Annotated,
5 relating to professions and businesses, so as to change confidentiality provisions relating to
6 investigations by the Composite State Board of Medical Examiners; to enact the "Patient
7 Right to Know Act of 2001"; to provide a short title; to provide for definitions; to provide
8 for creation, contents, and dissemination of physician profiles; to provide for access to
9 information about medical providers and services; to provide for the right to file a grievance
10 against a medical provider with respect to the provider, his or her office, and the services
11 rendered; to require the board to investigate every grievance filed; to establish the right of
12 the patient to inquire about the cost of treatment prior to receiving such treatment; to provide
13 for notices; to prohibit certain acts; to provide for penalties; to provide for practices and
14 procedures; to provide for rules and regulations; to provide for other related matters; to repeal
15 conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

17 Code Section 31-7-8 of the Official Code of Georgia Annotated, relating to reports of
18 disciplinary actions against persons authorized to practice medicine, osteopathy, podiatry,
19 or dentistry in this state, is amended by striking subsection (e) and inserting in its place the
20 following:
21

22 "(e) Except as provided in this subsection and Chapter 34A of Title 43, information
23 contained in any report made to the appropriate licensing board pursuant to this Code
24 section shall be confidential and shall not be disclosed to the public. Access to such reports
25 shall be limited to members of the appropriate licensing board or its staff for their use and

1 to interested institutions for their use in the review of medical staff privileges at the
2 institution."

3 SECTION 2.

4 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
5 is amended by striking subsection (d) of Code Section 43-34-37, relating to authority of the
6 Composite State Board of Medical Examiners to refuse a license or discipline a physician,
7 and inserting in its place the following:

8 "(d) The executive director is vested with the power and authority to make, or cause to be
9 made through employees or agents of the board, such investigations as he or she, or the
10 board, or any district attorney may deem necessary or advisable in the enforcement of this
11 chapter. Any person properly conducting an investigation on behalf of the board shall have
12 access to and may examine any writing, document, or other material, except that as to
13 which privilege has not been denied or deemed waived by this chapter, and which is
14 deemed by the president of the board, or vice-president if the president is not available, to
15 be related to the fitness of any licensee or applicant to practice medicine. The executive
16 director or the president of the board, or vice-president if the president is not available, may
17 issue subpoenas to compel such access. When a subpoena is disobeyed, the board may
18 apply to the superior court of the county where the person to whom the subpoena is issued
19 resides for an order requiring obedience. Failure to comply with such order shall be
20 punishable as for contempt of court. The results of any investigations whatsoever shall be
21 reported only to the board, and the records of such investigations shall be kept by the
22 board; no part of any such record shall be released for any purpose other than a hearing
23 before the board and as provided in Chapter 34A of this title; nor shall such records be
24 subject to subpoena."

25 SECTION 3.

26 Said title is further amended by adding, after Chapter 34, a new Chapter 34A to read as
27 follows:

28 "CHAPTER 34A

29 43-34A-1.

30 This chapter shall be known and may be cited as the 'Patient Right to Know Act of 2001.'

31 43-34A-2.

32 As used in this chapter, the term:

H. B. 156 (SUB)

1 (1) 'Board' means the Composite State Board of Medical Examiners.

2 (2) 'Current' means within the last six months.

3 (3) 'Disciplinary action' means any hospital disciplinary action or any final disciplinary
4 action taken by the Composite State Board of Medical Examiners under subsection (b)
5 of Code Section 43-34-37 within the immediately preceding ten-year period. No such
6 disciplinary action taken prior to the effective date of this chapter shall be included within
7 the definition of this term.

8 (4) 'Hospital' means a facility that provides inpatient and outpatient care and services for
9 the diagnosis and treatment of medical conditions.

10 (5) 'Hospital privileges' means permission granted by a hospital to a physician to treat
11 patients in that hospital.

12 (6) 'Requester' means a person who or entity that requests a physician profile from the
13 board by means of the telephone, in writing, in person, or by electronic mail.

14 43-34A-3.

15 (a) The Composite State Board of Medical Examiners shall create physician profiles on
16 each physician licensed to practice in this state under Chapter 34 of this title.

17 (b) In creating physician profiles, the board shall by regulation establish a standard form
18 for the collection and dissemination of such data to the public, including dissemination on
19 the Internet. The information shall be gathered from the physician, the board, medical
20 malpractice insurers, hospitals, medical and speciality societies, and other appropriate
21 sources. The information shall be compiled in a form which can be disseminated to a
22 member of the public upon request. Additionally, the board shall include in a physician's
23 profile comments submitted by the physician regarding information published in the
24 physician's profile. Such comments shall not exceed 100 words. The physician shall have
25 30 days to submit comments from the date of receipt of the profile or any amended profile
26 if the amendment relates to malpractice, hospital staff privileges or disciplinary action.

27 (c) The physician profile shall include the following information:

28 (1) The full name of the physician;

29 (2) Names of medical schools attended, dates of attendance, and date of graduation;

30 (3) The location and dates of graduate medical education;

31 (4) Speciality board certification, if applicable. The toll-free number of the American
32 Board of Medical Specialities shall be included to verify current board certification
33 status;

34 (5) The fact that a license has been granted by reciprocity under Code Section 43-34-31,
35 if applicable;

36 (6) The number of years in practice and locations;

- 1 (7) Current hospital privileges;
- 2 (8) The location of primary practice setting;
- 3 (9) If requested by the physician, identification of any translating services available at
- 4 the primary practice setting;
- 5 (10) Participation in the Medicaid program, if applicable;
- 6 (11) Criminal convictions for felonies, irrespective of the pendency or availability of an
- 7 appeal;
- 8 (12) Felony charges to which a plea of nolo contendere was entered;
- 9 (13) A description of any final, public disciplinary action by a regulatory board and a
- 10 description of any second or subsequent final private reprimand by a regulatory board.

11 As used in this paragraph, the term 'regulatory board' refers to :

- 12 (A) The Composite State Board of Medical Examiners and its counterpart in any other
- 13 state; and
- 14 (B) Any state licensing board in Georgia or in any other state;
- 15 (14) A description of any final revocation or any final action resulting in any restriction
- 16 of hospital privileges, either involuntary or by agreement, for reasons related to
- 17 competence or character in the most recent ten years. No such revocation or restriction
- 18 taken prior to the effective date of this chapter shall be included in the physician's profile;
- 19 (15) Resignation from or nonrenewal of medical staff membership or the restriction of
- 20 staff privileges at a hospital taken in lieu of or in settlement of pending disciplinary action
- 21 related to competence or character in the most recent ten years. No such action taken
- 22 prior to the effective date of this chapter shall be included in the physician's profile;
- 23 (16) Final medical malpractice court judgments or medical malpractice arbitration
- 24 awards entered on or after the effective date of this chapter in which payment in excess
- 25 of \$100,000.00 is awarded against the physician to the complaining party. No such
- 26 judgments or awards prior to the effective date of this chapter shall be included in any
- 27 physician's profile. No such medical malpractice court judgments or medical malpractice
- 28 arbitration awards which occurred more than ten years prior to the date of the profile shall
- 29 be included in any physician profile;
- 30 (17)(A) Medical malpractice settlements, including the monetary amount of each such
- 31 settlement, in which payment in excess of \$300,000.00 is made by or on behalf of and
- 32 attributable to the physician to the complaining party. No such settlement occurring
- 33 prior to the effective date of this chapter shall be included in any physician profile. No
- 34 such settlement which occurred more than ten years prior to the date of the profile shall
- 35 be included in any physician profile.
- 36 (B) Medical malpractice settlements, including the monetary amount of each such
- 37 settlement, if three medical malpractice settlements have been made by or on behalf of

1 and attributable to the physician to the complaining party and payment in excess of
2 \$100,000.00 has been made by or on behalf of and attributable to the physician in any
3 one or more of such settlements. No such settlement occurring prior to the effective
4 date of this chapter shall be included in any physician profile nor shall any such
5 settlement be included for the purpose of determining whether three medical
6 malpractice settlements have been made by or on behalf of and attributable to the
7 physician. No such settlement which occurred more than ten years prior to the date of
8 the profile shall be included in any physician profile nor shall any such settlement be
9 included for the purpose of determining whether three medical malpractice settlements
10 have been made by or on behalf of and attributable to the physician.

11 (C) All medical malpractice settlements, including the monetary amount of each such
12 settlement, if four or more medical malpractice settlements have been made by or on
13 behalf of and attributable to the physician to the complaining party, regardless of the
14 amount of the payment made by or on behalf of and attributable to the physician in any
15 such settlement. No such settlement occurring prior to the effective date of this chapter
16 shall be included in any physician profile nor shall any such settlement be included for
17 the purpose of determining whether four or more medical malpractice settlements have
18 been made by or on behalf of and attributable to the physician. No such settlement
19 which occurred more than ten years prior to the date of the profile shall be included in
20 any physician profile nor shall any such settlement be included for the purpose of
21 determining whether four or more medical malpractice settlements have been made by
22 or on behalf of and attributable to the physician.

23 (D) Any disclosure under this paragraph shall be accompanied by the following
24 statement:

25 'Settlement of a claim may occur for a variety of reasons which do not necessarily
26 reflect negatively on the professional competence or conduct of the physician. A
27 payment in settlement of a medical malpractice action or claim should not be construed
28 as creating a presumption that medical malpractice has occurred.';

29 (18) Pending malpractice claims shall not be disclosed;

30 (19) The board may, in its discretion, include additional statements describing the
31 experience or pattern of awards, judgments, or settlements of the physician. Information
32 concerning paid medical malpractice claims may be put in context by comparing an
33 individual licensee's medical malpractice judgments, awards, or settlements to the
34 experience of other physicians within the same specialty;

35 (20) Any complaint or grievance filed with the board and upon which the board took
36 disciplinary action, including a description of the nature of the complaint and the
37 resolution; and

1 (21) All violations of this chapter.

2 (d) The physician profile may include information relating to:

3 (1) Appointment to medical school faculties within the most recent ten years;

4 (2) Articles in professional publications and journals; and

5 (3) Professional or community service membership, activities, and awards.

6 (e) The physician profiles shall be updated by the board as required in this subsection:

7 (1) The profile items listed in paragraphs (11) through (17) of subsection (c) of this Code
8 section inclusive shall be reported to the board by the physician involved within ten days
9 of the judgment, award, settlement, revocation, resignation, or disciplinary action, and
10 the board shall update the physician's profile with such changes within ten days of receipt
11 of such information; and

12 (2) All other changes to the physician profile shall be reported by the physician to the
13 board within 30 days of the change, and the board shall verify and update the physician
14 profile with such new information within 15 days.

15 (f) The physician may request a copy of the profile and may submit corrections to the
16 board. The board shall verify corrections and make changes to the profile within five
17 business days of receipt of the corrected information by the board. The physician may
18 request postcorrection publication by the board to whomever received the profile
19 containing the error.

20 (g) Notwithstanding the provisions of subsection (c) of this Code section, no final medical
21 malpractice court judgment, medical malpractice arbitration award, or medical malpractice
22 settlement which was awarded prior to the effective date of this chapter and which was
23 sealed by order of a court prior to the effective date of this chapter shall be required to be
24 disclosed pursuant to subsection (c) of this Code section. No final medical malpractice
25 court judgment, medical malpractice arbitration award, or medical malpractice settlement
26 which is awarded on or after the effective date of this chapter shall be confidential or sealed
27 with regard to information which is needed to comply with the purposes of this chapter.

28 43-34A-4.

29 A patient or any requester has the right to receive a physician profile from the board upon
30 request. Requests for physician profiles shall be accepted by the board by telephone, in
31 writing, or by electronic mail. The person requesting the profile shall provide the name of
32 the physician for whom a profile is sought. The board may charge a nominal fee for
33 copying as is permitted under subsection (c) of Code Section 50-18-71. The board shall
34 not require from the requester a specific request form or a statement of reason for
35 requesting the profile. The board shall not be required to prepare reports, summaries, or
36 compilations of profiles not in existence at the time of the request. The board shall keep

1 both the requester's identity and the request confidential. The board must respond to all
 2 requests within three business days by sending a copy of the physician profile to the
 3 requester. Fees may be charged in accordance with subsection (c) of Code Section
 4 50-18-71. A physician may make available his or her current unaltered board approved
 5 profile to the patients in his or her practice. The physician may not knowingly disperse a
 6 profile that does not disclose recent disciplinary actions, criminal convictions, revocations
 7 or restriction of hospital privileges, settlements, medical malpractice judgments, or
 8 arbitration awards as set forth in paragraphs (11) through (17) of subsection (c) of Code
 9 Section 43-34A-3.

10 43-34A-5.

11 A patient has the right to inquire as to the estimated charges for a routine office visit,
 12 routine treatments, and lab tests prior to receiving such treatment. When asked for such
 13 information, the physician or other authorized personnel shall give such information freely
 14 and without reservation or evasion. Violation of this right should be reported immediately
 15 to the board. Physicians are not responsible for ascertaining the details of the patient's
 16 insurance coverage and explaining such information to the patient. A physician may
 17 require the payment of his or her fee or any applicable copayment in advance of delivering
 18 professional services unless otherwise prohibited by law.

19
 20 43-34A-6.

21 (a) The patient or any person that the board deems to have a legitimate interest has the
 22 right to file a grievance with the board concerning a physician, staff, office, or treatment
 23 received.

24 (b) A declaration of the patient's rights shall be prominently displayed in conspicuous
 25 language in the physician's waiting room. This declaration may be contained in the same
 26 notice as the right to obtain physician profiles. The declaration of rights shall contain the
 27 following statement:

28 'The patient has the right to file a grievance with the Composite State Board of Medical
 29 Examiners concerning the physician, staff, office, and treatment received. The patient
 30 should either call the board with such a complaint or send a written complaint to the
 31 board. The patient should be able to provide the physician or practice name, the address,
 32 and the specific nature of the complaint.'

33 Such notice shall include the current phone number and address of the board.

34 (c) The board must review every complaint received to determine if there is sufficient
 35 evidence to warrant an investigation according to a procedure established by board
 36 regulation. Only investigated complaints upon which the board has taken disciplinary

1 action shall be included in a physician's profile. The board must take the appropriate
2 action as set forth in the regulations promulgated by the board. The board must respond
3 in writing to the complaint within 60 days. In the response, the board shall inform the
4 person whether the complaint is being referred for investigation, and if the complaint has
5 been investigated, the results of the investigation or whether further investigation is
6 required, and any board action taken.

7 43-34A-7.

8 (a) Any physician or authorized personnel violating any provision of this chapter shall be
9 assessed a monetary fine as determined by the board by regulation for each day or instance
10 of violation.

11 (b) A record of the violation shall be maintained as part of the physician profile.

12 43-34A-8.

13 (a) The board shall have profiles ready and be able to respond to request for profiles no
14 later than July 1, 2002.

15 (b) All regulations required under this chapter shall be promulgated by the board by July
16 1, 2002."

17 **SECTION 4.**

18 All laws and parts of laws in conflict with this Act are repealed.