

House Bill 156 (AS PASSED HOUSE AND SENATE)

By: Representatives Walker of the 141<sup>st</sup>, Murphy of the 18<sup>th</sup>, Stuckey of the 67<sup>th</sup> and Martin of the 47<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to the  
2 regulation of hospitals and related institutions, so as to change confidentiality provisions  
3 concerning disciplinary actions against providers; to change the provisions relating to  
4 definitions regarding review organizations and provide for confidentiality of information  
5 disclosed to a governmental agency; to provide for the use of peer review materials without  
6 waiving its confidentiality; to amend Title 43 of the Official Code of Georgia Annotated,  
7 relating to professions and businesses, so as to change confidentiality provisions relating to  
8 investigations by the Composite State Board of Medical Examiners; to enact the "Patient  
9 Right to Know Act of 2001"; to provide a short title; to provide for definitions; to provide  
10 for creation, contents, and dissemination of physician profiles; to provide for access to  
11 information about medical providers and services; to provide for the right to file a grievance  
12 against a medical provider with respect to the provider, his or her office, and the services  
13 rendered; to require the board to investigate every grievance filed; to establish the right of  
14 the patient to inquire about the cost of treatment prior to receiving such treatment; to provide  
15 for notices; to prohibit certain acts; to provide for penalties; to provide for practices and  
16 procedures; to provide for rules and regulations; to provide for related matters; to provide an  
17 effective date; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

20 Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to the regulation  
21 of hospitals and related institutions, is amended in Code Section 31-7-8, relating to reports  
22 of disciplinary actions against persons authorized to practice medicine, osteopathy, podiatry,  
23 or dentistry in this state, by striking subsection (e) and inserting in its place the following:  
24 "(e) Except as provided in this subsection and Chapter 34A of Title 43, information  
25 contained in any report made to the appropriate licensing board pursuant to this Code  
26 section shall be confidential and shall not be disclosed to the public. Access to such reports

1 shall be limited to members of the appropriate licensing board or its staff for their use and  
 2 to interested institutions for their use in the review of medical staff privileges at the  
 3 institution."

4 **SECTION 2.**

5 Said chapter is further amended by striking "or" from the end of division (3)(B)(iv) of Code  
 6 Section 31-7-131, relating to the definitions regarding review organizations, and by striking  
 7 division (3)(B)(v) of such Code section and inserting in its place new divisions to read as  
 8 follows:

9 "(v) Evaluating the quality and efficiency of health care services rendered by a  
 10 professional health care provider in connection with such provider's participation as  
 11 or request to participate as a provider in or for an insurer, self-insurer, health  
 12 maintenance organization, preferred provider organization, provider network, or other  
 13 organization engaged in managed care; or  
 14 (vi) Performing any of the functions or activities described in Code Section 31-7-15."

15 **SECTION 3.**

16 Said chapter is further amended by striking Code Section 31-7-133, relating to the  
 17 confidentiality of review organizations' records, and inserting in its place the following:

18 "31-7-133.

19 (a) Except in proceedings alleging violation of this article, the proceedings and records of  
 20 a review organization shall be held in confidence and shall not be subject to discovery or  
 21 introduction into evidence in any civil action; and no person who was in attendance at a  
 22 meeting of such organization shall be permitted or required to testify in any such civil  
 23 action as to any evidence or other matters produced or presented during the proceedings  
 24 or activities of such organization or as to any findings, recommendations, evaluations,  
 25 opinions, or other actions of such organization or any members thereof. The confidentiality  
 26 provisions of this article shall also apply to any proceedings, records, actions, activities,  
 27 evidence, findings, recommendations, evaluations, opinions, data, or other information  
 28 shared between review organizations which are performing a peer review function or  
 29 disclosed to a governmental agency as required by law. However, information, documents,  
 30 or records otherwise available from original sources are not to be construed as immune  
 31 from discovery or use in any such civil action merely because they were presented during  
 32 proceedings of such organization, nor should any person who testifies before such  
 33 organization or who is a member of such organization be prevented from testifying as to  
 34 matters within such person's knowledge; but such witness cannot be asked about such  
 35 witness's testimony before such organization or about opinions formed by such witness as

1 a result of the organization hearings. Notwithstanding the foregoing, the Department of  
 2 Human Resources may inspect and copy peer review materials maintained by certain  
 3 providers when it is determined by the department to be necessary in the performance of  
 4 the department's licensure and certification responsibilities under Code Section 31-7-15;  
 5 provided, however, such inspection and copying shall not waive or abrogate the  
 6 confidentiality of such peer review materials as set forth in this Code section and in Code  
 7 Section 31-7-15.

8 (b) This Code section shall not apply to prevent:

9 (1) The disclosure under Article 4 of Chapter 18 of Title 50 of those documents in the  
 10 department's custody which are records, reports, or recommendations of the Joint  
 11 Commission on Accreditation of Healthcare Organizations or other national accreditation  
 12 body and which are provided by an institution to the department for licensure purposes  
 13 under subsection (b) of Code Section 31-7-3;

14 (2) The use of ~~such~~ peer review documents in any proceeding involving the permitting  
 15 or licensing of an institution pursuant to this chapter to the extent necessary to challenge  
 16 the effectiveness of the institution's peer review system; provided, however, such use  
 17 shall not waive or abrogate the confidentiality of such documents as set forth in this Code  
 18 section and in Code Section 31-7-15; or

19 (3) A health care provider from obtaining the specific reasons and the records and  
 20 proceedings related to such provider's exclusion or termination as a participating provider  
 21 in a health maintenance organization, provider network, or other organization which  
 22 engages in managed care if such provider has brought a civil action against such health  
 23 maintenance organization, provider network, or other organization for wrongful exclusion  
 24 or termination."

#### 25 SECTION 4.

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

30 "(d) The executive director is vested with the power and authority to make, or cause to be  
 31 made through employees or agents of the board, such investigations as he or she, or the  
 32 board, or any district attorney may deem necessary or advisable in the enforcement of this  
 33 chapter. Any person properly conducting an investigation on behalf of the board shall have  
 34 access to and may examine any writing, document, or other material, except that as to  
 35 which privilege has not been denied or deemed waived by this chapter, and which is  
 36 deemed by the president of the board, or vice-president if the president is not available, to

1 be related to the fitness of any licensee or applicant to practice medicine. The executive  
 2 director or the president of the board, or vice-president if the president is not available, may  
 3 issue subpoenas to compel such access. When a subpoena is disobeyed, the board may  
 4 apply to the superior court of the county where the person to whom the subpoena is issued  
 5 resides for an order requiring obedience. Failure to comply with such order shall be  
 6 punishable as for contempt of court. The results of any investigations whatsoever shall be  
 7 reported only to the board, and the records of such investigations shall be kept by the  
 8 board; no part of any such record shall be released for any purpose other than a hearing  
 9 before the board and as provided in Chapter 34A of this title; nor shall such records be  
 10 subject to subpoena."

11 **SECTION 5.**

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

14 "CHAPTER 34A

15 43-34A-1.

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

17 43-34A-2.

18 As used in this chapter, the term:

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

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

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

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

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

30 43-34A-3.

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

1 (b) In creating physician profiles, the board shall by regulation establish a standard form  
2 for the collection and dissemination of such data to the public, including dissemination on  
3 the Internet. The information may be gathered from the physician, the board, medical  
4 malpractice insurers, hospitals, medical and speciality societies, and other appropriate  
5 sources. The information shall be compiled in a form which can be disseminated to a  
6 member of the public upon request. Additionally, the board shall include in a physician's  
7 profile comments submitted by the physician regarding information published in the  
8 physician's profile. Such comments shall not exceed 100 words. The physician shall have  
9 30 days to submit comments from the date of receipt of the profile or any amended profile  
10 if the amendment relates to malpractice, hospital staff privileges or disciplinary action.

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

12 (1) The full name of the physician;

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

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

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

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

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

21 (7) Current hospital privileges;

22 (8) The location of primary practice setting;

23 (9) If requested by the physician, identification of any translating services available at  
24 the primary practice setting;

25 (10) Participation in the Medicaid program, if applicable;

26 (11) Criminal convictions for felonies, irrespective of the pendency or availability of an  
27 appeal;

28 (12) Felony charges to which a plea of nolo contendere was entered;

29 (13) A description of any final, public disciplinary action by a regulatory board and a  
30 description of any second or subsequent final private reprimand by a regulatory board.

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

32 (A) The Composite State Board of Medical Examiners and its counterpart in any other  
33 state; and

34 (B) Any state licensing board in Georgia or in any other state;

35 (14) A description of any final revocation or any final disciplinary action resulting in any  
36 restriction of hospital privileges, either involuntary or by agreement, for reasons related

1 to competence or character in the most recent ten years. No such revocation or restriction  
2 taken prior to the effective date of this chapter shall be included in the physician's profile;

3 (15) Resignation from or nonrenewal of medical staff membership or the restriction of  
4 staff privileges at a hospital taken in lieu of or in settlement of pending disciplinary action  
5 related to competence or character in the most recent ten years. No such action taken  
6 prior to the effective date of this chapter shall be included in the physician's profile;

7 (16) Final medical malpractice court judgments or medical malpractice arbitration  
8 awards entered on or after the effective date of this chapter in which payment in excess  
9 of \$100,000.00 is awarded against the physician to the complaining party. No such  
10 judgments or awards prior to the effective date of this chapter shall be included in any  
11 physician's profile. No such medical malpractice court judgments or medical malpractice  
12 arbitration awards which occurred more than ten years prior to the date of the profile shall  
13 be included in any physician profile;

14 (17)(A) Medical malpractice settlements, including the monetary amount of each such  
15 settlement, in which payment in excess of \$300,000.00 is made by or on behalf of and  
16 attributable to the physician to the complaining party. No such settlement occurring  
17 prior to the effective date of this chapter shall be included in any physician profile. No  
18 such settlement which occurred more than ten years prior to the date of the profile shall  
19 be included in any physician profile.

20 (B) Medical malpractice settlements, including the monetary amount of each such  
21 settlement, if three medical malpractice settlements have been made by or on behalf of  
22 and attributable to the physician to the complaining party and payment in excess of  
23 \$100,000.00 has been made by or on behalf of and attributable to the physician in any  
24 one or more of such settlements. No such settlement occurring prior to the effective  
25 date of this chapter shall be included in any physician profile nor shall any such  
26 settlement be included for the purpose of determining whether three medical  
27 malpractice settlements have been made by or on behalf of and attributable to the  
28 physician. No such settlement which occurred more than ten years prior to the date of  
29 the profile shall be included in any physician profile nor shall any such settlement be  
30 included for the purpose of determining whether three medical malpractice settlements  
31 have been made by or on behalf of and attributable to the physician.

32 (C) All medical malpractice settlements, including the monetary amount of each such  
33 settlement, if four or more medical malpractice settlements have been made by or on  
34 behalf of and attributable to the physician to the complaining party, regardless of the  
35 amount of the payment made by or on behalf of and attributable to the physician in any  
36 such settlement. No such settlement occurring prior to the effective date of this chapter  
37 shall be included in any physician profile nor shall any such settlement be included for

1 the purpose of determining whether four or more medical malpractice settlements have  
2 been made by or on behalf of and attributable to the physician. No such settlement  
3 which occurred more than ten years prior to the date of the profile shall be included in  
4 any physician profile nor shall any such settlement be included for the purpose of  
5 determining whether four or more medical malpractice settlements have been made by  
6 or on behalf of and attributable to the physician.

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

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

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

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

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

22 (21) All violations of this chapter.

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

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

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

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

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

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

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

36 (f) The physician may request a copy of the profile and may submit corrections to the  
37 board. The board shall verify corrections and make changes to the profile within five

1 business days of receipt of the corrected information by the board. The physician may  
2 request postcorrection publication by the board to whomever received the profile  
3 containing the error.

4 (g) Notwithstanding the provisions of subsection (c) of this Code section, no final medical  
5 malpractice court judgment, medical malpractice arbitration award, or medical malpractice  
6 settlement which was awarded prior to the effective date of this chapter and which was  
7 sealed by order of a court prior to the effective date of this chapter shall be required to be  
8 disclosed pursuant to subsection (c) of this Code section. No final medical malpractice  
9 court judgment, medical malpractice arbitration award, or medical malpractice settlement  
10 which is awarded on or after the effective date of this chapter shall be confidential or sealed  
11 with regard to information which is needed to comply with the purposes of this chapter.

12 43-34A-4.

13 Any person or entity has the right to receive a physician profile from the board upon  
14 request. Requests for physician profiles shall be accepted by the board by telephone, in  
15 writing, or by electronic mail. The person or entity requesting the profile shall provide the  
16 name of the physician for whom a profile is sought. The board may charge a nominal fee  
17 for copying as is permitted under subsection (c) of Code Section 50-18-71. The board shall  
18 not require the person or entity requesting a physician's profile to use a specific request  
19 form or provide a statement of reason for requesting the profile. The board shall not be  
20 required to prepare reports, summaries, or compilations of profiles not in existence at the  
21 time of the request. The board shall keep both the identity of the person or entity who  
22 requests a physician's profile and the request confidential. The board must respond to all  
23 requests within three business days by sending a copy of the physician profile to the  
24 requester. Fees may be charged in accordance with subsection (c) of Code Section  
25 50-18-71. A physician may make available his or her current unaltered board approved  
26 profile to the patients in his or her practice. The physician may not knowingly disperse a  
27 profile that does not disclose recent disciplinary actions, criminal convictions, revocations  
28 or restriction of hospital privileges, settlements, medical malpractice judgments, or  
29 arbitration awards as set forth in paragraphs (11) through (17) of subsection (c) of Code  
30 Section 43-34A-3.

31 43-34A-5.

32 A patient has the right to inquire as to the estimated charges for a routine office visit,  
33 routine treatments, and lab tests prior to receiving such treatment. When asked for such  
34 information, the physician or other authorized personnel shall give such information freely  
35 and without reservation or evasion. Violation of this right should be reported immediately

1 to the board. Physicians are not responsible for ascertaining the details of the patient's  
2 insurance coverage and explaining such information to the patient. A physician may  
3 require the payment of his or her fee or any applicable copayment in advance of delivering  
4 professional services unless otherwise prohibited by law.

5  
6 43-34A-6.

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

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

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

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

20 (c) The board must review every complaint received to determine if there is sufficient  
21 evidence to warrant an investigation according to a procedure established by board  
22 regulation. Only investigated complaints upon which the board has taken disciplinary  
23 action shall be included in a physician's profile. The board must take the appropriate  
24 action as set forth in the regulations promulgated by the board. The board must respond  
25 in writing to the complaint within 60 days. In the response, the board shall inform the  
26 person whether the complaint is being referred for investigation, and if the complaint has  
27 been investigated, the results of the investigation or whether further investigation is  
28 required, and any board action taken.

29 43-34A-7.

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

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

1 43-34A-8.

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

4 (b) All regulations required under this chapter shall be promulgated by the board by July  
5 1, 2002."

6 **SECTION 6.**

7 This Act shall become effective upon its approval by the Governor or upon its becoming law  
8 without such approval.

9 **SECTION 7.**

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