

House Bill 186

By: Representatives Forster of the 3rd, Post 1, Harrell of the 54th, Graves of the 106th and
Watson of the 60th, Post 2

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated,
2 relating to physicians, so as to prohibit gifts to physicians by businesses engaged in the
3 pharmaceutical and medical device and medical equipment industries; to provide for
4 exceptions; to provide for penalties; to provide for related matters; to repeal conflicting laws;
5 and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
9 physicians, is amended by striking subsection (a) of Code Section 43-34-37, relating to
10 authority to refuse to license or to discipline a physician, and inserting in lieu thereof a new
11 subsection (a) to read as follows:

12 "(a) The board shall have authority to refuse to grant a license to an applicant or to
13 discipline a physician licensed under this chapter or any antecedent law upon a finding by
14 the board that the licensee or applicant has:

15 (1) Failed to demonstrate the qualifications or standards for a license contained in this
16 chapter or in the rules and regulations of the board. It shall be incumbent upon the
17 applicant to demonstrate to the satisfaction of the board that he or she meets all
18 requirements for the issuance of a license; and, if the board is not satisfied as to the
19 applicant's qualifications, it shall not issue a license;

20 (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the
21 practice of medicine or in any document connected therewith, or practiced fraud or deceit
22 or intentionally made any false statement in obtaining a license to practice medicine, or
23 made a false or deceptive biennial registration with the board;

24 (3) Been convicted of a felony in the courts of this state or any other state, territory,
25 country, or of the United States. As used in this paragraph, the term 'conviction of a
26 felony' shall include a conviction of an offense which if committed in this state would be

1 deemed a felony under either state or federal law, without regard to its designation
2 elsewhere. As used in this paragraph, the term 'conviction' shall include a finding or
3 verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding,
4 regardless of whether the adjudication of guilt or sentence is withheld or not entered
5 thereon;

6 (4) Committed a crime involving moral turpitude, without regard to conviction; the
7 conviction of a crime involving moral turpitude shall be evidence of the commission of
8 such crime. As used in this paragraph, the term 'conviction' shall have the meaning
9 prescribed in paragraph (3) of this subsection. For the purpose of this chapter, a
10 conviction or plea of guilty or of nolo contendere to a charge or indictment by either
11 federal or state government for income tax evasion shall not be considered a crime
12 involving moral turpitude;

13 (4.1) Violated Code Section 43-34-47;

14 (5) Had his or her license to practice medicine revoked, suspended, or annulled by any
15 lawful licensing authority; or had other disciplinary action taken against him or her by
16 any lawful licensing authority; or been denied a license by any lawful licensing authority;

17 (6) Advertised for or solicited patients; obtained a fee or other thing of value on the
18 representation that a manifestly incurable disease can be permanently cured; or made
19 untruthful or improbable statements, or flamboyant or extravagant claims concerning his
20 or her professional excellence;

21 (7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or
22 practice harmful to the public, which conduct or practice need not have resulted in actual
23 injury to any person. As used in this paragraph, the term 'unprofessional conduct' shall
24 include any departure from, or failure to conform to, the minimal standards of acceptable
25 and prevailing medical practice and shall also include, but not be limited to, the
26 prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to
27 the patient as determined by the minimal standards of acceptable and prevailing medical
28 practice or by rule of the board;

29 (8) Performed, procured, or aided or abetted in performing or procuring a criminal
30 abortion;

31 (9) Knowingly maintained a professional connection or association with any person who
32 is in violation of this chapter or the rules or regulations of the board; or knowingly aided,
33 assisted, procured, or advised any person to practice medicine contrary to this chapter or
34 to the rules and regulations of the board; or knowingly performed any act which in any
35 way aids, assists, procures, advises, or encourages any unlicensed person or entity to
36 practice medicine; or divided fees or agreed to divide fees received for professional

1 services with any person, firm, association, corporation, or other entity for bringing or
2 referring a patient;

3 (10) Violated or attempted to violate a law, rule, or regulation of this state, any other
4 state, the board, the United States, or any other lawful authority without regard to whether
5 the violation is criminally punishable, which law, rule, or regulation relates to or in part
6 regulates the practice of medicine, when the licensee or applicant knows or should know
7 that such action is violative of such law, rule, or regulation; or violated a lawful order of
8 the board, previously entered by the board in a disciplinary hearing;

9 (11) Committed any act or omission which is indicative of bad moral character or
10 untrustworthiness;

11 (11.1) Failed to attempt to inform a patient, in a timely manner, that the physician has
12 received the results of a laboratory test. The board shall promulgate rules for the
13 implementation of this paragraph no later than January 1, 2002. Any physician who
14 complies with the rules promulgated by the board for informing his or her patient that the
15 results of any laboratory test have been received shall be immune from any civil or
16 criminal liability for such disclosure;

17 (12) Been adjudged mentally incompetent by a court of competent jurisdiction, within or
18 outside this state. Any such adjudication shall automatically suspend the license of any
19 such person and shall prevent the reissuance or renewal of any license so suspended for
20 as long as the adjudication of incompetence is in effect unless the board, upon a finding
21 that the licensee is mentally competent, orders otherwise. Any applicant who has been
22 so adjudged to be mentally incompetent shall not receive a license unless the board, upon
23 a finding that the applicant is mentally competent, orders otherwise; or

24 (13) Become unable to practice medicine with reasonable skill and safety to patients by
25 reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of
26 material, or as a result of any mental or physical condition:

27 (A) In enforcing this paragraph the board may, upon reasonable grounds, require a
28 licensee or applicant to submit to a mental or physical examination by physicians
29 designated by the board. The results of such examination shall be admissible in any
30 hearing before the board, notwithstanding any claim of privilege under a contrary rule
31 of law or statute, including, but not limited to, Code Section 24-9-21. Every person
32 who shall accept the privilege of practicing medicine in this state or who shall file an
33 application for a license to practice medicine in this state shall be deemed to have given
34 his or her consent to submit to such mental or physical examination and to have waived
35 all objections to the admissibility of the results in any hearing before the board, upon
36 the grounds that the same constitutes a privileged communication. If a licensee or
37 applicant fails to submit to such an examination when properly directed to do so by the

1 board, unless such failure was due to circumstances beyond his or her control, the board
 2 may enter a final order upon proper notice, hearing, and proof of such refusal. Any
 3 licensee or applicant who is prohibited from practicing medicine under this paragraph
 4 shall at reasonable intervals be afforded an opportunity to demonstrate to the board that
 5 he or she can resume or begin the practice of medicine with reasonable skill and safety
 6 to patients;

7 (B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain
 8 any and all records relating to the mental or physical condition of a licensee or
 9 applicant, including psychiatric records; and such records shall be admissible in any
 10 hearing before the board, notwithstanding any privilege under a contrary rule of law or
 11 statute, including, but not limited to, Code Section 24-9-21. Every person who shall
 12 accept the privilege of practicing medicine in this state or who shall file an application
 13 to practice medicine in this state shall be deemed to have given his or her consent to the
 14 board's obtaining any such records and to have waived all objections to the
 15 admissibility of such records in any hearing before the board, upon the grounds that the
 16 same constitute a privileged communication; and

17 (C) If any licensee or applicant could, in the absence of this paragraph, invoke a
 18 privilege to prevent the disclosure of the results of the examination provided for in
 19 subparagraph (A) of this paragraph or the records relating to the mental or physical
 20 condition of such licensee or applicant obtained pursuant to subparagraph (B) of this
 21 paragraph, all such information shall be received by the board in camera and shall not
 22 be disclosed to the public, nor shall any part of the record containing such information
 23 be used against any licensee or applicant in any other type of proceeding."

24 SECTION 2.

25 Said article is further amended by inserting a new Code Section 43-34-47 to read as follows:
 26 "43-34-47.

27 (a) It shall be unlawful for any physician licensed in accordance with this article
 28 knowingly to accept any gift or anything of value from a business engaged in the
 29 pharmaceutical or medical device or medical equipment industry or any officer, agent,
 30 employee, or representative of such business.

31 (b) It shall be unlawful for any business engaged in the pharmaceutical or medical device
 32 or medical equipment industry or any officer, agent, employee, or representative of such
 33 business knowingly to give, loan, transfer, or otherwise provide any gift or anything of
 34 value to any physician licensed in accordance with this article.

35 (c) As used in this Code section, the term 'gift or anything of value' shall not include
 36 textbooks and other items which serve a legitimate and genuine educational purpose; meals

1 and other food and beverages valued at \$25.00 or less; samples of products for patients of
2 the physician; items valued at \$25.00 or less which are directly related to the physician's
3 work; and gifts from spouses, children, grandchildren, parents, grandparents, and siblings.
4 In addition, the term shall not include subsidies to defray or underwrite the cost of
5 continuing medical education conferences and other professional meetings for physicians
6 where such conferences or meetings are primarily dedicated, in both time and effort, to
7 promoting objective scientific and educational activities and discourse and the main
8 incentive for bringing the physicians together is to further their knowledge of the topic or
9 topics being presented and where the subsidies are paid to the sponsoring organization of
10 the conference or meeting and not to individual physicians.

11 (d) Any person who knowingly violates this Code section shall be guilty of a misdemeanor
12 of a high and aggravated nature."

13

SECTION 3.

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