

House Bill 779

By: Representatives Stephenson of the 92<sup>nd</sup>, Mangham of the 94<sup>th</sup>, Bordeaux of the 162<sup>nd</sup>, Benfield of the 85<sup>th</sup>, McClinton of the 84<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 2 of Title 31 of the Official Code of Georgia Annotated, relating to the  
2 licensing of entities by the Department of Human Resources; to provide for opportunity for  
3 consumer participation in the disciplinary process; to provide for a short title; to provide for  
4 legislative findings; to amend Article 12 of Chapter 7 of Title 31, relating to health care data  
5 collection, so as to provide for the reporting of adverse incidents; to amend Article 2 of  
6 Chapter 34 of Title 43, relating to physicians, so as to include more consumers on the  
7 Composite State Board of Medical Examiners; to provide for an opportunity for consumer  
8 participation in the physician disciplinary process; to amend the standards for the licensing  
9 of physicians; to provide for related matters; to provide for an effective date; to repeal  
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 This Act shall be known and may be cited as the "Consumer Right to Participate Act."

14 style="text-align:center">**SECTION 2.**

15 (a) The General Assembly finds that many factors contribute to the high cost of health care.  
16 Among the factors are problems assuring patient safety, fully investigating complaints about  
17 health care, and access for all parties to participate in the health care complaint process.

18 (b) The General Assembly finds that the number of health care providers who perform  
19 negligently make up a small percentage of health care providers and yet account for a  
20 substantial number of the injuries to patients. The rising cost of medical malpractice  
21 insurance is attributable to the risk generated by this small number of negligent health care  
22 providers.

23 (c) The General Assembly further finds that by providing consumer participation in the  
24 complaint, investigative, and disciplinary process, and by removing the licenses of the  
25 repeatedly negligent providers, fewer negligent acts will occur, fewer Georgians will be  
26 injured by negligent health care providers, fewer medical procedures will be needed to

1 correct the negligent care, and the risk of medical negligence will decline resulting in lower  
2 costs for providing health care, both to consumers and providers.

3 **SECTION 3.**

4 Chapter 2 of Title 31 of the Official Code of Georgia Annotated, relating to the Department  
5 of Human Resources, is amended by striking subsection (c) of Code Section 31-2-6, relating  
6 to actions against certain applicants or licensees, and inserting in lieu thereof the following:

7 "(c) When the department finds that any applicant or licensee has violated any provisions  
8 of subsection (b) of this Code section or laws, rules, regulations, or formal orders related  
9 to the initial or continued licensing of the agency, facility, institution, or entity, the  
10 department, subject to notice and opportunity for hearing provided to the applicant or  
11 licensee and to any patient or the authorized representative of any patient whose care may  
12 have been adversely affected by the violation of any provisions of subsection (b) of this  
13 Code section, may take any of the following actions:

14 (1) Refuse to grant a license; provided, however, that the department may refuse to grant  
15 a license without holding a hearing prior to taking such action;

16 (2) Administer a public reprimand;

17 (3) Suspend any license, permit, registration, or commission for a definite period or for  
18 an indefinite period in connection with any condition which may be attached to the  
19 restoration of said license;

20 (4) Prohibit any applicant or licensee from allowing a person who previously was  
21 involved in the management or control, as defined by rule, of any agency, facility,  
22 institution, or entity which has had its license or application revoked or denied within the  
23 past 12 months to be involved in the management or control of such agency, facility,  
24 institution, or entity;

25 (5) Revoke any license;

26 (6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for  
27 each violation of a law, rule, regulation, or formal order related to the initial or ongoing  
28 licensing of any agency, facility, institution, or entity, except that no fine may be imposed  
29 against any nursing facility, nursing home, or intermediate care facility which is subject  
30 to intermediate sanctions under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as  
31 amended, whether or not those sanctions are actually imposed; or

32 (7) Limit or restrict any license as the department deems necessary for the protection of  
33 the public, including, but not limited to, restricting some or all services of or admissions  
34 into an agency, facility, institution, or entity for a time certain.

35 In taking any of the actions enumerated in this subsection, the department shall consider  
36 the seriousness of the violation, including the circumstances, extent, and gravity of the

1 prohibited acts, and the hazard or potential hazard created to the health or safety of the  
2 public."

3 **SECTION 4.**

4 Said chapter is further amended by adding at the end of Code Section 31-2-6, a new  
5 subsection (o) to read as follows:

6 "(o) In all administrative or legal proceedings under this Code section, a person who has  
7 filed a complaint against an applicant or licensee that is the subject of the proceedings must  
8 be notified of the proceedings and must be provided an opportunity to participate in the  
9 proceedings, including, but not limited to, providing oral or written testimony to the  
10 department concerning the applicant or licensee."

11 **SECTION 5.**

12 Article 12 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to  
13 health care data collection, is amended by inserting at the end thereof a new Code Section  
14 31-7-286 to read as follows:

15 "31-7-286.

16 (a) Every licensed institution as the term 'institution' is defined in Code Section 31-7-1  
17 shall report to the department and all appropriate licensing entities all of the following:

18 (1) The investigation and analysis of the frequency and causes of general categories and  
19 specific types of adverse incidents to patients;

20 (2) The development of appropriate measures to minimize the risk of adverse incidents  
21 to patients, including, but not limited to: development, implementation, and ongoing  
22 evaluation of procedures, protocols, and systems to accurately identify patients; planned  
23 procedure and the correct site of the planned procedure so as to minimize the  
24 performance of surgical procedure on the wrong patient; a wrong surgical procedure; a  
25 wrong-site surgical procedure; or a surgical procedure otherwise unrelated to the patient's  
26 diagnosis or medical condition;

27 (3) The analysis of patient grievances that relate to patient care and the quality of  
28 medical services;

29 (4) A system for informing a patient or the patient's authorized representative that the  
30 patient was the subject of an adverse incident, as defined in subsection (c) of this Code  
31 section. Such notice shall be given by an appropriately trained person designated by the  
32 licensed facility as soon as practicable to allow the patient an opportunity to minimize  
33 damage or injury; and

34 (5) The development and implementation of an incident reporting system based upon the  
35 affirmative duty of all health care providers and all agents and employees of the licensed

1 health care facility to report adverse incidents to the licensing agency within three  
2 business days after the occurrence of the adverse incident.

3 (b) In addition to the reports mandated by this Code section, innovative approaches  
4 intended to reduce the frequency and severity of medical malpractice and patient injury  
5 claims shall be encouraged and their implementation and operation facilitated. Such  
6 additional approaches may include extending internal risk management programs to health  
7 care providers' offices and the assuming of provider liability by a licensed health care  
8 facility for acts or omissions occurring within the licensed institution. Each licensed  
9 institution shall annually report to the department and any other appropriate licensing entity  
10 the name and judgments entered against each health care practitioner for which it assumes  
11 liability. The department and the appropriate licensing entity, in their respective annual  
12 reports, shall include statistics that report the total number of adverse incidents for all  
13 health care facilities for such year, the number and nature of adverse incidents by facility,  
14 and any other related information the department determines relevant to the public welfare  
15 in furtherance of patient education and patient safety.

16 (c) For purposes of reporting to the department pursuant to this Code section, the term  
17 'adverse incident' means an event over which health care personnel could exercise control  
18 and which is associated in whole or in part with medical intervention, rather than the  
19 condition for which such intervention occurred, and which:

20 (1) Results in one of the following injuries:

21 (A) Death;

22 (B) Brain or spinal damage;

23 (C) Permanent disfigurement;

24 (D) Fracture or dislocation of bones or joints;

25 (E) A resulting limitation of neurological, physical, or sensory function that continues  
26 after discharge from the facility;

27 (F) Any condition that required specialized medical attention or surgical intervention  
28 resulting from nonemergency medical intervention, other than an emergency medical  
29 condition, to which the patient has not given his or her informed consent; or

30 (G) Any condition that required the transfer of the patient, inside or outside the facility,  
31 to a unit providing a more acute level of care due to the adverse incident, rather than the  
32 patient's condition prior to the adverse incident;

33 (2) Was the performance of a surgical procedure on the wrong patient, a wrong surgical  
34 procedure, a wrong-site surgical procedure, or a surgical procedure otherwise unrelated  
35 to the patient's diagnosis or medical condition;

36 (3) Required the surgical repair of damage resulting to a patient from a planned surgical  
37 procedure where the damage was not a recognized specific risk as disclosed to the patient

1 and documented through the informed-consent process as provided in Code Section  
2 36-9-1; or

3 (4) Was a procedure to remove unplanned foreign objects remaining from a surgical  
4 procedure.

5 (d)(1) Each licensed facility subject to this Code section shall submit an annual report  
6 to the department summarizing the incident reports that have been filed in the facility for  
7 that year. The report shall include:

8 (A) The total number of adverse incidents;

9 (B) A listing, by category, of the types of operations, diagnostic or treatment  
10 procedures, or other actions causing the injuries, and the number of incidents occurring  
11 within each category;

12 (C) A listing, by category, of the types of injuries caused and the number of incidents  
13 occurring within each category;

14 (D) A code number using the health care professional's licensure number and a  
15 separate code number identifying all other individuals directly involved in adverse  
16 incidents to patients, the relationship of the individual to the licensed facility, and the  
17 number of incidents in which each individual has been directly involved. Each licensed  
18 facility shall maintain names of the health care professionals and individuals identified  
19 by code numbers for purposes of this Code section;

20 (E) A description of all malpractice claims filed against the licensed facility, including  
21 the total number of pending and closed claims and the nature of the incident which led  
22 to, the persons involved in, and the status and disposition of each claim. Each report  
23 shall update status and disposition for all prior reports;

24 (F) Any of the following adverse incidents, whether occurring in the licensed facility  
25 or arising from health care prior to admission in the licensed facility, shall be reported  
26 by the facility to the department within three business days after its occurrence:

27 (i) The death of a patient;

28 (ii) Brain or spinal damage to a patient;

29 (iii) The performance of a surgical procedure on the wrong patient;

30 (iv) The performance of a wrong-site surgical procedure;

31 (v) The performance of a wrong surgical procedure;

32 (vi) The performance of a surgical procedure that is medically unnecessary or  
33 otherwise unrelated to the patient's diagnosis or medical condition;

34 (vii) The surgical repair of damage resulting to a patient from a planned surgical  
35 procedure where the damage is not a recognized specific risk, as disclosed to the  
36 patient and documented through the informed-consent process as provided in Code  
37 Section 31-9-6.1; or

1 (viii) The performance of procedures to remove unplanned foreign objects remaining  
2 from a surgical procedure.

3 The department may grant extensions to this reporting requirement for more than three  
4 business days upon justification submitted in writing by the facility administrator to the  
5 department. The agency may require an additional, final report.

6 (d)(2) The department shall publish on its website, no less than quarterly, a summary and  
7 trend analysis of adverse incident reports received pursuant to this Code section, which  
8 shall not include information that would identify the patient. The department shall publish  
9 on its website an annual summary and trend analysis of all adverse incident reports and  
10 malpractice claims information provided by institutions in their annual reports, which  
11 shall not include information that would identify the patient. The purpose of the  
12 publication of the summary and trend analysis is to promote the rapid dissemination of  
13 information relating to adverse incidents and malpractice claims to assist in avoidance of  
14 similar incidents and reduce morbidity and mortality.

15 (e) In addition to any penalty imposed pursuant to this Code section, the department shall  
16 require a written plan of correction from the institution. For a single incident or series of  
17 isolated incidents that are nonwillful violations of the reporting requirements of this Code  
18 section, the department shall first seek to obtain corrective action by the institution. If the  
19 correction is not demonstrated within the time frame established by the department or if  
20 there is a pattern of nonwillful violations of this Code section, the department may impose  
21 an administrative fine, not to exceed \$5,000.00 for any violation of the reporting  
22 requirements of this Code section. The administrative fine for repeated nonwillful  
23 violations shall not exceed \$10,000.00 for any violation. The administrative fine for each  
24 intentional and willful violation may not exceed \$25,000.00 per violation, per day. The fine  
25 for an intentional and willful violation of this Code section may not exceed \$250,000.00.

26 (f) The department shall have access to all licensed institution records necessary to carry  
27 out the provisions of this Code section.

28 (g) The department shall review, as part of its licensure inspection process, the internal risk  
29 management program at each licensed institution to determine whether the program meets  
30 standards established in statutes and rules, whether the program is being conducted in a  
31 manner designed to reduce adverse incidents, and whether the program is appropriately  
32 reporting incidents under this Code section.

33 (h) If the department, through its receipt of any reports required under this Code section  
34 or through any investigation, has a reasonable belief that conduct by a staff member or  
35 employee of a licensed institution is grounds for disciplinary action by the appropriate  
36 regulatory board, the department shall report this fact to such regulatory board.

1 (i) It shall be unlawful for any person to coerce, intimidate, or preclude a health care  
 2 facility employee from lawfully executing his or her reporting obligations pursuant to this  
 3 article. Such unlawful action shall be subject to civil monetary penalties not to exceed  
 4 \$10,000.00 per violation."

#### 5 SECTION 6.

6 Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, is amended  
 7 by striking subsection (b) and (c) of Code Section 43-34-21, relating to the Composite State  
 8 Board of Medical Examiners, and inserting in lieu thereof the following:

9 "(b) ~~Twelve~~ Six of the members shall be practicing physicians of integrity and ability and  
 10 shall be duly licensed to practice in this state. ~~Ten~~ Four of the ~~12~~ six physician members  
 11 shall be graduates of reputable medical schools conferring the M.D. degree; the other two  
 12 physician members shall be graduates of reputable osteopathic schools conferring the D.O.  
 13 degree. All of the physician members shall have been engaged in the active practice of their  
 14 profession within this state for a period of at least five years. Any vacancy occurring in a  
 15 post held by a holder of the D.O. degree shall be filled by a D.O. from the state at large.  
 16 (c) ~~The thirteenth member~~ remaining seven members of the board shall be appointed from  
 17 the state at large and shall have no connection whatsoever with the practice of medicine."

#### 18 SECTION 7.

19 Said article is further amended by striking Code Section 43-34-31, relating to out-of-state  
 20 physicians, and inserting a new Code Section 43-34-31 to read as follows:

21 "43-34-31.

22 ~~Licensed physicians of other states and foreign countries may be permitted to enter this~~  
 23 ~~state for consultation with any licensed physician of this state. A physician from another~~  
 24 ~~state or from a foreign country shall not be permitted to establish offices in this state for~~  
 25 ~~the practice of his profession, either temporary or permanent, or practice under another~~  
 26 ~~physician's license, unless he obtains a license from the board. A license may be issued to~~  
 27 ~~a physician of another state or a foreign country by comity or reciprocity if the standards~~  
 28 ~~for medical licensure of such a state or foreign country equal those of this state, and after~~  
 29 ~~such state or foreign country agrees to license physicians of this state on a like basis,~~  
 30 ~~provided such agreements are not in conflict with this article. Under no circumstance shall~~  
 31 ~~a license be granted to a physician of another state or foreign country who has had three~~  
 32 ~~or more disciplinary actions of any kind taken against such physician or has paid three or~~  
 33 ~~more malpractice claims.~~"



1 shall be notified of such appearance permitted the opportunity to participate, including, but  
2 not limited to, providing oral and written testimony. The power to subpoena as set forth in  
3 Chapter 13 of Title 50 shall include the power to subpoena any book, writing, paper, or  
4 document. If any licensee fails to appear at any hearing after reasonable notice, the board  
5 may proceed to hear the evidence against such licensee and take action as if such licensee  
6 had been present."

7 **SECTION 11.**

8 This Act shall become effective on July 1, 2005.

9 **SECTION 12.**

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