

Senate Bill 252

By: Senators Thomas of the 54th, Goggans of the 7th, Mullis of the 53rd, Unterman of the 45th and Hill of the 4th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated,  
2 relating to the Georgia Composite Medical Board, so as to authorize the board to establish  
3 a professional health program to provide for monitoring and rehabilitation of impaired health  
4 care professionals; to authorize the board to enter into a contract with an entity to conduct  
5 such program; to provide for definitions; to provide for transfer and confidentiality of  
6 information; to provide for immunity; to provide for related matters; to repeal conflicting  
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to the  
11 Georgia Composite Medical Board, is amended by revising subsection (g) of Code Section  
12 43-34-2, relating to creation of the Georgia Composite Medical Board, physician assistants  
13 advisory committee, review of qualifications, and impaired physicians programs, as follows:  
14 "~~(g) The board shall have the authority to contract with medical associations or other~~  
15 ~~professionally qualified organizations to conduct impaired physicians programs.~~  
16 Reserved."

17 **SECTION 2.**

18 Said article is further amended by adding a new Code section to read as follows:

19 "43-34-5.1.

20 (a) As used in this Code section, the term:

21 (1) 'Entity' means an organization or medical professional association which conducts  
22 professional health programs.

23 (2) 'Health care professional' means any individual licensed, certified, or permitted by  
24 the board under this chapter.

25 (3) 'Impaired' means the inability of a health care professional to practice with reasonable  
26 skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics,  
27 chemicals, or any other type of material, or as a result of any mental or physical  
28 condition.

29 (4) 'Professional health program' means a program established for the purposes of  
30 monitoring and rehabilitation of impaired health care professionals.

31 (b) The board shall be authorized to conduct a professional health program to provide  
32 monitoring and rehabilitation of impaired health care professionals in this state. To this  
33 end, the board shall be authorized to enter into a contract with an entity for the purpose of  
34 establishing and conducting such professional health program, including but not limited to:

35 (1) Monitoring and rehabilitation of impaired health care professionals;

36 (2) Performing duties related to paragraph (13) of subsection (a) of Code Section  
37 43-34-8; and

38 (3) Performing such other related activities as determined by the board.

39 (c) Notwithstanding the provisions of Code Sections 43-34-7 and 43-34-8, the board shall  
40 be authorized to provide pertinent information regarding health care professionals, as  
41 determined by the board and in its sole discretion, to the entity for its purposes in  
42 conducting a professional health program pursuant to this Code section.

43 (d) All information, interviews, reports, statements, memoranda, or other documents  
44 furnished to the entity by the board or other source or produced by the entity and any  
45 findings, conclusions, recommendations, or reports resulting from the monitoring or  
46 rehabilitation of health care professionals pursuant to this Code section are declared to be  
47 privileged and confidential and shall not be subject to Article 4 of Chapter 18 of Title 50,  
48 relating to open records. All such records of the entity shall be confidential and shall be  
49 used by such entity and its employees and agents only in the exercise of the proper function  
50 of the entity pursuant to its contract with the board. Such information, interviews, reports,  
51 statements, memoranda, or other documents furnished to or produced by the entity and any  
52 findings, conclusions, recommendations, or reports resulting from the monitoring or  
53 rehabilitation of health care professionals shall not be available for court subpoenas or for  
54 discovery proceedings.

55 (e) An impaired health care professional who participates in a professional health program  
56 conducted pursuant to this Code section shall bear all costs associated with such  
57 participation.

58 (f) Any entity that contracts with the board pursuant to this Code section shall be immune  
59 from any liability, civil or criminal, that might otherwise be incurred or imposed, for the  
60 performance of any functions or duties under the contract if performed in accordance with  
61 the terms of such contract and the provisions of this Code section."

62 **SECTION 3.**

63 Said article is further amended by revising paragraph (13) of subsection (a) and subparagraph  
64 (1)(K) of subsection (b) of Code Section 43-34-8, relating to authority to refuse license,  
65 certificate, or permit or issue discipline, as follows:

66 "(13) Become unable to practice pursuant to this chapter with reasonable skill and safety  
67 to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other  
68 type of material, or as a result of any mental or physical condition:

69 (A) In enforcing this paragraph the board may, upon reasonable grounds, require a  
70 licensee, certificate holder, permit holder, or applicant to submit to a mental or physical  
71 examination by physicians designated by the board. The expense of this examination  
72 shall be borne by the licensee, certificate holder, or permit holder or applicant. The  
73 results of such examination shall be admissible in any hearing before the board,  
74 notwithstanding any claim of privilege under a contrary rule of law or statute,  
75 including, but not limited to, Code Section 24-9-21. Every person who shall accept the  
76 privilege of practicing a profession regulated under this chapter or who shall file an  
77 application for a license to practice a profession regulated under this chapter in this  
78 state shall be deemed to have given his or her consent to submit to such mental or  
79 physical examination and to have waived all objections to the admissibility of the  
80 results in any hearing before the board, upon the grounds that the same constitutes a  
81 privileged communication. If a licensee, certificate holder, or permit holder or  
82 applicant fails to submit to such an examination when properly directed to do so by the  
83 board, unless such failure was due to circumstances beyond his or her control, the board  
84 may enter a final order upon proper notice, hearing, and proof of such refusal. Any  
85 licensee, certificate holder, permit holder, or applicant who is prohibited from  
86 practicing pursuant to this chapter under this paragraph shall at reasonable intervals be  
87 afforded an opportunity to demonstrate to the board that he or she can resume or begin  
88 practice pursuant to this chapter with reasonable skill and safety to patients;

89 (B) For the purposes of this paragraph, the board and any entity which has entered into  
90 a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided  
91 for in such contract, may, upon reasonable grounds, obtain any and all records relating  
92 to the mental or physical condition of a licensee, certificate holder, or permit holder or  
93 applicant, including psychiatric records; and such records shall be admissible in any  
94 hearing before the board, notwithstanding any privilege under a contrary rule of law or  
95 statute, including, but not limited to, Code Section 24-9-21. Every person who shall  
96 accept the privilege of practicing pursuant to this chapter in this state or who shall file  
97 an application to practice pursuant to this chapter in this state shall be deemed to have  
98 given his or her consent to the board's obtaining any such records and to have waived

99 all objections to the admissibility of such records in any hearing before the board, upon  
100 the grounds that the same constitute a privileged communication; and  
101 (C) If any licensee, certificate holder, or permit holder or applicant could, in the  
102 absence of this paragraph, invoke a privilege to prevent the disclosure of the results of  
103 the examination provided for in subparagraph (A) of this paragraph or the records  
104 relating to the mental or physical condition of such licensee, certificate holder, or  
105 permit holder or applicant obtained pursuant to subparagraph (B) of this paragraph, all  
106 such information shall be received by the board in camera and shall not be disclosed to  
107 the public, nor shall any part of the record containing such information be used against  
108 any licensee, certificate holder, or permit holder or applicant in any other type of  
109 proceeding;"

110 "(K) Condition the penalty, or withhold formal disposition, which actions shall be kept  
111 confidential, unless there is a public order upon the ~~licensee or applicant~~, licensee,  
112 certificate holder, or permit holder's submission to the care, counseling, or treatment by  
113 physicians or other professional persons, which may be provided pursuant to Code  
114 Section 43-34-5.1, and the completion of such care, counseling, or treatment, as  
115 directed by the board; or"

116 **SECTION 4.**

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