

Senate Bill 453

By: Senator Carter of the 1st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
2 physicians, acupuncture, physician assistants, cancer and glaucoma treatment, respiratory
3 care, clinical perfusionists, and orthotics and prosthetics practice, so as to provide for
4 additional powers of the Georgia Composite Medical Board relating to pain management;
5 to enact the "Georgia Pain Management Clinic Act"; to provide for legislative intent; to
6 require the licensure of pain management clinics; to provide for definitions; to provide for
7 requirements for licensure; to provide for denial, suspension, and revocation of licenses; to
8 provide for notice to the board upon the occurrence of certain events; to provide for renewal
9 of licenses; to provide for a penalty for violation of the Act; to amend Article 2 of Chapter
10 16 of Title 45 of the Official Code of Georgia Annotated, relating to death investigations by
11 coroners, so as to require coroners to report to the board when a death may be the result of
12 medication administered or prescribed; to provide for related matters; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

16 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
17 acupuncture, physician assistants, cancer and glaucoma treatment, respiratory care, clinical
18 perfusionists, and orthotics and prosthetics practice, is amended by revising subsection (c)
19 of Code Section 43-34-5, relating to powers and duties of the Georgia Composite Medical
20 Board, as follows:

21 "(c) The board shall have the following powers and duties:

- 22 (1) To adopt, amend, and repeal such rules and regulations in accordance with this
23 chapter necessary for the proper administration and enforcement of this chapter;
24 (2) To adopt a seal by which the board shall authenticate the acts of the board;
25 (3) To establish a pool of qualified physicians to act as peer reviewers and expert
26 witnesses and to appoint or contract with physicians professionally qualified by education

- 27 and training, medical associations, or other professionally qualified organizations to serve
28 as peer reviewers; provided, however, that no licensing, investigative, or disciplinary
29 duties or functions of the board may be delegated to any medical association or related
30 entity by contract or otherwise;
- 31 (4) To employ a medical director and other staff to implement this chapter and provide
32 necessary and appropriate support who shall be subject to the same confidentiality
33 requirements of the board;
- 34 (5) To keep a docket of public proceedings, actions, and filings;
- 35 (6) To set its office hours;
- 36 (7) To set all reasonable fees by adoption of a schedule of fees approved by the board.
37 The board shall set such fees sufficient to cover costs of operation;
- 38 (8) To establish rules regarding licensure and certification status, including, but not
39 limited, to inactive status, as the board deems appropriate;
- 40 (9) To issue, deny, or reinstate the licenses, certificates, or permits of duly qualified
41 applicants for licensure, certification, or permits under this chapter;
- 42 (10) To revoke, suspend, issue terms and conditions, place on probation, limit practice,
43 fine, require additional medical training, require medical community service, or otherwise
44 sanction licensees, certificate holders, or permit holders;
- 45 (11) To renew licenses, certificates, and permits and set renewal and expiration dates and
46 application and other deadlines;
- 47 (12) To approve such examinations as are necessary to determine competency to practice
48 under this chapter;
- 49 (13) To set examination standards, approve examinations, and set passing score
50 requirements;
- 51 (14) To adopt necessary rules concerning proceedings, hearings, review hearings,
52 actions, filings, depositions, and motions related to uncontested cases;
- 53 (15) To initiate investigations for the purposes of discovering violations of this chapter;
- 54 (16) To administer oaths, subpoena witnesses and documentary evidence including
55 medical records, and take testimony in all matters relating to its duties;
- 56 (17) To conduct hearings, reviews, and other proceedings according to Chapter 13 of
57 Title 50;
- 58 (18) To conduct investigative interviews;
- 59 (19) To issue cease and desist orders to stop the unlicensed practice of medicine or other
60 profession licensed, certified, or permitted under this chapter and impose penalties for
61 such violations;
- 62 (20) To request injunctive relief or refer cases for criminal prosecution to appropriate
63 enforcement authorities;

- 64 (21) To release investigative or applicant files to another enforcement agency or lawful
 65 licensing authority in another state;
- 66 (22) To sue and be sued in a court of competent jurisdiction; and
- 67 (23) To enter into contracts;
- 68 (24) To license and regulate pain management clinics;
- 69 (25) To establish minimum standards for prescribing controlled substances for pain
 70 management; and
- 71 (26) To accept any gifts, grants, donations, and other funds, including funds from the
 72 disposition of forfeited property to the extent permitted by applicable law, to assist in
 73 enforcing this chapter."

74 **SECTION 2.**

75 Said chapter is further amended by adding a new article to read as follows:

76 "ARTICLE 10

77 43-34-280.

78 This article shall be known and may be cited as the 'Georgia Pain Management Clinic Act.'

79

80 43-34-281.

81 This article is enacted for the purpose of safeguarding the public health, safety, and welfare
 82 by providing for state administrative control, supervision, and regulation of pain
 83 management clinics. It is the intention of the General Assembly that people be able to
 84 obtain appropriate and safe medical care to treat conditions in which the control of pain is
 85 an element. However, the illegal and improper distribution of controlled substances is a
 86 growing problem in this state. Licensure and regulation of pain management clinics will
 87 better protect the public from criminal activities associated with the illegal distribution of
 88 controlled substances as well as provide for a safer place for people to obtain appropriate
 89 medical treatment by requiring certain minimum training of practitioners and by the
 90 regulation of pain management clinics.

91 43-34-282.

92 As used in this article, the term:

- 93 (1) 'Annual patient population' means persons seen by a clinic or practice in a 12 month
 94 calendar year but shall not include persons that are inpatients in a hospital, nursing home,
 95 or hospice facilities licensed pursuant to Chapter 7 of Title 31.

- 96 (2) 'Board' means the Georgia Composite Medical Board created by Code Section
97 43-34-2.
- 98 (3) 'Chronic pain' means pain treated for a period of 90 days or more in a year but shall
99 not include perioperative pain, which shall mean pain immediately preceding and
100 immediately following a surgical procedure, when such perioperative pain is being
101 treated by a surgeon in connection with a surgical procedure.
- 102 (4) 'License' means a valid and current certificate of registration issued by the board
103 pursuant to this article which shall give the person to whom it is issued authority to
104 engage in the practice prescribed thereon.
- 105 (5) 'Licensee' means any person holding a license under this article.
- 106 (6) 'Nonterminal condition' means a medical condition which is reversible, where there
107 is a reasonable hope of recovery, and where the patient's medical prognosis is a life
108 expectancy of two years or more.
- 109 (7) 'Pain management clinic' means a medical practice advertising 'treatment of pain' or
110 utilizing 'pain' in the name of the clinic or a medical practice or clinic with greater than
111 50 percent of its annual patient population being treated for chronic pain for nonterminal
112 conditions by the use of Schedule II or III controlled substances.
- 113 (8) 'Physician' means a person who possesses a current, unrestricted license to practice
114 medicine in the State of Georgia pursuant to Article 2 of this chapter; who, during the
115 course of his or her practice, has not been denied the privilege of prescribing, dispensing,
116 administering, supplying, or selling any controlled substance; and who has not, during
117 the course of his or her practice, had board action taken against his or her medical license
118 as a result of dependency on drugs or alcohol.
- 119 (9) 'Person' means a natural person.
- 120 43-34-283.
- 121 (a) All pain management clinics shall be licensed by the board and shall biennially renew
122 their license with the board. In the event that physicians in a pain management clinic
123 practice at more than one location, each such location shall be licensed by the board, and
124 such license shall be nontransferable.
- 125 (b) All pain management clinics shall be wholly owned by physicians licensed in this state.
126 If a pain management clinic is incorporated, all shares shall be owned by, and all members
127 shall be, physicians licensed in this state. The board may by rule determine additional
128 educational or training qualifications of all persons owning or practicing in a pain
129 management clinic and may establish minimum standards for such persons and facilities.
130 No physician who has been convicted of a felony as defined in paragraph (3) of subsection

131 (a) of Code Section 43-34-8 shall own or have any ownership interest in a pain
132 management clinic.

133 (c) Upon the filing of an application for a license, the board may cause a thorough
134 investigation of the applicant to be made and, if satisfied that the applicant possesses the
135 necessary qualifications, shall issue a license. However, the board may issue licenses with
136 varying restrictions to such persons where the board deems it necessary for the purpose of
137 safeguarding the public health, safety, and welfare.

138 (d) Whenever an applicable rule requires or prohibits action by a pain management clinic,
139 responsibility shall be that of the owner and the physicians practicing in the pain
140 management clinic, whether the owner is a sole proprietor, partnership, association,
141 corporation, or otherwise.

142 (e) Pain management clinic owners and physicians who practice in pain management
143 clinics shall comply with the minimum standards of practice for physicians and the laws
144 and rules and regulations of the board.

145 (f) The board may deny or refuse to renew a pain management clinic license if it
146 determines that the granting or renewing of such license would not be in the public interest.

147 (g) No pain management clinic shall be open to the public unless a physician, a physician
148 assistant authorized to prescribe controlled substances under an approved job description,
149 or an advance practice registered nurse authorized to prescribe controlled substances
150 pursuant to a physician protocol is on-site at the pain management clinic.

151 (h) The board may enter into agreements with other states or with third parties for the
152 purpose of exchanging information concerning licensure of any pain management clinic.

153 43-34-284.

154 In addition to the authority granted in Code Section 43-34-8, a license obtained pursuant
155 to this article shall be denied, suspended, or revoked by the board upon finding that the
156 licensee or a physician practicing at a licensed pain management clinic has:

157 (1) Furnished false or fraudulent material information in any application filed under this
158 chapter;

159 (2) Been convicted of a crime under any state or federal law relating to any controlled
160 substance;

161 (3) Had his or her federal registration to prescribe, distribute, or dispense controlled
162 substances suspended or revoked; or

163 (4) Violated the provisions of this chapter, Chapter 13 of Title 16, or Chapter 4 of Title
164 26.

165 43-34-285.

166 The board shall be notified immediately upon the occurrence of any of the following:

167 (1) Permanent closing of a licensed pain management clinic;

168 (2) Change of ownership, management, or location of a licensed pain management clinic;

169 (3) Change of the physicians practicing in a licensed pain management clinic;

170 (4) Any theft or loss of drugs or devices of a licensed pain management clinic;

171 (5) Any known conviction of any employee of a licensed pain management clinic of any
172 state or federal drug laws;

173 (6) Disasters, accidents, theft, destruction, or loss of records of a licensed pain
174 management clinic required to be maintained by state or federal law or the rules of the
175 board; or

176 (7) Any and all other matters and occurrences as the board may require by rule.

177 43-34-286.

178 All pain management clinics that dispense controlled substances or dangerous drugs shall
179 be registered with the Georgia State Board of Pharmacy as required by Chapter 4 of Title
180 26.

181 43-34-287.

182 (a) All licenses shall expire biennially unless renewed. All applications for renewal of a
183 license shall be filed with the board prior to the expiration date, accompanied by the
184 biennial renewal fee prescribed by the board. A license which has expired for failure of the
185 holder to renew may be late renewed after application and payment of the prescribed late
186 renewal fee within the time period established by the board and provided the applicant
187 meets such requirements as the board may establish by rule. Any license which has not
188 been renewed by the end of the late renewal period shall be considered revoked and subject
189 to reinstatement at the discretion of the board after meeting such requirements as the board
190 may establish.

191 (b) As a condition of license renewal, the board shall require the owners of the pain
192 management clinic and any physicians practicing in the pain management clinic to meet
193 such continuing education and training requirements as may be required by rule.

194 43-34-288.

195 Any person who operates a pain management clinic in the State of Georgia without a
196 license in violation of this article shall be guilty of a felony."

197

SECTION 3.

198 Article 2 of Chapter 16 of Title 45 of the Official Code of Georgia Annotated, relating to
199 death investigations by coroners, is amended by revising Code Section 45-16-32, relating to
200 reports of examination and investigation, as follows:

201 "45-16-32.

202 The medical examiner and coroner shall complete a report of each medical examiner's
203 inquiry and coroner's investigation and shall maintain permanent records of such reports.

204 The coroner or county medical examiner may file all original reports with the clerk of the
205 superior court of the county. In cases where such report indicates a suspicion of foul play,
206 the medical examiner and peace officer in charge shall transmit any specimens, samples,
207 or other evidence to a forensic laboratory for analysis. In cases where reports indicating
208 foul play are verified by the forensic laboratory, the laboratory shall provide a completed
209 lab report to the appropriate prosecuting attorney where the acts or events leading to the
210 death occurred. In cases where such report indicates the death may be the result of
211 medication administered or prescribed or a procedure conducted by an individual licensed
212 under Chapter 34 of Title 43, or by an individual under the direct supervision of such
213 person, the coroner or county medical examiner shall promptly provide a certified copy of
214 such report and any supporting evidence to the Georgia Composite Medical Board."

215

SECTION 4.

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