

The Senate Regulated Industries and Utilities Committee offered the following substitute to SB 453:

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 at a pain management clinic; to provide for related
13 matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 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 patients in a hospital, hospice, or
 95 nursing home 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 physical pain treated for a period of 90 days or more in a year
 99 but shall not include perioperative pain, which shall mean pain immediately preceding
 100 and immediately following a surgical procedure, when such perioperative pain is being
 101 treated in connection with a surgical procedure by a licensed health care professional
 102 acting within the scope of his or her license.

103 (4) 'License' means a valid and current certificate of registration issued by the board
 104 pursuant to this article which shall give the person to whom it is issued authority to
 105 engage in the practice prescribed thereon.

106 (5) 'Licensee' means any person holding a license under this article.

107 (6) 'Nonterminal condition' means a medical condition which is reversible, where there
 108 is a reasonable hope of recovery, and where the patient's medical prognosis is a life
 109 expectancy of two years or more.

110 (7) 'Pain management clinic' means a medical practice advertising 'treatment of pain' or
 111 utilizing 'pain' in the name of the clinic or a medical practice or clinic with greater than
 112 50 percent of its annual patient population being treated for chronic pain for nonterminal
 113 conditions by the use of Schedule II or III controlled substances. This term shall not
 114 include any clinic or practice owned, in whole or in part, or operated by a hospital
 115 licensed pursuant to Chapter 7 of Title 31 or by a health system or any ambulatory
 116 surgical center, hospice, or home health agency licensed pursuant to Chapter 7 of Title
 117 31.

118 (8) 'Person' means a natural person.

119 (9) 'Physician' means a person who possesses a current, unrestricted license to practice
 120 medicine in the State of Georgia pursuant to Article 2 of this chapter; who, during the
 121 course of his or her practice, has not been denied the privilege of prescribing, dispensing,
 122 administering, supplying, or selling any controlled substance; and who has not, during
 123 the course of his or her practice, had board action taken against his or her medical license
 124 as a result of dependency on drugs or alcohol.

125 43-34-283.

126 (a) All pain management clinics shall be licensed by the board and shall biennially renew
 127 their license with the board. In the event that physicians in a pain management clinic
 128 practice at more than one location, each such location shall be licensed by the board, and
 129 such license shall be nontransferable.

130 (b) All pain management clinics shall be wholly owned by physicians licensed in this state.
 131 If a pain management clinic is incorporated, all shares shall be owned by, and all members

132 shall be, physicians licensed in this state. No physician who has been convicted of a felony
133 as defined in paragraph (3) of subsection (a) of Code Section 43-34-8 shall own or have
134 any ownership interest in a pain management clinic. This subsection shall not apply to any
135 pain management clinic in existence on June 30, 2012, which is jointly owned by one or
136 more physician assistants or advanced practice registered nurses and one or more
137 physicians; provided, however, that any physician assistant or advanced practice registered
138 nurse shall be subject to all requirements which owners of pain management clinics are
139 subject to under this article.

140 (c) The board may establish minimum standards of continuing medical education for all
141 physicians owning and all licensed health care professionals practicing in a pain
142 management clinic, minimum standards for any licensed health care professional employed
143 therein, and minimum standards for pain management clinic facilities.

144 (d) Upon the filing of an application for a license, the board may cause a thorough
145 investigation of the applicant to be made and, if satisfied that the applicant possesses the
146 necessary qualifications, shall issue a license. However, the board may issue licenses with
147 varying restrictions to such persons where the board deems it necessary for the purpose of
148 safeguarding the public health, safety, and welfare.

149 (e) Whenever an applicable rule requires or prohibits action by a pain management clinic,
150 responsibility shall be that of the owner and the physicians practicing in the pain
151 management clinic, whether the owner is a sole proprietor, partnership, association,
152 corporation, or otherwise.

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

155 (g) No pain management clinic shall provide medical treatment or services, as defined by
156 the board, unless a physician, a physician assistant authorized to prescribe controlled
157 substances under an approved job description, or an advanced practice registered nurse
158 authorized to prescribe controlled substances pursuant to a physician protocol is on-site at
159 the pain management clinic.

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

162 43-34-284.

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

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

- 168 (2) Been convicted of a crime under any state or federal law relating to any controlled
 169 substance;
 170 (3) Had his or her federal registration to prescribe, distribute, or dispense controlled
 171 substances suspended or revoked; or
 172 (4) Violated the provisions of this chapter, Chapter 13 of Title 16, or Chapter 4 of Title
 173 26.

174 43-34-285.

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

- 176 (1) Permanent closing of a licensed pain management clinic;
 177 (2) Change of ownership, management, or location of a licensed pain management clinic;
 178 (3) Change of the physicians practicing in a licensed pain management clinic;
 179 (4) Any theft or loss of drugs or devices of a licensed pain management clinic;
 180 (5) Any known conviction of any employee of a licensed pain management clinic of any
 181 state or federal drug laws;
 182 (6) Any known conviction based upon charges of fraud of any employee of a licensed
 183 pain management clinic;
 184 (7) Disasters, accidents, theft, destruction, or loss of records of a licensed pain
 185 management clinic required to be maintained by state or federal law or the rules of the
 186 board; or
 187 (8) Any and all other matters and occurrences as the board may require by rule.

188 43-34-286.

189 All pain management clinics that dispense controlled substances or dangerous drugs shall
 190 be registered with the Georgia State Board of Pharmacy as required by Chapter 4 of Title
 191 26.

192 43-34-287.

193 (a) All licenses shall expire biennially unless renewed. All applications for renewal of a
 194 license shall be filed with the board prior to the expiration date, accompanied by the
 195 biennial renewal fee prescribed by the board. A license which has expired for failure of the
 196 holder to renew may be late renewed after application and payment of the prescribed late
 197 renewal fee within the time period established by the board and provided the applicant
 198 meets such requirements as the board may establish by rule. Any license which has not
 199 been renewed by the end of the late renewal period shall be considered revoked and subject
 200 to reinstatement at the discretion of the board after meeting such requirements as the board
 201 may establish.

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

205 43-34-288.

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

208 **SECTION 3.**

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

212 "45-16-32.

213 The medical examiner and coroner shall complete a report of each medical examiner's
 214 inquiry and coroner's investigation and shall maintain permanent records of such reports.
 215 The coroner or county medical examiner may file all original reports with the clerk of the
 216 superior court of the county. In cases where such report indicates a suspicion of foul play,
 217 the medical examiner and peace officer in charge shall transmit any specimens, samples,
 218 or other evidence to a forensic laboratory for analysis. In cases where reports indicating
 219 foul play are verified by the forensic laboratory, the laboratory shall provide a completed
 220 lab report to the appropriate prosecuting attorney where the acts or events leading to the
 221 death occurred. In cases where such report indicates the death may be the result of
 222 medication administered or prescribed or a procedure conducted at a pain management
 223 clinic as defined by Paragraph (7) of Code Section 43-34-282 either by an individual
 224 licensed under Chapter 34 of Title 43 or by an individual under the supervision or
 225 delegated authority of such person, the coroner or county medical examiner shall promptly
 226 provide a certified copy of such report and any supporting evidence to the Georgia
 227 Composite Medical Board. Such report shall be confidential, not subject to Article 4 of
 228 Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the
 229 approval of the board. Law enforcement officers, coroners, county medical examiners, and
 230 the Georgia Bureau of Investigation Medical Examiner's Office when investigating
 231 prescription drug overdose deaths are authorized to send pertinent records on such deaths
 232 to the Georgia Composite Medical Board."

233 **SECTION 4.**

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