

House Bill 972 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Weldon of the 3rd, Lane of the 167th, Dollar of the 45th, Benton of the 31st, Parrish of the 156th, and others

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 provide for reports to the
10 Georgia Composite Medical Board; to amend Article 2 of Chapter 16 of Title 45 of the
11 Official Code of Georgia Annotated, relating to death investigations by coroners, so as to
12 require coroners to report to the board when a death may be the result of medication
13 administered or prescribed at a pain management clinic; to provide for related matters; to
14 repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

- 23 (1) To adopt, amend, and repeal such rules and regulations in accordance with this
24 chapter necessary for the proper administration and enforcement of this chapter;
25 (2) To adopt a seal by which the board shall authenticate the acts of the board;

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

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

75 **SECTION 2.**

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

77 "ARTICLE 10

78 43-34-280.

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

80

81 43-34-281.

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

92 43-34-282.

93 As used in this article, the term:

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

97 (2) 'Board' means the Georgia Composite Medical Board created by Code Section
98 43-34-2.

99 (3) 'Chronic pain' means physical pain treated for a period of 90 days or more in a year
100 but shall not include perioperative pain, which shall mean pain immediately preceding
101 and immediately following a surgical procedure, when such perioperative pain is being
102 treated in connection with a surgical procedure by a licensed health care professional
103 acting within the scope of his or her license.

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

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

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

111 (7) 'Pain management clinic' means a medical practice advertising 'treatment of pain' or
112 utilizing 'pain' in the name of the clinic or a medical practice or clinic with greater than
113 50 percent of its annual patient population being treated for chronic pain for nonterminal
114 conditions by the use of Schedule II or III controlled substances. This term shall not
115 include any clinic or practice owned, in whole or in part, or operated by a hospital
116 licensed pursuant to Chapter 7 of Title 31 or by a health system or any ambulatory
117 surgical center, hospice, or home health agency licensed pursuant to Chapter 7 of Title
118 31.

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

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

126 43-34-283.

127 (a) All pain management clinics shall be licensed by the board and shall biennially renew
128 their license with the board. In the event that physicians in a pain management clinic

129 practice at more than one location, each such location shall be licensed by the board, and
130 such license shall be nontransferable.

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

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

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

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

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

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

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

163 43-34-284.

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

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

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

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

173 (4) Violated the provisions of this chapter, Chapter 13 of Title 16, or Chapter 4 of Title
 174 26.

175 43-34-285.

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

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

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

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

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

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

183 (6) Any known conviction based upon charges of fraud of any employee of a licensed
 184 pain management clinic;

185 (7) Disasters, accidents, theft, destruction, or loss of records of a licensed pain
 186 management clinic required to be maintained by state or federal law or the rules of the
 187 board; or

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

189 43-34-286.

190 All pain management clinics that dispense controlled substances or dangerous drugs shall
 191 be registered with the Georgia State Board of Pharmacy as required by Chapter 4 of Title
 192 26.

193 43-34-287.

194 (a) All licenses shall expire biennially unless renewed. All applications for renewal of a
 195 license shall be filed with the board prior to the expiration date, accompanied by the
 196 biennial renewal fee prescribed by the board. A license which has expired for failure of the

197 holder to renew may be late renewed after application and payment of the prescribed late
 198 renewal fee within the time period established by the board and provided the applicant
 199 meets such requirements as the board may establish by rule. Any license which has not
 200 been renewed by the end of the late renewal period shall be considered revoked and subject
 201 to reinstatement at the discretion of the board after meeting such requirements as the board
 202 may establish.

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

206 43-34-288.

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

209 43-34-289.

210 Law enforcement officers, the Georgia Drugs and Narcotics Agency, and the Georgia
 211 Bureau of Investigation Medical Examiner's Office, when investigating deaths which may
 212 be the result of medication administered or prescribed or a procedure conducted at a pain
 213 management clinic as defined by paragraph (7) of Code Section 43-34-282 either by an
 214 individual licensed under Chapter 34 of Title 43 or by an individual under the supervision
 215 or delegated authority of such person, are authorized to send pertinent records on such
 216 deaths to the board. Such records shall be confidential, not subject to Article 4 of Chapter
 217 18 of Title 50, relating to open records, and shall not be disclosed without the approval of
 218 the board."

219 **SECTION 3.**

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

223 "45-16-32.

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

226 The coroner or county medical examiner may file all original reports with the clerk of the
 227 superior court of the county. In cases where such report indicates a suspicion of foul play,
 228 the medical examiner and peace officer in charge shall transmit any specimens, samples,
 229 or other evidence to a forensic laboratory for analysis. In cases where reports indicating
 230 foul play are verified by the forensic laboratory, the laboratory shall provide a completed

231 lab report to the appropriate prosecuting attorney where the acts or events leading to the
232 death occurred. In cases where such report indicates the death may be the result of
233 medication administered or prescribed or a procedure conducted at a pain management
234 clinic as defined by paragraph (7) of Code Section 43-34-282 either by an individual
235 licensed under Chapter 34 of Title 43 or by an individual under the supervision or
236 delegated authority of such person, the coroner or county medical examiner shall promptly
237 provide a certified copy of such report and any supporting evidence to the Georgia
238 Composite Medical Board. Such report shall be confidential, not subject to Article 4 of
239 Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the
240 approval of the Georgia Composite Medical Board."

241 **SECTION 4.**

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