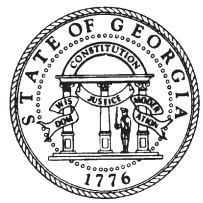
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

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The Code Revision Commission
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and
The Editorial Staff of LexisNexis®



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(Chapters 1 through 32)

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 1st Day of July in the year of our Lord Two Thousand and Twenty- Two and of the Independence of the United States of America the Two Hundred and Forty-Sixth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2016 edition of Volume 30 of the Official Code of Georgia Annotated, as supplemented by the 2021 Cumulative Supplement. The 2016 Volume 30 and its 2021 Supplement may be recycled or, if so desired retained for historical purposes.

This volume contains all laws specifically codified in Title 43, Chapters 1 through 32, by the General Assembly through the 2022 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 13, 2022. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2020, 2021, and 2022 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2020 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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RESEARCH REFERENCES

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2 Am. Jur. 2d, Administrative Law, § 214 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

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15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

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Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 42 A.L.R. 1226; 118 A.L.R. 646.

Public license as revocable for fraud or other misconduct before, or at the time of, its issuance, 165 A.L.R. 1138.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade, or occupational license, 42 A.L.R.4th 516.

43-1-1. Definitions.

As used in this title, the term:

(1) "Division" means the professional licensing boards division created under Code Section 43-1-2.

(2) "Division director" means the individual appointed by the

Secretary of State as director of the professional licensing boards division within the office of the Secretary of State.

(3) "Professional licensing board" means any board, bureau, commission, or other agency of the executive branch of state government which is created for the purpose of licensing or otherwise regulating or controlling any profession, business, or trade and which is placed by law under the jurisdiction of the director of the professional licensing boards division within the office of the Secretary of State.

History.
Code 1981, § 43-1-1; Ga. L. 2000, p. 1706, § 1.

Cross references.
State Water Well Standards Advisory Council, § 12-5-120 et seq.
State Board of Registration for Foresters, § 12-6-40 et seq.
State Board of Pharmacy, § 26-4-30 et seq.

Editor's notes.
This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).
For application of this statute in 2021, see Executive Order 06.30.21.02.

43-1-2. Appointment and general powers of division director; members and meetings of professional licensing boards; examination standards; roster of licensees; funding.

(a)(1) There is created within the office of the Secretary of State the professional licensing boards division as successor to the office of the joint-secretary of the state examining boards. The Secretary of State is authorized and directed to appoint a director of the professional licensing boards division.

(2) Any action of the joint-secretary taken with regard to any state examining board prior to July 1, 2000, shall thereafter be deemed to be action taken by the director of the professional licensing boards division and that division director shall thereafter act in the stead of such joint-secretary and succeed to the powers and duties of the joint-secretary with regard to those state examining boards. The rights, privileges, entitlements, or duties of parties to contracts, leases, agreements, or other transactions entered into by the joint-secretary prior to July 1, 2000, shall continue to exist and shall not be impaired or diminished by reason of the succession of the division director to the powers and duties of the joint-secretary.

(b) The salary of the division director shall be fixed by the Secretary of State, and he or she shall hold office at the pleasure of the Secretary of State.

(c) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall employ personnel as deemed necessary to carry out this chapter and to provide for all services required by each of

the professional licensing boards and shall establish within the guidelines provided by the laws and rules and regulations of the State Personnel Board the qualifications of such personnel.

(d) The division director, with the approval of the Secretary of State, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required by each of the professional licensing boards.

(e) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall have the power to employ and shall set the qualifications and salary for a deputy division director and shall appoint executive directors as required who shall act in the absence of the division director and who shall perform such other functions of the division director under this chapter as the division director may designate. The deputy division director and executive directors as appointed shall be in the unclassified service and shall be excluded from the classified service as defined in Article 1 of Chapter 20 of Title 45.

(f) Notwithstanding any other provisions of law to the contrary, each member of the various professional licensing boards may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Any board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by members of the various professional licensing boards are subject to approval of the president or chairperson of the respective board and the division director.

(g) All meetings and hearings of the respective professional licensing boards shall be held in the capitol, at the site of the office of the respective board, or at such other site as may be requested by the chairperson or president of a professional licensing board and approved by the division director.

(h) A majority of the appointed members of a professional licensing board shall constitute a quorum for the transaction of business by that board.

(h.1) Members of a professional licensing board shall serve until the expiration of the term for which they were appointed and until their

successors have been appointed and qualified unless otherwise specified under the provisions of this title.

(i) A schedule of all meetings and hearings of the various professional licensing boards shall be maintained at the office of the division director and be available for public review.

(j) The division director may establish administrative standards for the examination of applicants for licensure by the various professional licensing boards, notwithstanding any other provisions of law to the contrary. These administrative standards may include the setting of date, time, and location of examinations, subject to the approval of the respective professional licensing boards. Notwithstanding any other provisions of law to the contrary, examination criteria, examination grading procedures, examination fees, examination passing score requirements, and other matters pertaining to the examination of applicants for licensure may be adopted by rules of the respective professional licensing boards as necessary to implement such examination standards. Examination standards, including examination criteria, grading procedures, and passing score requirements, developed in agreement or in conjunction with a national association of state boards or other related national association for the administration of a nationally recognized uniform examination may be adopted in lieu of state standards by the respective professional licensing boards.

(k) The division director shall prepare and maintain a roster containing the names and addresses of all current licensees for each of the various professional licensing boards. A copy of this roster, except for home addresses of licensees, shall be available to any person upon request at a fee prescribed by the division director sufficient to cover the cost of printing and distribution. The following shall be treated as confidential and need not be disclosed without the approval of the professional licensing board to which application is made:

(1) Applications and other personal information, including home addresses, submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes.

(l) Funding for the office of the division director and the various professional licensing boards served by such office shall be contained in

a common budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

History.

Ga. L. 1931, p. 7, §§ 89, 89A; Code 1933, §§ 84-101, 84-102; Ga. L. 1943, p. 370, § 1; Ga. L. 1955, p. 323, § 1; Ga. L. 1975, p. 412, § 1; Ga. L. 1977, p. 758, § 1; Ga. L. 1981, p. 1898, § 1; Ga. L. 1990, p. 1965, § 1; Ga. L. 2000, p. 1706, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 266, §§ 6, 7/SB 195; Ga. L. 2012, p. 446, § 2-64/HB 642; Ga. L. 2021, p. 559, § 1/SB 32.

The 2021 amendment, effective May 6, 2021, inserted ", except for home addresses of licensees," in the second sentence of subsection (k); and inserted ", including home addresses," in paragraph (k)(1).

Cross references.

Expense allowance of General Assembly members and legal mileage allowance, §§ 28-1-8, 45-7-4, 50-19-7.

Allowing inspection of public records generally, § 50-18-70 et seq.

Editor's notes.

Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 1 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Georgia Board of Dentistry. — Service upon the joint-secretary of the state examining boards, in reliance upon the provisions of former Code 1933, §§ 84-101 and 84-102 (see now O.C.G.A. § 43-1-2), was not sufficient to obtain the appearance of the individual members of the Georgia Board of Dentistry since the board was itself a legal entity capable of suing and being sued under former Code 1933, § 84-102 (see now O.C.G.A. § 43-11-2). Clark v. Board of Dental Exmrs., 240 Ga. 289, 240 S.E.2d 250, 1977 Ga. LEXIS 1480 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Support personnel and executive directors. — Joint-secretary of state examining boards are given broad powers of appointment with respect to all support personnel and executive directors for the various examining boards. 1982 Op. Att'y Gen. No. 82-4.

Location of meetings. — State examining boards must hold all meetings in the capitol, except for examinations of applicants for licenses, which may be conducted at other designated places; it is clear that the boards cannot meet at such places as Jekyll Island. 1965-66 Op. Att'y Gen. No. 66-80.

Applicability. — Provisos contained in this section applied generally to all of the professional licensing boards. 1945-47 Ga. Op. Att'y Gen. 513.

State Building Administrative Board workers. — Persons who provide the services statutorily required to the State Building Administrative Board are employees of the Secretary of State and the duties of such persons are determined by delegation of authority made by the Secretary of State. 1975 Op. Att'y Gen. No. 75-43.

Quorum. — Majority of the total number of positions on a given licensing board is required to constitute a quorum as identified in O.C.G.A. § 43-1-2(h), and a

majority of such quorum is necessary for board actions other than the specific actions set forth in O.C.G.A. § 43-1-19(a), which requires an affirmative finding by a majority of the board. 2003 Op. Att'y Gen. No. 2003-6.

43-1-3. Duties of division director; serving notice or process on boards through division director.

(a) It shall be the duty of the division director:

(1) To bring together and keep all records relating to the professional licensing boards;

(2) To receive all applications for licenses;

(3) With the consent of the board concerned, to schedule the time and place for examinations;

(4) To schedule the time and place for all hearings;

(5) To issue certificates upon authority of the professional licensing board concerned; and

(6) Except as otherwise provided by law, to collect all fees required by law in connection with the licensing of trades and professions under such boards and to remit the same to the state treasurer for deposit into the general fund of the state. Notwithstanding any other provision of law, the division director is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter; provided, however, that nothing in this Code section shall be construed so as to allow the division director to retain any funds required by the Constitution of Georgia to be paid into the state treasury; and provided, further, that the division director shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such funds.

(b) All orders and processes of the professional licensing boards shall be signed and attested by the division director, or his or her designee, in the name of the particular professional licensing board, with the seal of such board attached. Any notice or legal process necessary to be served upon any of the professional licensing boards may be served upon the division director.

History.

Ga. L. 1931, p. 7, § 89; Code 1933, § 84-101; Ga. L. 1937, p. 208, § 2; Ga. L. 1967, p. 294, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1993, p. 1402, § 18; Ga. L. 1997, p. 677, § 1; Ga. L. 2000, p. 1706, § 3; Ga. L. 2008, p. 1112, § 1/HB 1055; Ga. L. 2010, p. 863, § 3/SB 296.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, "professional licensing" was substituted for "state examining" in the second sentence of subsection (b).

Administrative rules and regulations.

Rules of the profession, Official Compilation of the Rules and Regulations of the

State of Georgia, Rules of Professional Licensing Boards, Joint Secretary, Chapter 295-1 et seq.

JUDICIAL DECISIONS

Service on joint-secretary cannot secure individual member's appearance. — Service upon the joint-secretary of the state examining boards, in reliance upon the provisions of former Code 1933, § 84-101 (see now O.C.G.A. § 43-1-3), was not sufficient to obtain the appearance of the individual members of the Georgia Board of Dentistry since the board is itself a legal entity capable of suing and being sued under former Code 1933, §§ 84-101 and 84-102 (see now O.C.G.A. § 43-11-2). Clark v. Board of Dental Exmrs., 240 Ga. 289, 240 S.E.2d 250, 1977 Ga. LEXIS 1480 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Joint-secretary, not board electees, keeps records, receives license applications, and collects fees. — While a board had authority under former Code 1933, § 84-104 (see now O.C.G.A. § 43-11-3) to elect from the board's members a president and such other officers as the board in the board's discretion may see fit, any application filed with or communication addressed to "such other officer" as the board in the board's discretion has seen fit to elect has no legal status since former Code 1933, § 84-101 (see now O.C.G.A. § 43-1-3) clearly imposed upon the joint-secretary the duty to bring together and keep records relating to the several boards, to receive all applications for licenses, to collect all fees required by law, and to remit the fees to the Fiscal Division of the Department of Administrative Services (now Office of Treasury and Fiscal Services). 1963-65 Ga. Op. Att'y Gen. 182.

Joint-secretary must remit fees to Department of Administrative Services. — Fees collected by the Secretary of State (now the joint-secretary) as the Commissioner of Securities must be paid to the Fiscal Division of the Department of Administrative Services (now Office of Treasury and Fiscal Services) and those fees may not be retained as reimbursements for expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

43-1-4. Expiration, renewal, and penalty dates of licenses and certificates; duration of validity; renewals.

(a) The division director shall determine the expiration, renewal, and penalty dates for each license and certificate issued by the professional licensing boards through the office of the division director which is subject to renewal. Before becoming effective, these expiration, renewal, and penalty dates must be approved by the respective professional licensing boards.

(b) Each license and certificate issued by the professional licensing boards through the office of the division director which are subject to renewal shall be valid for up to two years and shall be renewable biennially on the renewal date established by the division director, as approved by the respective professional licensing boards.

(c) The division director is authorized to adopt the necessary rules and regulations to implement the biennial renewal of licenses and

certificates in such manner as to ensure that the number of renewals is reasonably evenly distributed throughout each two-year period.

History.
Code 1933, § 84-104, enacted by Ga. L. 1972, p. 505, § 1; Ga. L. 1973, p. 1481, § 1; Ga. L. 1981, p. 1898, § 2; Ga. L. 2000, p. 1706, § 19.
Editor's notes.
Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 2 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

For application of this statute in 2020 and 2021, see Executive Orders 03.23.20.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.
Administrative rules and regulations.
Renewal of certificates of registration and professional development requirements, architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-6.

43-1-5. Investigators for professional licensing boards.

Persons hired for the purpose of conducting investigations for the professional licensing boards shall be designated as investigators and any person so designated shall have all the powers of a peace officer of this state when engaged in the enforcement of this title or of any of the laws creating or related to the professional licensing boards. Such investigators shall be authorized, upon the written approval of the division director, notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms.

History.
Code 1933, § 84-105, enacted by Ga. L. 1975, p. 412, § 2; Ga. L. 1984, p. 704, § 1; Ga. L. 1996, p. 381, § 2; Ga. L. 2000, p. 1706, § 4; Ga. L. 2010, p. 266, § 8/SB 195; Ga. L. 2010, p. 963, § 2-17/SB 308.
Cross references.
Employment and training of peace officers generally, T. 35, C. 8.
Cease and desist order violations, § 43-14-12.1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2010, the designation "(a)" was deleted from the beginning of this Code section.

Editor's notes.
Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.
Law reviews.
For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

43-1-6. Venue of actions involving professional licensing boards.

The venue of any action involving the members of any professional licensing board shall be governed by the laws of this state pertaining to venue. The division director shall not be considered a member of any such board in determining the venue of any such action; and no court shall have jurisdiction of any such action solely by virtue of the division director residing or maintaining a residence within its jurisdiction.

History.
Code 1933, § 84-103, enacted by Ga. L. 1962, p. 539, § 1; Ga. L. 2000, p. 1706, § 19.

Cross references.
Venue generally, Ga. Const. 1983, Art. VI, Sec. II and § 9-10-30 et seq.

JUDICIAL DECISIONS

Venue proper. — Venue of contractors' action seeking to restrain the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law, O.C.G.A. § 43-41-1 et seq., was proper in Muscogee County because there was substantial equitable relief sought that was common to the Board and to the resident county; the complaint alleged that enforcement of the licensing law by both the Board and the county would cause irreparable injury to the contractors, and it asked that preliminary and permanent injunctions be issued against both the county and the Board enjoining and restraining those entities from exercising any of the powers, rights, or duties respecting enforcement of the licensing law. Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343, 2010 Ga. LEXIS 278 (2010).

RESEARCH REFERENCES

Am. Jur. 2d.
77 Am. Jur. 2d, Venue, §§ 4 et seq., 28 et seq.

C.J.S.
92A C.J.S., Venue, §§ 4, 5, 76, 77.

43-1-7. Determination of fees by professional licensing boards; refunds.

Each professional licensing board is authorized to charge an examination fee, license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the professional licensing board shall approximate the total of the direct and indirect costs to the state of the operations of the board. Fees may be refunded for good cause, as determined by the division director.

History.
Ga. L. 1978, p. 1517, § 1; Ga. L. 1981, p. 1898, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 5.

Editor's notes.
Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 4 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

Administrative rules and regulations.
Fees, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-5.

Registered interior designer fees, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-12.

OPINIONS OF THE ATTORNEY GENERAL

State Board of Education does not have the power to charge a fee for the certification of teachers and other personnel employed in the public schools of this state. 1983 Op. Att'y Gen. No. 83-63.

43-1-8. [Reserved] Disposition of fees.

History.
Ga. L. 1978, p. 1517, § 2; repealed by Ga. L. 1984, p. 22, § 43, effective February 3, 1984.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2007, this Code section number was designated as reserved.
Editor's notes.
Ga. L. 1984, p. 22, § 43 repealed and reserved this Code section, effective February 3, 1984.

43-1-9. Point credit for veterans taking examinations given by professional licensing boards.

Any applicant taking an examination required by any professional licensing board except the Georgia Board of Nursing shall receive points in the following manner:

(1) Any applicant who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, for a period of one year or more, of which at least 90 days were served during wartime or during any conflict when military personnel were committed by the President of the United States, shall be entitled to a credit of five points. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination;

(2) Any applicant who is a disabled veteran and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of five points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at less than 10 percent at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination; and

(3) Any applicant who is a disabled veteran who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of ten points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at 10 percent or above at the time of taking the

examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering questions propounded in any such examination.

History.

Ga. L. 1960, p. 1172, § 1; Ga. L. 1964, p. 761, § 1; Ga. L. 1968, p. 1213, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2007, p. 483, § 1/SB 114; Ga. L. 2010, p. 266, § 9/SB 195; Ga. L. 2014, p. 136, § 1-1/HB 291.

Cross references.

Civil service preference for veterans, Ga. Const. 1983, Art. IV, Sec. III, Para. II and § 45-2-20 et seq.

Law reviews.

For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Veterans' preference in examinations not in conflict with preference in hiring. — There is no conflict between the preference in employment granted veterans under Ga. Const. 1976, Art. IV, Sec. VI, Para. II (see now Ga. Const. 1983, Art. IV, Sec. III, Para. II), and extra points granted to veterans when taking licensure examinations offered by the various state examining boards under Ga. L. 1968, p. 1213, § 1 (see now O.C.G.A. § 43-1-9), since the two provisions speak to separate types of veterans preferences. 1978 Op. Att'y Gen. No. 78-69.

Purpose of Ga. L. 1960, p. 1172, § 1. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) is to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Ga. L. 1960, p. 1172, § 1 was mandatory, leaving board no discretion. — As each section employs the word "shall" in its provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allow the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board of Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

In awarding veterans' credit points, the board should utilize the disability rating determined by the United States Department of Veterans Affairs formulated pursuant to 38 U.S.C. § 301 et seq. 1980 Op. Att'y Gen. No. 80-73.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

Preference not applied retroactively. — Applicants who took an examination and received scores prior to the effective date of Ga. L. 1960, p. 1172, §§ 1, 2 (see now O.C.G.A. §§ 43-1-9 and 43-1-10) cannot have veterans' preference points applied to those scores. 1972 Op. Att'y Gen. No. 72-119.

RESEARCH REFERENCES

Am. Jur. 2d.

77 Am. Jur. 2d, Veterans and Veterans' Laws, § 89 et seq.

C.J.S.

67 C.J.S., Officers and Public Employees, § 48 et seq.

43-1-10. Credit to veteran's grades when examination given in parts or by subject.

If an examination given by a professional licensing board is required in parts or by subjects and the applicant is required to make a minimum grade on each of the parts or subjects, the points to which the applicant is entitled shall be added to the grade made on each part or subject before the average of his or her grade on all of the parts or subjects is determined.

History.
Ga. L. 1960, p. 1172, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 10/SB 195.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Preference not applied retroactively. — Applicants who took an examination and received scores prior to the effective date of Ga. L. 1960, p. 1172, §§ 1, 2 (see now O.C.G.A. §§ 43-1-9 and 43-1-10) cannot have veterans' preference points applied to those scores. 1972 Op. Att'y Gen. No. 72-119.

Provisions mandatory, leaving board no discretion. — As each section employs the word "shall" in the statute's provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) are mandatory and allow the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d.
77 Am. Jur. 2d, Veterans and Veterans' Laws, § 89 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, § 48 et seq.

43-1-11. Veteran's examination to be graded prior to determination of eligibility for credit.

A person grading an examination required by a professional licensing board shall first grade the examination without reference to veteran credit, determining thereafter from the proof submitted whether an applicant is a veteran and is entitled to such credit; if so, the credit shall be added; and if after such addition the applicant equals or exceeds the grade required to pass the examination, the applicant shall be entitled to be certified as having passed the examination.

History.
Ga. L. 1960, p. 1172, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 11/SB 195.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d.
77 Am. Jur. 2d, Veterans and Veterans' Laws, § 116 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, § 48 et seq.

43-1-12. Duty of division director to inform applicants of availability of veteran credit; rules and regulations for implementing veteran credit program.

It shall be the duty of the division director to inform applicants taking the examination of the provisions of Code Sections 43-1-9 through 43-1-11 and Code Section 43-1-13. The division director shall make such rules and regulations as are necessary in order to carry out the terms of Code Sections 43-1-9 through 43-1-11 and Code Section 43-1-13.

History.
Ga. L. 1960, p. 1172, § 4; Ga. L. 1981, p. 1898, § 3; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19.

Editor's notes.
Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 3 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Provisions mandatory, leaving board no discretion. — As each section employs the word "shall" in the statute's provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allows the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board of Examination, Qualifi-

cation, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, § 48 et seq.

43-1-13. Inapplicability of veteran credit provisions to applicants who were not honorably discharged.

The provisions of Code Sections 43-1-9 through 43-1-12 relating to points to be allowed to veterans shall apply to any applicant, male or female, who comes within the classes specified in those Code sections except that such provisions shall not apply in any instance to an applicant who has not been honorably discharged.

History.
Ga. L. 1960, p. 1172, § 5.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

Provisions mandatory, leaving board no discretion. — As each section employs the word "shall" in the statute's provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see now O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allows the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d.
77 Am. Jur. 2d, Veterans and Veterans' Laws, § 116 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, § 48 et seq.

43-1-14. Authority of Governor to appoint qualified persons to professional licensing boards.

The Governor is authorized to appoint any person who is otherwise qualified as provided by law to serve as a member of any professional licensing board for a regular term or for an unexpired term, notwithstanding the fact that the law creating such board requires the Governor to appoint members from a list of nominees submitted by a private organization or association.

History.
Ga. L. 1980, p. 1162, § 1; Ga. L. 2000, p. 1706, § 19.

Cross references.
Appointment powers of Governor generally, § 45-12-50 et seq.

Law reviews.
For article, "Legislative Delegation of Executive Power of Appointment to Private Organizations Held Unconstitutional," see 16 Ga. St. B.J. 129 (1980).

43-1-15. Itinerant entertainers.

(a) All carnivals, road shows, and tent shows and all other itinerant entertainment not presented within any regularly licensed theater, auditorium, or other building permitted to be used for the offering of entertainment for value shall, before opening to the public or offering any amusement, entertainment, or other service to the public for value within this state:

(1) Designate a resident of this state as agent and lawful attorney in fact upon whom may be served all summons or other lawful processes in any action or proceeding against such carnival, circus, road show, tent show, or other itinerant show or itinerant entertainment for any action arising as a result of its appearance in this state. The name and address of such resident agent shall be filed with the judge of the probate court of each county in which such carnival, circus, or show is to be held. If no resident agent has been designated, the Secretary of State shall become such agent with all the foregoing authority, and service of such process shall be made by serving a copy of the petition with process attached thereto on the Secretary of State or an employee in his office designated by the Secretary of State as an agent to receive service in his name, or his successor in office, along with a copy of the affidavit to be submitted to the court pursuant to this Code section, and such service shall be sufficient service upon any such carnival, circus, or show, provided that notice of such service and a copy of the petition and process are forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff or his agent to the defendant, if its address is known, and that the defendant's return receipt and the plaintiff's affidavit of compliance herewith are appended to the summons or other process and are filed with said summons, petition, and other papers in the case in the court

in which the action is pending. The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for service of process on him under this Code section;

(2) Secure an insurance policy or a bond, affording coverage to such carnival, circus, or show for the extent of its stay within this state, which insurance policy or bond shall be subject to any personal injury or death or property damages to the following limits:

(A) An indemnity bond subject to a limit of $100,000.00; or

(B) An insurance policy or public liability bond subject to a limit of $50,000.00 for personal injury or death or property damage sustained by any one person and subject to a limit of $100,000.00 for personal injuries or death or property damages sustained by two or more persons as a result of any one accident or event; and

(3) File a copy of such insurance policy or bond with the judge of the probate court in the county where the carnival, circus, or show is to be held or with both the judge of the probate court and the Secretary of State. The Secretary of State is authorized and directed to issue, upon the request of any carnival, circus, or show filing a copy of such insurance policy or bond in his office, a certificate of filing, stating the coverage afforded by the policy or bond and the effective dates, which certificate may be filed with the judge of the probate court of the county where the carnival, circus, or show is to be held in lieu of a copy of the policy or bond. The Secretary of State is authorized to prescribe and require such terms and conditions in such policies as he may deem necessary or advisable to protect the interests of the public in carrying out the purposes of this Code section, and he is further authorized to prescribe and require use of a standard form of bond and policy for use under this Code section.

(b) Any owner, manager, employee, or other person, excluding landowners on whose land a carnival, circus, road show, or itinerant show is operated, who shall cause or grant permission, either actual or constructive, to any carnival, circus, road show, tent show, or other itinerant show or itinerant entertainment or any part thereof to operate in violation of this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1957, p. 406, §§ 1, 2; Ga. L. 1959, p. 106, § 1; Ga. L. 1959, p. 160, § 1; Ga. L. 1965, p. 235, § 1; Ga. L. 1983, p. 1474, § 3; Ga. L. 1984, p. 22, § 43; Ga. L. 1989, p. 364, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 1589, § 3.

Cross references.

Licensing of traveling carnivals, circuses, and other exhibits, § 25-2-20.

Authority of counties to impose license fees on carnivals or circuses, §§ 48-13-9, 48-13-10.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (a)(1) is applicable with respect to notices delivered on or after July 1, 2000.

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Bonds and liability policies filed under this section include coverage for property damage and personal injuries. 1958-59 Ga. Op. Att'y Gen. 22.

RESEARCH REFERENCES

ALR.
Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

43-1-16. Senate confirmation of appointments to professional licensing boards.

Each person appointed by the Governor as a member of a professional licensing board shall be confirmed by the Senate; and any such appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate.

History.
Code 1981, § 43-1-16, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-17. Removal from office of member of a professional licensing board.

The Governor, after notice and opportunity for hearing, may remove from office any member of a professional licensing board for any of the following:

(1) Inability or neglect to perform the duties required of members;

(2) Incompetence; or

(3) Dishonest conduct.

History.
Code 1981, § 43-1-17, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-18. Eligibility of consumer members of professional licensing boards to vote on all matters.

Without affecting the eligibility to vote of any other member of a professional licensing board, each consumer member of a professional licensing board shall be eligible to vote on all matters brought before that board.

History.
Code 1981, § 43-1-18, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-19. Refusal to grant, revocation, and reinstatement of licenses; surrender; probationary license.

(a) A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph, paragraph (4) of this subsection, and subsection (q) of this Code section, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph and subsection (q) of this Code section, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4)(A) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, when:

(i) A sentence for such offense was imposed pursuant to Article 3 of Chapter 8 of Title 42 or another state's first offender laws;

(ii) A sentence for such offense was imposed pursuant to subsection (a) or (c) of Code Section 16-13-2;

(iii) A sentence for such offense was imposed as a result of a plea of nolo contendere; or

(iv) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge.

(B) An order entered pursuant to subsection (a) or (c) of Code Section 16-13-2, Article 3 of Chapter 8 of Title 42, or another state's first offender treatment order shall be conclusive evidence of an arrest and sentencing for such offense;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title or is of a nature likely to jeopardize the interest of the public; such conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Such conduct or practice shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority without regard to whether the violation is criminally punishable when such statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title and when the licensee or applicant knows or should know that such action violates such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall

automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for so long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material; or

(11) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may be issued or granted if all other conditions for licensure are met.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, a professional licensing board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When a professional licensing board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition

pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed $500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, a professional licensing board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of a professional licensing board shall be had solely in the superior court of the county of domicile of the board. The court may assess reasonable and necessary attorney's fees and expenses of litigation in any such review if, upon the motion of any party or the court itself, it finds that an attorney or any party aggrieved by an action of the board appealed such action of the board or any part thereof when such appeal lacked substantial justification or when such appeal or any part thereof was interposed for delay or harassment or if it finds that an attorney or aggrieved party unnecessarily expanded the proceeding by other improper conduct. As used in this subsection, the term "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(g) In its discretion, a professional licensing board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to the licensed business or profession.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the division, such investigations as he or she or a respective board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to businesses and professions licensed by that board. Any person properly conducting an investigation on behalf of a professional licensing board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his

or her appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of the licensed business or profession subject to regulation or licensing by such board may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(5) When a member of the public files a complaint with a professional licensing board or the division director against a licensee, within 30 days after the conclusion of the investigation of such complaint, the professional licensing board or the division director shall notify the complainant of the disposition of such complaint. Such notification shall include whether any action was taken by the board with regard to such complaint and the nature of such action. In addition, the division director and the board shall upon request by the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice a business or profession licensed under this title or for initiating or

conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to a professional licensing board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of such chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests. A board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any person except the licensee or applicant.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the professional licensing board for that licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon that director, or that director's designee, shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of such license, subject to reinstatement in the discretion of a board. A board may restore and reissue a license to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorpo-

rated or unincorporated associations, corporations, limited liability companies, or other associations of any kind whatsoever.

(n) Regulation by a professional licensing board of a business or profession licensed under this title shall not exempt that business or profession from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(o) Subsections (a), (d), and (e) of this Code section shall be supplemental to and shall not operate to prohibit any professional licensing board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for that particular board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsection (a), (d), or (e) of this Code section limits such grounds or actions, those other provisions shall apply so long as the requirements of subsection (q) of this Code section are met.

(p)(1) Notwithstanding any other provision of this Code section or title, when an applicant submits his or her application for licensure or renewal, together with proof of completion of a drug court division as set forth in Code Section 15-1-15, a mental health court division as set forth in Code Section 15-1-16, a veterans court division as set forth in Code Section 15-1-17, an operating under the influence court division as set forth in Code Section 15-1-19, or a family treatment court division as set forth in Code Section 15-11-70, a board shall issue the applicant a probationary license under the terms and conditions deemed appropriate by such board.

(2) Paragraph (1) of this subsection shall not supersede a board's consideration of an applicant's other prior criminal history or arrests or convictions that occur subsequent to completion of a court division identified in paragraph (1) of this subsection.

(q)(1) Notwithstanding paragraphs (3) and (4) of subsection (a) of this Code section or any other provision of law, and unless a felony or crime involving moral turpitude directly relates to the occupation for which the license is sought or held, no professional licensing board shall refuse to grant a license to an applicant therefor or shall revoke the license of an individual licensed by that board due solely or in part to such applicant's or licensee's:

(A) Conviction of any felony or any crime involving moral turpitude, whether it occurred in the courts of this state or any other state, territory, or country or in the courts of the United States;

(B) Arrest, charge, and sentence for the commission of such offense;

(C) Sentence for such offense pursuant to Article 3 of Chapter 8 of Title 42 or another state's first offender laws;

(D) Sentence for such offense pursuant to subsection (a) or (c) of Code Section 16-13-2;

(E) Sentence for such offense as a result of a plea of nolo contendere;

(F) Adjudication of guilt or sentence was otherwise withheld or not entered; or

(G) Being under supervision by a community supervision officer, as such term is defined in Code Section 42-3-1, for a conviction of any felony or any crime involving moral turpitude, whether it occurred in the courts of this state or any other state, territory, or country or in the courts of the United States, so long as such individual was not convicted of a felony violation of Chapter 5 of Title 16 nor convicted of a crime requiring registration on the state sexual offender registry.

(2) In determining if a felony or crime involving moral turpitude directly relates to the occupation for which the license is sought or held, the professional licensing board shall consider:

(A) The nature and seriousness of such felony or crime involving moral turpitude and the relationship of such felony or crime involving moral turpitude to the occupation for which the license is sought or held;

(B) The age of the individual at the time such felony or crime involving moral turpitude was committed;

(C) The length of time elapsed since such felony or crime involving moral turpitude was committed;

(D) All circumstances relative to such felony or crime involving moral turpitude, including, but not limited to, mitigating circumstances or social conditions surrounding the commission of such felony or crime involving moral turpitude; and

(E) Evidence of rehabilitation and present fitness to perform the duties of the occupation for which the license is sought or held.

History.

Code 1981, § 43-1-19, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1990, p. 1965, § 2; Ga. L. 1993, p. 123, § 4; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 453, § 13; Ga. L. 1996, p. 776, §§ 1, 2; Ga. L. 1997, p. 677, § 2; Ga. L. 1998, p. 1094, § 10; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 6; Ga. L. 2003, p. 422, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2015, p. 519, § 3-1/HB 328; Ga. L. 2016, p. 443, § 10-1/SB 367; Ga. L. 2016, p. 846, § 43/HB 737; Ga. L. 2018, p. 550, § 2-20/SB 407; Ga. L. 2019, p. 462, § 1-11/SB 214; Ga. L. 2021, p. 443, § 1/SB 114.

The 2021 amendment, effective May 4, 2021, deleted "or" at the end of subparagraph (q)(1)(E), substituted "; or" for a

period at the end of subparagraph (q)(1)(F), and added subparagraph (q)(1)(G).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, paragraph (d)(9) as added by Ga. L. 1996, p. 776, § 1, was redesignated as paragraph (d)(8).

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 139 (2016).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 45 (2018).

JUDICIAL DECISIONS

Licensee must be allowed access to information. — Licensee facing the possibility of the loss of a license/livelihood must be allowed access to information held by the board that is exculpatory. Wills v. Composite State Bd. of Medical Exmrs., 259 Ga. 549, 384 S.E.2d 636, 1989 Ga. LEXIS 415 (1989).

Release of file not prohibited under § 43-1-19(h)(2). — When the plaintiff sought portions of the board's file for the express purpose of preparing for a hearing before the board, the release of the file was not prohibited by O.C.G.A. § 43-1-19(h)(2) or other statutory provisions. Wills v. Composite State Bd. of Medical Exmrs., 259 Ga. 549, 384 S.E.2d 636, 1989 Ga. LEXIS 415 (1989).

Statements to board made in good faith privileged. — Attorney's statements about a psychologist to the State Board of Examiners of Psychologists were privileged under O.C.G.A. § 43-1-19(i) because the statements were made in good faith because of a concern that the psychologist's custody recommendations were improperly made without a proper evaluation of both parents, the children, and relevant witnesses to the detriment of the children involved in the cases in which the psychologist testified; thus, the attorney could not be held liable in the psychologist's action claiming tortious interference with the psychologist's business relations, contracts, trade, and profession. Farrar v. Macie, 297 Ga. App. 192, 676 S.E.2d 840, 2009 Ga. App. LEXIS 398 (2009).

Judicial review not precluded by issuance of letter of concern. — When the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the Board could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued as the result of contested case proceedings. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125, 1998 Ga. App. LEXIS 1472 (1998).

Immunity from civil liability provided under O.C.G.A. § 43-1-19(i) for reporting violations by licensed persons is applicable to only the professions and occupations licensed under that title. Attorneys are governed by other statutes and regulations not included in Title 43. Jefferson v. Stripling, 316 Ga. App. 197, 728 S.E.2d 826, 2012 Ga. App. LEXIS 517 (2012).

No contested case for review. — Because no hearing was required by law before the denial of the applicant's license, the Georgia Board of Examiners of Psychologists' denial of the applicant's license application did not present a contested case subject to judicial review and the trial court properly denied judicial review of the denial of the application and limited the court's review to issues related to the Board's denial of the request for a waiver of the requirement that the applicant reside full-time at school for at least one year. Welcker v. Ga. Bd. of Examiners of Psychologists, 340 Ga. App. 853, 798 S.E.2d 368, 2017 Ga. App. LEXIS 158 (2017).

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Power of board to restore license revoked for failure to renew. — State Board of Physical Therapy may, in the board's discretion, require an individual whose license has been revoked by operation of law for failure to renew the license by the end of an established penalty period to comply with all relevant requirements for the issuance of a new license as a condition of reinstatement. 1984 Op. Att'y Gen. No. 84-64.

Construction with § 43-33-16 or § 43-33-18(c). — To the extent that subsections (g) and (l) of O.C.G.A. § 43-1-19 are later legislative enactments than O.C.G.A. § 43-33-16 or O.C.G.A. § 43-33-18(c), subsection (g) and (l) of O.C.G.A. § 43-1-19 would control in the case of a conflict. 1984 Op. Att'y Gen. No. 84-64.

Only actual conflict between O.C.G.A. §§ 43-1-19(g) and (l) and 43-33-16 relates to the discretion of the State Board of Physical Therapy to restore a license and to impose conditions therefor. 1984 Op. Att'y Gen. No. 84-64.

Quorum. — Majority of the total number of positions on a given licensing board is required to constitute a quorum as identified in O.C.G.A. § 43-1-2(h), and a majority of such quorum is necessary for board actions other than the specific actions set forth in O.C.G.A. § 43-1-19(a), which requires an affirmative finding by a majority of the board. 2003 Op. Att'y Gen. No. 03-6.

RESEARCH REFERENCES

ALR.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

43-1-19.1. Waiver of deductibles or copayments in health insurance plans; deceptive or misleading advertising.

(a) For the purposes of applicable provisions of Code Section 43-1-19, it shall be considered a deceptive or misleading practice for any person duly licensed and authorized to provide any type of health care services to advertise, as an inducement to attract patients, the waiver of a deductible or copayment required to be made to such person under the patient's health insurance policy or plan.

(b) This Code section shall not apply to nonprofit community health centers which primarily serve indigent patients.

(c) Notwithstanding the provisions of any other law of this Code to the contrary, it shall not be considered a misleading, fraudulent, or deceptive act for a provider to waive occasionally such a deductible or copayment required to be made under the patient's health insurance contract, policy, or plan if the waiver is authorized by the insurer or if the waiver is based on an evaluation of the individual patient and is not a regular business practice of the person providing the health care services.

History.
Code 1981, § 43-1-19.1, enacted by Ga. L. 1992, p. 2488, § 1.

43-1-19.2. License applications to include questions on prior revocation or denial of license.

Each application for a license to practice a profession or business to be issued by a professional licensing board or any agency of the state shall include a question as to whether the applicant for such license:

(1) Has had revoked or suspended or otherwise sanctioned any license issued to the applicant by any board or agency in Georgia or any other state; or

(2) Was denied issuance of or, pursuant to disciplinary proceedings, refused renewal of a license by any board or agency in Georgia or any other state.

The question shall be answered under oath and the answer shall include the name of the board or agency which revoked, suspended, denied, refused renewal of, or otherwise sanctioned the license.

History.
Code 1981, § 43-1-19.2, enacted by Ga. L. 1993, p. 427, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-20. Actions to enjoin unlicensed practice.

A professional licensing board, the division director, or the appropriate prosecuting attorney may bring an action to enjoin the unlicensed practice by any person of a profession or business required to be licensed by a professional licensing board. The action to restrain and enjoin such unlicensed practice shall be brought in the superior court of the county where the unlicensed person resides. It shall not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section.

History.
Code 1981, § 43-1-20, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-20.1. Cease and desist orders against persons practicing without a license; fine for violating order.

(a) Notwithstanding any other provisions of the law to the contrary, after notice and hearing, a professional licensing board may issue a cease and desist order prohibiting any person from violating the provisions of this title by engaging in the practice of a business or profession without a license.

(b) The violation of any cease and desist order of a professional licensing board issued under subsection (a) of this Code section shall

subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed $500.00 for each transaction constituting a violation thereof. Each day that a person practices in violation of this title shall constitute a separate violation.

(c) Initial judicial review of the decision of the board entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the board.

(d) Nothing in this Code section shall be construed to prohibit a professional licensing board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

History.
Code 1981, § 43-1-20.1, enacted by Ga. L. 1986, p. 1155, § 1; Ga. L. 1990, p. 1965, § 3; Ga. L. 2000, p. 1706, § 19.

Law reviews.
For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

43-1-21. Release of information regarding investigations.

The division director is authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure by that board or licensee of that board notwithstanding the provisions of subsection (h) of Code Section 43-1-19 or any other law to the contrary regarding the confidentiality of that information. Nothing in this Code section or chapter shall be construed to prohibit or limit the authority of that director to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure by a professional licensing board.

History.
Code 1981, § 43-1-21, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1997, p. 677, § 3; Ga. L. 2000, p. 1706, § 7.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2000, "professional licensing" was substituted for "state examining" in the last sentence.

43-1-22. Inactive status licenses.

The division director may provide for inactive status licenses for the various professional licensing boards.

History.
Code 1981, § 43-1-22, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 8.

43-1-23. Exemption of licensees of professional licensing boards from filing with clerk of superior court.

No licensee of a professional licensing board shall be required to file or record his license with the clerk of the superior court, and no clerk shall be required to report the filing or recordation of any such license.

History.
Code 1981, § 43-1-23, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-24. Licensed professionals subject to regulation by professional licensing board.

Any person licensed by a professional licensing board and who practices a "profession," as defined in Chapter 7 of Title 14, the "Georgia Professional Corporation Act," or who renders "professional services," as defined in Chapter 10 of Title 14, "The Georgia Professional Association Act," whether such person is practicing or rendering services as a proprietorship, partnership, professional corporation, professional association, other corporation, limited liability company, or any other business entity, shall remain subject to regulation by that professional licensing board, and such practice or rendering of services in that business entity shall not change the law or existing standards applicable to the relationship between that person rendering a professional service and the person receiving such service, including but not limited to the rules of privileged communication and the contract, tort, and other legal liabilities and professional relationships between such persons.

History.
Code 1981, § 43-1-24, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1993, p. 123, § 5; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19.

JUDICIAL DECISIONS

"Professional" defined for malpractice act. — Legislature intended for the term "professional" as used in O.C.G.A. § 9-11-9.1 to be defined by O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. Gillis v. Goodgame, 262 Ga. 117, 414 S.E.2d 197, 1992 Ga. LEXIS 181 (1992).

Affidavit requirements of O.C.G.A. § 9-11-9.1 apply only to those professions recognized under Georgia law in O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. Gillis v. Goodgame, 262 Ga. 117, 414 S.E.2d 197, 1992 Ga. LEXIS 181 (1992).

Affidavit requirement applies against a hospital not only when liability is based upon the doctrine of respondeat superior but when it is further grounded upon the averment of acts or omissions requiring the exercise of professional skill and judgment by agents or employees who themselves are recognized as "professionals" under O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632, 1992 Ga. App. LEXIS 1440 (1992), cert. denied, No. S93C0266, 1993 Ga. LEXIS 3 (Ga. Jan. 7, 1993).

O.C.G.A. § 9-11-9.1 applies only to those licensed professions regulated by state examining boards when licensure is predicated upon successful completion of the specialized schooling or training nec-

essary to obtain the expertise to practice that profession. Harrell v. Lusk, 263 Ga. 895, 439 S.E.2d 896, 1994 Ga. LEXIS 73 (1994).

43-1-25. Authority of professional licensing boards to promulgate rules and regulations.

Except as provided in subsection (o) of Code Section 43-1-19, Code Sections 43-1-16 through 43-1-24 shall apply to all professional licensing boards and licenses thereunder, except the Georgia Real Estate Commission and its licensees, notwithstanding any other law to the contrary, and each such professional licensing board may promulgate rules and regulations to implement the authority provided by the applicability of said provisions to said boards.

History.
Code 1981, § 43-1-25, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.

43-1-26. [Reserved] Exemption of credentialed persons from licensure, registration, or certification in the state in connection with the Olympic and Paralympic Games; conditions and limitations; consent for certain medical services; automatic repeal.

History.
Ga. L. 1994, p. 480, § 1; repealed by Ga. L. 1994, p. 480, § 1, effective December 31, 1996.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.
Editor's notes.
Ga. L. 1994, p. 480, § 1 repealed and reserved this Code section, effective December 31, 1996.

43-1-27. Licensee required to notify licensing authority of felony conviction.

Any licensed individual who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-1-19 shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction. The failure of a licensed individual to notify the appropriate licensing authority of a conviction shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed profession.

History.
Code 1981, § 43-1-27, enacted by Ga. L. 1996, p. 776, § 3.

43-1-28. Volunteers in health care specialties.

(a) This Code section shall be known and may be cited as the "Georgia Volunteers in Health Care Specialties Act."

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

(1) "Health care board" means that professional licensing board which licenses a health care practitioner under this title.

(2) "Health care practitioner" means a chiropractor, registered professional nurse, podiatrist, optometrist, professional counselor, social worker, marriage and family therapist, occupational therapist, physical therapist, physician assistant, licensed practical nurse, certified nurse midwife, pharmacist, speech-language pathologist, audiologist, psychologist, or dietitian.

(3) "Health care specialty" means the practice of chiropractic, nursing, podiatry, optometry, professional counseling, social work, marriage and family therapy, occupational therapy, physical therapy, physician assistance, midwifery, pharmacy, speech-language pathology, audiology, psychology, or dietetics.

(4) "Unrestricted" means that no restrictions have been placed on a health care practitioner's license by a health care board, no sanctions or disciplinary actions have been imposed by a health care board on a health care practitioner, and a health care practitioner is not under probation or suspension by a health care board.

(c) Notwithstanding any other provision of law, each health care board shall issue a special license to qualifying health care practitioners whose health care specialty is licensed by that board under the terms and conditions set forth in this Code section. The special license shall only be issued to a person who:

(1) Is currently licensed to practice the applicable health care specialty in any health care specialty licensing jurisdiction in the United States and whose license is unrestricted and in good standing; or

(2) Is retired from the practice of the health care specialty or, in the case of a physician assistant, has an inactive license and is not currently engaged in such practice either full time or part time and has, prior to retirement or attaining inactive status, maintained full licensure unrestricted in good standing in the applicable health care specialty licensing jurisdiction in the United States.

(d) The special licensee shall be permitted to practice the health care specialty only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit

corporations, or not for profit associations which provide health care specialty services only to indigent patients in areas which are underserved by that specialty or critical need population areas of the state, as determined by the board which licenses that specialty, or pursuant to Article 8 of Chapter 8 of Title 31.

(e) The person applying for the special license under this Code section shall submit to the appropriate health care board a copy of his or her health care specialty degree, a copy of his or her health care specialty license in his or her current or previous licensing and regulating jurisdiction, and a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by that board, whereby he or she agrees unequivocally not to receive compensation for any health care specialty services he or she may render while in possession of the special license.

(f) Examinations by the health care board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(g) If, at the time application is made for the special license, the health care practitioner is not in compliance with the continuing education requirements established by the health care board for the applicable health care specialty, the health care practitioner shall be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(h)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing a health care specialty under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1, except that a podiatrist engaged in such practice and an employer thereof shall have the same immunity from liability as provided other health care practitioners under Code Section 51-1-29.1.

(2) The liability of persons practicing a health care specialty pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by the provisions of such article.

(i) This Code section, being in derogation of the common law, shall be strictly construed.

History.

Code 1981, § 43-1-28, enacted by Ga. L. 2000, p. 1406, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2005, p. 1493, § 2/HB 166; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2008, p. 354, § 3/HB 1222; Ga. L. 2009, p. 859, § 3/HB 509.

Cross references.

"Health Share" volunteers in medicine, T. 31, C. 8, A. 8.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, "professional licensing" was substituted for "state examining" in paragraph (b)(1).

Pursuant to Code Section 28-9-5, in 2002, "Specialties" was substituted for "Specialities" in subsection (a).

Editor's notes.

Ga. L. 2002, p. 639, § 1(c)(1), not codified by the General Assembly, provides: "The provisions of Code Section 43-1-28 of the Official Code of Georgia Annotated, the 'Georgia Volunteers in Health Care Specialties Act,' which were in effect and applicable on January 1, 2002, shall remain in effect and applicable until and unless changed by future Act of the General Assembly."

Ga. L. 2005, p. 1493, § 7/HB 166, provides that the 2005 amendment becomes effective only when funds are specifically appropriated for purposes of that Act in an appropriations Act making specific reference to that Act. Funds were appropriated at the 2005 session of the General Assembly.

43-1-29. Suspension of license for nonpayment of student loans prohibited.

A professional licensing board shall not suspend the license of a person licensed by that board because he or she is a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or because he or she has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

History.

Code 1981, § 43-1-29, enacted by Ga. L. 2001, p. 1066, § 1; Ga. L. 2019, p. 462, § 1-12/SB 214.

Cross references.

Georgia Higher Education Assistance Corporation, § 20-3-260 et seq.

Law reviews.

For note on the 2001 enactment of this Code section, see 18 Georgia. St. U.L. Rev. 256 (2001).

43-1-30. [Reserved] Collection of work force and demographic data; procedure for collection and utilization.

History.

Ga. L. 2002, p. 615, § 3; repealed by Ga. L. 2002, p. 615, § 3, effective December 31, 2007.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.

Editor's notes.

Ga. L. 2002, p. 615, § 3 repealed and reserved this Code section, effective December 31, 2007.

43-1-31. Expiration of professional licenses of service members on active duty outside of state.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia

National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license to practice a profession issued pursuant to any provision of this title expired while such service member was serving on active duty outside the state shall be permitted to practice such profession in accordance with such expired license and shall not be charged with a violation of this title related to practicing a profession with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. The service member must present to the applicable professional licensing board either a copy of the official military orders or a written verification signed by the service member's commanding officer to waive any charges.

History.
Code 1981, § 43-1-31, enacted by Ga. L. 2005, p. 213, § 6/SB 258.

43-1-32. Limitations on licensure requirements for physicians and dentists; conditioning of licensing upon participation in public or private health insurance plans prohibited.

(a) State licensure requirements for physicians and dentists in this state shall be granted based on demonstrated skill and academic competence. Licensure approval for physicians and dentists in this state shall not be conditioned upon or related to participation in any public or private health insurance plan, public health care system, public service initiative, or emergency room coverage.

(b) The Georgia Composite Medical Board and the Georgia Board of Dentistry shall be solely responsible for the licensure of physicians and dentists, respectively, in this state.

History.
Code 1981, § 43-1-32, enacted by Ga. L. 2012, p. 348, § 1/HB 785.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2012, Code Section 33-1-22, as enacted by Ga. L. 2012, p. 348, § 1, was redesignated as Code Section 43-1-32.

43-1-33. Advertisement, signage, and identifier requirements for health care practitioners.

(a) This Act shall be known and may be cited as the "Consumer Information and Awareness Act."

(b) The General Assembly hereby finds and declares that:

(1) There are numerous professional degrees that include the term "doctor," such as Doctor of Medicine (M.D.); Doctor of Osteopathy (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Dental Medicine (D.M.D.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); registered professional nurses or advanced practice registered nurses (nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified nurse anesthetists) with doctorate degrees (D.N.P., D.N.S., Ph.D., or Ed.D.); audiologists with doctorate degrees (A.U.D.); speech-language pathologists with doctorate degrees (S.L.P.D. or Ph.D.); and other designations, which may be used by health care practitioners; and

(2) Each health care professional receives education and training that qualifies them to provide general and specialized services respectively. This training is necessary to correctly detect, diagnose, prevent, and treat serious health conditions.

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

(1) "Advertisement" means any communication or statement, whether printed, electronic, or verbal, that names a health care practitioner in relation to his or her practice, profession, or institution in which the practitioner is employed, volunteers, or otherwise provides health care services. This term includes business cards, letterhead, patient brochures, e-mail, Internet, audio, and video.

(2) "Health care practice or facility" means a hospital, physician practice setting, nursing home, assisted living community, or personal care home.

(3) "Health care practitioner" means a:

(A) Chiropractor licensed pursuant to Chapter 9 of this title;

(B) Professional counselor, social worker, or marriage and family therapist licensed pursuant to Chapter 10A of this title;

(C) Dentist licensed pursuant to Chapter 11 of this title;

(D) Dietitian licensed or registered pursuant to Chapter 11A of this title;

(E) Advanced practice registered nurse, including nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, registered professional nurse, and licensed practical nurse, licensed or registered pursuant to Chapter 26 of this title;

(F) Occupational therapist licensed pursuant to Chapter 28 of this title;

(G) Optometrist licensed pursuant to Chapter 30 of this title;

(H) Physical therapist licensed pursuant to Chapter 33 of this title;

(I) Physician or osteopath licensed pursuant to Chapter 34 of this title;

(J) Physician assistant licensed pursuant to Chapter 34 of this title;

(K) Acupuncturist licensed pursuant to Chapter 34 of this title;

(L) Podiatrist licensed pursuant to Chapter 35 of this title;

(M) Psychologist licensed pursuant to Chapter 39 of this title;

(N) Audiologist or speech-language pathologist licensed pursuant to Chapter 44 of this title;

(O) Pharmacist licensed pursuant to Chapter 4 of Title 26;

(P) Ophthalmic technician;

(Q) Medical assistant or certified nursing assistant; and

(R) Respiratory care professional certified pursuant to Article 6 of Chapter 34 of this title.

(d)(1) An advertisement by a health care practitioner shall identify the type of license the health care practitioner holds.

(2) This subsection shall not apply to an advertisement by a health care practice or facility and shall not be construed to require any such practice or facility in which multiple health care practitioners are employed to list in an advertisement the name of every health care practitioner so employed by such practice or facility.

(e)(1) A health care practitioner providing services in this state in a health care practice or facility shall conspicuously post and affirmatively communicate the practitioner's specific licensure to all current and prospective patients as follows:

(A)(i) The health care practitioner shall wear an identifier during all patient encounters that shall include:

(I) The health care practitioner's name; and

(II) The type of license or educational degree the health care practitioner holds.

(ii) The identifier shall be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent. A lab coat or similar distinguishing clothing or uniform indicating the practitioner's specific licensure may be considered an identifier if

such clothing or uniform meets the requirements of division (i) of this subparagraph.

(iii) An identifier shall not be required in an operating room or other setting where surgical or other invasive procedures are performed or in any other setting where maintaining a sterile environment is medically necessary.

(iv) An identifier shall not be required in any mental health setting where it would impede the psychotherapeutic relationship.

(v) If a safety or health risk to the health care practitioner or a patient would be created as a result of the practitioner wearing such identifier in a specified practice setting, an identifier shall not be required or may be modified by omitting or concealing the last name of the practitioner in accordance with the requirements of the health care practice or facility; and

(B) A health care practitioner in a health care practice or facility other than a hospital shall display in the reception area of such practice or facility a notice that clearly identifies the type of health care practitioners employed in such practice or facility and the right of a patient to inquire as to the type of license of the health care practitioner treating such patient. The notice shall be of sufficient size so as to be visible and apparent to all current and prospective patients.

(2) A health care practitioner who practices in more than one office shall place the identifier information conspicuously on such practitioner's website if he or she maintains a website.

(3) A health care practitioner who practices in a nonpatient care setting and who does not have any direct patient care interactions shall not be subject to the provisions of this subsection.

(4) A health care practice or facility which requires, as of the effective date of this Code section, its health care practitioners to wear an identification badge shall not be required to replace such badges to conform to the requirements of subparagraph (A) of paragraph (1) of this subsection.

(5) Except as otherwise provided by paragraph (6) of this subsection, this subsection shall only apply to health care practices and facilities where more than one type of health care practitioner interacts with patients in exam settings. This subsection shall not apply to health care practices or facilities in which only one type of health care practitioner practices.

(6) This subsection shall only apply to a dentist if such dentist is practicing in a hospital. This subsection shall only apply to a

chiropractor or optometrist if such chiropractor or optometrist is practicing in a hospital, nursing home, assisted living community, or personal care home.

(f) A health care practitioner who intentionally violates any provision of this Code section may be subject to disciplinary action by the health care practitioner's professional licensing board. Notwithstanding the imposition of any sanction, the health care practitioner's professional licensing board may seek an injunction or other legal means as appropriate against such health care practitioner violating this Code section.

(g) A violation of this Code section shall not constitute a private cause of action.

History.
Code 1981, § 43-1-33, enacted by Ga. L. 2015, p. 1309, § 1/HB 416.

43-1-34. Licenses for transitioning members of the armed forces.

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

(1) "License" means a document, permit, certificate of registration, or other authorization issued by or on behalf of a professional licensing board or other board that is required under this title for a person to engage in a profession, business, or trade.

(2) "Military" means the United States armed forces, including the National Guard.

(3) "Other board" means a board created pursuant to this title that is not a professional licensing board.

(4) "Service member" means an active or reserve member of the armed forces, including the National Guard.

(5) "Transitioning service member" means a member of the military on active duty status or on separation leave who is within 24 months of retirement or 12 months of separation.

(b) No later than July 1, 2017, each professional licensing board and other board shall adopt rules and regulations implementing a process by which transitioning service members may qualify for temporary licenses, licenses by endorsement, expedited licenses, or a combination thereof for each profession, business, or trade for which a license is issued. Such process may include the issuance of a license to an applicant based upon such applicant:

(1) Holding a license from another state for which the training,

experience, and testing substantially meet or exceed the requirements under this state to obtain a license; and

(2) Obtaining a specialty, certification, training, or experience in the military while a service member which substantially meets or exceeds the requirements to obtain a license in this state.

(c) Any professional licensing board or other board created after June 30, 2016, shall adopt within one year of its creation the rules and regulations required by subsection (b) of this Code section.

History.

Code 1981, § 43-1-34, enacted by Ga. L. 2016, p. 428, § 2/HB 821; Ga. L. 2020, p. 909, § 1/HB 914.

The 2020 amendment, effective January 1, 2021, deleted former paragraph (a)(3), which read: "'Military spouse' means a spouse of a service member or transitioning service member."; redesignated former paragraphs (a)(4)-(a)(6) as present paragraphs (a)(3)-(a)(5), respectively; and deleted "military spouses and" preceding "transitioning service members" in the first sentence of subsection (b).

Cross references.

Qualification for temporary certificates for military spouses, § 20-2-200.2.

Editor's notes.

Ga. L. 2016, p. 428, § 1/HB 821, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Military Spouses and Veterans Licensure Act.'"

43-1-35. Expedited license by endorsement for spouses of active or transitioning members of the armed forces.

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

(1) "License" shall have the same meaning as provided in Code Section 43-1-34.

(2) "Other board" shall have the same meaning as provided in Code Section 43-1-34.

(3) "Service member" shall have the same meaning as provided in Code Section 43-1-34.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Transitioning service member" shall have the same meaning as provided in Code Section 43-1-34.

(b) Notwithstanding any other provisions of law, a professional licensing board or other board shall issue an expedited license by endorsement to any individual who:

(1) Is a spouse of a service member or transitioning service member stationed within the State of Georgia;

(2) Holds a current license to practice such occupation or profes-

sion issued by another state for which the training, experience, and testing are substantially similar in qualifications and scope to the requirements under this state to obtain a license;

(3) Is in good standing in such other state; and

(4) Passes any examination that may only be required to demonstrate knowledge of the laws and rules and regulations of this state specific to the practice of the profession, business, or trade for which such expedited license by endorsement is being sought.

(c) An expedited license by endorsement shall be issued no later than 90 days from the date of receipt of an application and information and documents that show that all of the requirements of subsection (b) of this Code section have been met. Such application shall only require such information and documentation necessary to verify that the applicant meets the requirements set forth in subsection (b) of this Code section.

(d) Nothing contained in this Code section shall be construed to invalidate, override, or amend any licensing compact entered into by the State of Georgia.

History.

Code 1981, § 43-1-34.1, enacted by Ga. L. 2020, p. 909, § 2/HB 914; Ga. L. 2022, p. 98, § 1/HB 884.

Effective date.

This Code section became effective January 1, 2021.

The 2022 amendment, effective April 18, 2022, deleted former paragraph (a)(2), which read: "'Military' shall have the same meaning as provided in Code Section 43-1-34." and redesignated former paragraphs (a)(3) through (a)(6) as present paragraphs (a)(2) through (a)(5), respectively; substituted "who" for "that" at the end of subsection (b), substituted "the State of Georgia" for "this state" at the end of paragraph (b)(1); added subsection (c); and redesignated former subsection (c) as present subsection (d).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, former Code Section 43-1-34.1 was redesignated as Code Section 43-1-34.

CHAPTER 1A

OCCUPATIONAL REGULATION LEGISLATION REVIEW

Sec.		Sec.	
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43-1A-2.	Legislative intent.		
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43-1A-5.	Powers and duties of council.		
43-1A-6.	Review of proposed legislation.		

Law reviews.
For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.
C.J.S.
15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73A C.J.S, Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-1A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Occupational Regulation Review Law."

History.
Code 1981, § 43-1A-1, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-2. Legislative intent.

The General Assembly finds that the need for and the effectiveness of establishing occupational licensure and certification in this state has not been systematically evaluated. It is the purpose of this chapter to ensure that no programs of licensure and certification shall hereafter be

imposed upon any profession or business unless required for the safety and well-being of the citizens of this state. It is the further purpose of this chapter to authorize the periodic review of existing regulatory entities to ensure that the authority of such regulatory entities is applicable and necessary with relation to the current professional and business conditions of this state. Any actions of the council pursuant to this chapter are solely recommendations and shall be nonbinding.

History. Code 1981, § 43-1A-2, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-3. Definitions.

As used in this chapter, the term:

(1) "Applicant group" means any business or professional group or organization, any individual, or any other interested party which proposes that any business or professional group not presently regulated be regulated by the state.

(2) "Certificate" or "certification" means a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use "certified" in the title or designation to perform prescribed occupational tasks.

(3) "Council" means the Georgia Occupational Regulation Review Council.

(4) "Grandfather clause" means a provision in a regulatory statute applicable to individuals engaged in the regulated business or profession prior to the effective date of the regulatory statute which exempts the individuals from meeting prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(5) "Legislative committee of reference" means the standing legislative committee designated by the Speaker of the House of Representatives or the President of the Senate to consider proposed legislation introduced in their respective houses of the General Assembly to regulate any business or occupation not previously regulated.

(6) "License," "licensing," or "licensure" means authorization to engage in a business or profession which would otherwise be unlawful in the state in the absence of authorization. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed business or professional tasks, who use a particular title, or who perform those tasks and use a particular title.

(7) "Regulate" or "regulation" means the process of licensure or certification as defined in this Code section.

(8) "Regulatory entity" means any state agency which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(9) "State agency" means each state board, bureau, commission, department, division, office, or other separate unit of state government created or established by law.

History. Code 1981, § 43-1A-3, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-4. Occupational Regulation Review Council.

(a) There is created the Georgia Occupational Regulation Review Council.

(b) The council shall consist of nine members:

(1) The comptroller general or his or her designee;

(2) The Secretary of State or his or her designee;

(3) The commissioner of public health or his or her designee;

(4) The director of the Office of Planning and Budget or his or her designee;

(5) The commissioner of natural resources or his or her designee;

(6) The state revenue commissioner or his or her designee;

(7) The Commissioner of Agriculture or his or her designee;

(8) The chairperson of the legislative committee of reference or that person's designee from that committee, but only when legislation referred by such committee is being considered by the council; and

(9) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson's designee from that committee, but only when legislation of which that presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.

(c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.

(d) Legislative members of the council appointed thereto pursuant to paragraphs (8) and (9) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and

mileage allowance authorized for legislative members of interim legislative committees.

History.

Code 1981, § 43-1A-4, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2013, p. 141, § 43/HB 79; Ga. L. 2015, p. 1088, § 27/SB 148.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, the capitalization of "natural resources" was changed and "the Department of" preceding "natural resources" was deleted in paragraph (b)(5), and "state revenue commissioner" was substituted for "commissioner of the Department of Revenue" in paragraph (b)(6).

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-1A-5. Powers and duties of council.

(a) It shall be the duty of the council to:

(1) Review all bills introduced in the General Assembly to license or certify a profession or business, which is not currently licensed or certified by the state, based on the criteria outlined in Code Section 43-1A-6; and

(2) Review each existing regulatory entity that is currently regulated pursuant to this title to determine the applicability and necessity of such regulatory entity's authority with relation to the current professional and business conditions of this state. The council shall conduct such review a minimum of once every seven years. All council meetings relating to a review of an existing regulatory entity pursuant to this paragraph shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The chairperson of the legislative committee of reference shall provide written notification to the council of any proposed legislation introduced in that house of the General Assembly of which that committee is a standing committee if that legislation provides for the licensure or certification of a business or profession not currently licensed or certified by the state. That chairperson at the same time shall provide written notification of that legislation to the presiding officer of the house of the General Assembly in which that legislation was not introduced, and that presiding officer shall then appoint the chairperson of a standing committee of that house to serve as a member of the council for the purpose of considering that legislation, except that the chairperson so appointed may instead designate another member of that standing committee to serve as a member of the council for that purpose. Within a period of time not to exceed nine months from the date of such notification to the council, but in no event later than the convening date of the next succeeding regular session of the General Assembly, the council shall provide a formal report evaluating the need

to regulate the business or profession based on the factors and information provided under Code Section 43-1A-7 to the chairperson of the legislative committee of reference, the committee chairperson appointed to the council pursuant to paragraph (9) of subsection (b) of Code Section 43-1A-4, the presiding officers of the House of Representatives and the Senate, and the legislative counsel. If, subsequent to a review pursuant to paragraph (2) of subsection (a) of this Code section, the council concludes changes are needed to the regulations of an existing regulatory entity, or that a regulatory entity's existence is no longer necessary or in the interests of the state, a formal report recommending such changes shall be completed and distributed in the same manner described previously herein. If the council determines a need for regulation, the report shall recommend an appropriate type of regulation and an appropriate state agency to oversee the regulation.

(c) The council shall work with the applicant group, the legislative committee of reference, and other interested parties in formulating its formal report.

(d) The head of a regulatory entity subject to review pursuant to paragraph (2) of subsection (a) of this Code section shall have the right to testify to the council to contribute its perspective and recommendations regarding potential changes to how such regulatory entity is regulated.

History.
Code 1981, § 43-1A-5, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2015, p. 1088, § 28/SB 148.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1986, "Code Section 43-1A-4" was substituted for "Code Section 41-1A-4" in the third sentence of subsection (b).

43-1A-6. Review of proposed legislation.

All bills introduced in the General Assembly to newly regulate a profession or business and all reviews of existing regulatory entities pursuant to paragraph (2) of subsection (a) of Code Section 43-1A-5 shall be reviewed according to the following criteria. In evaluating how or whether a profession or business shall hereafter be regulated, the following factors shall be considered:

(1) Whether the unregulated practice of the occupation may harm or endanger the health, safety, and welfare of citizens of this state and whether the potential for harm is recognizable and not remote;

(2) Whether the practice of the occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;

(3) Whether the citizens of this state are or may be effectively protected by other means;

(4) Whether the overall cost effectiveness and economic impact would be positive for citizens of this state; and

(5) Whether there are means other than state regulation to protect the interests of the state.

History. Code 1981, § 43-1A-6, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-7. Required information for proposed regulation.

Applicant groups and other interested parties shall explain in writing each of the following factors to the extent requested by the council and the legislative committee of reference:

(1) A definition of the problem and why regulation is necessary:

(A) The nature of the potential harm to the public if the business or profession is not regulated, and the extent to which there is a threat to public health and safety; and

(B) The extent to which consumers need and will benefit from a method of regulation identifying competent individuals engaged in the business or profession;

(2) The efforts made to address the problem:

(A) Voluntary efforts, if any, by members of the business or profession to establish a code of ethics or help resolve disputes between the business or professional group and consumers; and

(B) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(A) Regulation of business or professional employers rather than employees;

(B) Regulation of the program or service rather than the individuals;

(C) Registration of all individuals;

(D) Certification of all individuals;

(E) Other alternatives;

(F) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest; and

(G) Why licensure would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(A) The extent to which the incidence of specific problems present in the unregulated business or profession can reasonably be expected to be reduced by regulation;

(B) Whether the public can identify qualified individuals;

(C) The extent to which the public can be confident that regulated individuals are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both and, if appropriate, their respective responsibilities in administering the system of certification or licensure, including the composition of the board; the powers and duties of the board or state agency regarding examinations, investigations, and the disciplining of certified or licensed individuals; the promulgation of rules and a code of ethics; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such individuals will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for certification or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training and whether applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the cost of development will be met; and

(D) Assurance to the public that regulated individuals have maintained their competence:

(i) Whether the certification or license will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee or whether renewal will involve reexamination, satisfactory completion of continuing education, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(A) The extent to which regulation might restrict entry into the business or profession and whether the proposed standards are more restrictive than necessary to ensure safe and effective performance; and

(B) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the business or profession in this state, an estimate of the number of individuals in each group, and whether the groups represent different levels of business or professional activity;

(7) The expected cost of regulation:

(A) The impact regulation might have on the costs of service to the public;

(B) The impact regulation might have on various types of insurance; and

(C) The initial and long-term cost to the state and to the general public of implementing the proposed legislation; and

(8) Any additional information requested by the council or the legislative committee of reference.

History. Code 1981, § 43-1A-7, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-8. Preferred forms of regulation; role of General Assembly.

(a) After evaluating the report of the council and any other desired information based on the criteria outlined in Code Section 43-1A-6 and considering governmental and societal costs and benefits, if the General Assembly finds that it is necessary to regulate a business or profession not previously regulated by law, the most appropriate alternative method of regulation should be implemented, consistent with the public interest and this Code section:

(1) Where the consumer may have a substantial basis for relying on the services of a profession or business, a system of certification should be implemented;

(2) Where apparent that adequate regulation cannot be achieved by means other than licensing, a system of licensing should be implemented; or

(3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary to protect the public health and welfare, a less restrictive means of ensuring public protection, including, but not limited to, stricter civil action or criminal penalties, inspection requirements, or a system of registration, may be considered.

(b) The General Assembly may, with regard to an existing regulatory entity, and after evaluating the report of the council or any desired information, including, but not limited to, the criteria outlined in Code Section 43-1A-6 and any governmental and societal costs and benefits:

(1) Take no action if it has determined that such existing regulatory agency is efficiently regulated and that no action is necessary in the interests of the state;

(2) Amend the enabling legislation of such existing regulatory entity if it has determined that making such amendments shall more efficiently regulate such regulatory entity in a manner that is in the best interests of the state; or

(3) Repeal the enabling legislation of such existing regulatory entity if it has determined that the continuing regulation of such regulatory entity is no longer in the interests of the state.

History. Code 1981, § 43-1A-8, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

43-1A-9. Chapter not to limit legislature's constitutional powers.

Nothing in this chapter shall be construed to limit the authority of the General Assembly to legislate as authorized by the Constitution.

History. Code 1981, § 43-1A-9, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.

CHAPTER 1B

PATIENT SELF-REFERRAL

Sec.
43-1B-1. Short title.
43-1B-2. Legislative intent.
43-1B-3. Definitions.
43-1B-4. Prohibited actions; civil penalties; grounds for disciplinary action.
43-1B-5. Disclosure form required; contents; posting.
43-1B-6. Entities excepted from prohibitions as to financing and referrals; requirements; regulation.
43-1B-7. [Reserved] Exception for physicians treating workers' compensation claimants.
43-1B-8. Exception for health care providers with interest in health service regulated by federal law.

Cross references.

Patient self-referral in workers' compensation cases, § 34-9-25.

Editor's notes.

Ga. L. 1993, p. 521, § 2, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1993, and shall apply to referrals for designated health services and other health care items or services made on or after July 1, 1993, provided that with respect to an investment interest acquired by an investor before July 1, 1993, Code Section 43-1B-4 shall not apply to referrals for designated health services and other health care items or services occurring before July 1, 1996."

Law reviews.

For note on 1993 enactment of this chapter, see 10 Ga. St. U.L. Rev. 192 (1993).

43-1B-1. Short title.

This chapter shall be known and may be cited as the "Patient Self-referral Act of 1993."

History.

Code 1981, § 43-1B-1, enacted by Ga. L. 1993, p. 521, § 1.

43-1B-2. Legislative intent.

It is recognized by the General Assembly that the referral of a patient by a health care provider to a provider of designated health care services in which the health care provider has an investment interest represents a potential conflict of interest. The General Assembly finds that these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The General Assembly also recognizes, however, that it may be appropriate for health care providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are

present in the arrangement. It is the intent of the General Assembly to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the citizens of Georgia from unnecessary and costly health care expenditures.

History.
Code 1981, § 43-1B-2, enacted by Ga. L. 1993, p. 521, § 1.

43-1B-3. Definitions.

As used in this chapter, the term:

(1) "Board" means any professional licensing board which, under the laws of this state, licenses, registers, or in any other way regulates any health care provider to whom this chapter applies.

(2) "Designated health services" means clinical laboratory services, physical therapy services, rehabilitation services, diagnostic imaging services, pharmaceutical services, durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), home health care services, and outpatient surgical services.

(3) "Entity" means any individual, partnership, firm, corporation, or other business entity.

(4) "Fair market value" means value in arm's length transactions consistent with the general market value and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(5) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

(A) In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

(B) For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

(C) In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(6) "Health care provider" means a physician, chiropractor, podiatrist, optometrist, pharmacist, or physical therapist who is licensed or otherwise regulated under this title.

(7) "Immediate family member" means a health care provider's spouse, child, child's spouse, grandchild, grandchild's spouse, parent, parent-in-law, or sibling.

(8) "Investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. The following investment interests shall be excepted from this definition:

(A) An investment interest in an entity that is a provider of a designated health service solely in a rural area;

(B) An investment interest in notes, bonds, debentures, or other debt instruments issued by an entity which provides designated health services, as an integral part of a plan by such entity to acquire such investor's equity investment interest in the entity, provided that the interest rate is consistent with fair market value, and that the maturity date of the notes, bonds, debentures, or other debt instruments issued by the entity to the investor is not later than July 1, 1996;

(C) An investment interest in real property resulting in a landlord-tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value;

(D) A financial relationship between a university, college, or other entity providing education and training in the health sciences, including its owned and affiliated hospitals, and any entity or entities through which its faculty and employees who are health care providers provide designated health services; or

(E) An investment interest in a publicly held corporation with total assets over $50 million whose shares are traded on a national exchange or over-the-counter market if the investment interest is less than 1 percent of the corporation, there are no special stock classes for health care provider investors, and no income from the investment interest is tied to the volume of referrals.

(9) "Investor" means a health care provider or entity owning a legal or beneficial ownership or investment interest, directly or

indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. subsection 413.17, in an entity.

(10) "Referral" means any referral of a patient for health care services, including, without limitation:

(A) The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service;

(B) The request or establishment of a plan of care by a health care provider which includes the provision of designated health services or other health care item or service; or

(C) The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

(i) By a radiologist for diagnostic imaging services;

(ii) By a health care provider specializing in the provision of radiation therapy services for such services;

(iii) By a health care provider referring within the health care provider's group practice;

(iv) By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another health care provider;

(v) By a staff health care provider of a hospital referring a patient to the hospital at which the health care provider has current staff privileges;

(vi) By a health care provider for items or services provided by such health care provider or by a member of such health care provider's group practice to the patients of that health care provider or group practice or items or services provided or performed at the direction or under the supervision of such health care provider or group practice; or

(vii) By a health care provider when the patient is in need of emergency health care services where any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected.

(11) "Rural area" means a county with a population density of no greater than 65 persons per square mile, as defined by the United States decennial census of 1990.

History.

Code 1981, § 43-1B-3, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 530, § 1; Ga. L. 2000, p. 1706, § 19.

Editor's notes.

Ga. L. 1994, p. 530, § 2, not codified by the General Assembly, provides an effective date of July 1, 1994, and provides that with respect to an investment interest acquired by a health care provider before July 1, 1994, for durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), or home health care services, Code Section 43-1B-4 shall not apply to such referrals occurring before January 1, 1995, and that the Act shall not be construed to affect the effective date for any designated health care services other than durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), or home health care services.

Law reviews.

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 230 (1994).

43-1B-4. Prohibited actions; civil penalties; grounds for disciplinary action.

Except as provided in this chapter:

(1) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider has an investment interest. This prohibition includes any consideration paid as compensation or in any manner which is a product of, or incident to, or in any other way related to any membership, proprietary interest, or co-ownership with an individual, group, or organization to whom patients, clients, or customers are referred or to any employer-employee or independent contractor relationship including, without limitation, those that may occur in a limited partnership, profit-sharing arrangement, or other similar arrangement with any person licensed under this title to whom these patients are referred;

(2) A board shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this Code section or any rule adopted pursuant to this Code section as it applies solely to the licensee. The board shall determine the name of any entity in which a health care provider investment interest has been approved pursuant to this Code section and the board shall adopt rules providing for periodic quality assurance and utilization review of such entities;

(3) No claim for payment may be presented by a health care provider or an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this Code section, and, further, a third-party payor may request annually and receive from the health care provider a copy of the disclosure form provided for in subsection (a) of Code Section 43-1B-5;

(4) If the health care provider or entity collects any amount that was billed in violation of this Code section, the health care provider or

entity shall refund such amount on a timely basis to the payor or individual, whichever is applicable;

(5) Any person who presents or causes to be presented a bill or a claim for service that such person knows or should know is for a service for which payment may not be made under paragraph (3) of this Code section and for which a refund has not been made under paragraph (4) of this Code section shall be subject to a civil penalty of not more than $15,000.00 for each such service;

(6) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the health care provider or entity knows or should know has a principal purpose of assuring referrals by the health care provider to a particular entity which, if the health care provider directly made referrals to such entity, would be in violation of this Code section shall be subject to a civil penalty of not more than $50,000.00 for each such circumvention arrangement or scheme;

(7) Any health care provider or entity that divides fees or agrees to divide fees received for a designated health service with any health care provider or entity solely for referring a patient shall be subject to a civil penalty of not more than $15,000.00 for each such service. The board shall develop rules regarding the prohibition of fee division and charging of fees solely for referral of a patient; and

(8) A violation of this Code section by a health care provider shall constitute grounds for disciplinary action to be taken by the health care provider's respective board, including the potential for license revocation.

History.

Code 1981, § 43-1B-4, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 2011, p. 752, § 43/HB 142.

Editor's notes.

Ga. L. 1993, p. 521, § 2, not codified by the General Assembly, effective July 1, 1993, provides that the Act "shall apply to referrals for designated health services and other health care items or services made on or after July 1, 1993, provided that with respect to an investment interest acquired by an investor before July 1, 1993, Code Section 43-1B-4 shall not apply to referrals for designated health services and other health care items or services occurring before July 1, 1996."

43-1B-5. Disclosure form required; contents; posting.

(a) A health care provider shall not refer a patient to an entity in which such health care provider has an investment interest unless, prior to the referral, the health care provider furnishes the patient with a written disclosure form approved by the health care provider's respective board, informing the patient of:

(1) The existence of the investment interest;

(2) The name and address of each applicable entity in which the referring health care provider is an investor; and

(3) The patient's right to obtain the items or services for which the patient has been referred at the location or from the health care provider or supplier of the patient's choice unless otherwise restricted by law, including the entity in which the referring health care provider is an investor.

(b) The health care provider shall post a copy of the disclosure form provided for in subsection (a) of this Code section in a conspicuous public place in the health care provider's office.

(c) The provisions of this Code section shall apply to all referrals made prior to July 1, 1996, and to referrals expressly exempted from the prohibitions contained in this chapter on and after that date. Nothing in this Code section shall be construed so as to authorize any referral otherwise prohibited by this chapter on and after July 1, 1996.

(d) A violation of this Code section shall be grounds for disciplinary action by the board.

History.
Code 1981, § 43-1B-5, enacted by Ga. L. 1993, p. 521, § 1.

43-1B-6. Entities excepted from prohibitions as to financing and referrals; requirements; regulation.

(a) The provisions of Code Section 43-1B-4 shall not prohibit nor apply to the referral of patients to any entity or facility providing designated health services if there is no entity or facility of reasonable quality, price, or service in the community, alternative financing is not reasonably available, and all the following requirements are met:

(1) No health care provider shall be required to make referrals or otherwise generate business as a condition for becoming or remaining an investor, and all other individuals are given a bona fide opportunity to invest in the facility on the same terms as a referring health care provider;

(2) The facility shall not loan funds nor guarantee loans for referring health care providers, nor shall the income from the investment be based on the volume of referrals made by the health care provider;

(3) The health care provider complies with Code Section 43-1B-5, requiring disclosure of the investment interest to the patient; and

(4) The facility shall provide uncompensated health services for indigent or charity patients at a standard which meets or exceeds 3

percent of the gross revenues of the facility after provisions for bad debts and third-party adjustments have been deducted. The services offered shall be reasonably financially accessible to the residents of the facility's service area.

(b) The provisions of this Code section shall be regulated by the state Department of Community Health.

History.
Code 1981, § 43-1B-6, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 1999, p. 296, § 22.

43-1B-7. [Reserved] Exception for physicians treating workers' compensation claimants.

History.
Ga. L. 1993, p. 521, § 1; repealed by Ga. L. 2006, p. 676, § 5/HB 1240, effective July 1, 2006.

Editor's notes.
Ga. L. 2006, p. 676, § 5/HB 1240 repealed and reserved this Code section, effective July 1, 2006.

43-1B-8. Exception for health care providers with interest in health service regulated by federal law.

Notwithstanding the provisions of this chapter, this chapter shall not apply to any health care provider or to any designated health service if the financial interest of such health care provider in such designated health service is restricted or regulated pursuant to any federal law which is applicable to such health care provider or designated health service and which covers private paying patients as well as medicare or Medicaid patients.

History.
Code 1981, § 43-1B-8, enacted by Ga. L. 1993, p. 521, § 1.

CHAPTER 1C

GEORGIA PROFESSIONAL REGULATION REFORM

Sec.
43-1C-1. Short title.
43-1C-2. Definitions.
43-1C-3. Executive oversight of professional licensing boards.

Editor's notes.

Ga. L. 2016, p. 561, § 1/HB 952, not codified by the General Assembly, provides that: "The General Assembly finds, determines, and declares that:

"(1) In *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), the Supreme Court of the United States established a new standard for determining whether state professional licensing boards and board members are entitled to immunity for federal antitrust violations. Pursuant to *N.C. State Bd. of Dental Exam'rs*, state professional licensing boards and board members are entitled to antitrust immunity only if:

"(A) Their anticompetitive conduct is consistent with 'clearly articulated' state policy; and

"(B) The state provides 'active supervision' of their conduct.

"(2) It is the policy of the State of Georgia to increase economic opportunities for all of its citizens by promoting competition and thereby encouraging innovation and job growth. It is therefore also the policy of the State of Georgia to displace competition only when necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety.

"(3) By establishing the policies and procedures of this chapter, the General Assembly intends to ensure that the state's professional licensing boards and board members are entitled to antitrust immunity and that state laws relating to professions and businesses are interpreted and enforced in a manner consistent with clearly articulated state policy."

43-1C-1. Short title.

This chapter shall be known and may be cited as the "Georgia Professional Regulation Reform Act."

History.

Code 1981, § 43-1C-1, enacted by Ga. L. 2016, p. 561, § 2/HB 952.

43-1C-2. Definitions.

As used in this chapter, the term:

(1) "Governor" means the Governor of the State of Georgia or his or her designee.

(2) "Professional licensing board" means any board, bureau, commission, or other agency of the executive branch of state government which is created for the purpose of licensing or otherwise regulating or controlling any profession, business, or trade, including all boards, bureaus, commissions, or other agencies established pursuant to this

title or Chapter 4 of Title 26; provided, however, that such term shall not include the State Bar of Georgia.

(3) "Rule" means a regulation, standard, or statement of general applicability, whether formal or informal, that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any professional licensing board. Such term shall include the amendment or repeal of a prior rule but shall not include statements of policy or interpretation made as part of a decision in a contested case.

History.
Code 1981, § 43-1C-2, enacted by Ga. L. 2016, p. 561, § 2/HB 952.

43-1C-3. Executive oversight of professional licensing boards.

(a) The Governor shall have the authority and duty to actively supervise the professional licensing boards of this state to ensure that their actions are consistent with clearly articulated state policy and shall therefore have the authority and duty to:

(1) Review and, in writing, approve or veto any rule before it is filed in the office of the Secretary of State if such rule is required to be filed in the office of the Secretary of State by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or before such rule becomes effective, if filing is not required;

(2) Review and, in writing, approve or veto any rule that is:

(A) Challenged via an appeal to the Governor after the denial of a petition filed pursuant to Code Section 50-13-9; or

(B) Submitted by a professional licensing board for review by the Governor;

(3) Review and, in writing, approve, remand, modify, or reverse any action by a professional licensing board that is:

(A) Challenged via an appeal to the Governor; or

(B) Submitted by a professional licensing board for review by the Governor; and

(4) Promulgate any regulations or executive orders necessary to effectuate the provisions of this chapter, including regulations or orders relating to the process, procedures, and timelines that will govern any appeal or submission filed in accordance with this Code section.

(b) Any review undertaken by the Governor pursuant to subsection (a) of this Code section shall be fully completed within 90 days.

(c) Nothing in this Code section shall be interpreted to subject the Governor to any of the administrative procedures of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-1C-3, enacted by Ga. L. 2016, p. 561, § 2/HB 952.

CHAPTER 2

AUDIT OF REGULATORY AGENCIES

Sec.
43-2-1. Legislative findings; purpose of chapter.
43-2-2. "Regulatory agency" defined.
43-2-3. Assignment of agencies to standing committees of Senate and House of Representatives; public hearings; factors considered in conducting audit.
43-2-4. Performance audit; submission of copies; response.
43-2-5. Reports of findings and recommendations.

Editor's notes.

Ga. L. 1992, p. 3137, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this chapter, and enacted the current chapter. The former chapter consisted of Code Sections 43-2-1 through 43-2-9 and was based on Ga. L. 1977, p. 961, §§ 1-6, 8-10; Ga. L. 1978, p. 2012, §§ 1-4; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 430, § 3; and Ga. L. 1984, p. 22, § 43.

Law reviews.

For note on 1992 enactment of this chapter, see 9 Ga. St. U.L. Rev. 319 (1992).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-2-1. Legislative findings; purpose of chapter.

The General Assembly finds that the effectiveness of many regulatory agencies which have been created in this state needs to be evaluated. It is the purpose of this chapter to establish a procedure for the review of regulatory agencies to increase their effectiveness and efficiency.

History.

Code 1981, § 43-2-1, enacted by Ga. L. 1992, p. 3137, § 1.

43-2-2. "Regulatory agency" defined.

As used in this chapter, the term "regulatory agency" means any board, bureau, or commission of the executive branch of state government in existence on July 1, 1992, or created by law after July 1, 1992, for the primary purpose of licensing or otherwise regulating or controlling any profession, business, or trade.

History.
Code 1981, § 43-2-2, enacted by Ga. L. 1992, p. 3137, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Governor's declaration that board not terminated was possible circumvention of intent of General Assembly. — For Governor to declare that a regulatory agency may continue to do business as usual during the agency's termination period, or to declare that the board shall not be terminated, could be perceived as an attempt to circumvent the intent of the General Assembly. 1980 Op. Att'y Gen. No. 80-49.

43-2-3. Assignment of agencies to standing committees of Senate and House of Representatives; public hearings; factors considered in conducting audit.

(a) The President of the Senate and the Speaker of the House of Representatives shall assign each of the regulatory agencies to a standing committee of their respective houses for the purpose of review. When a performance audit is conducted, the Senate and House committees to which a regulatory agency is assigned shall conduct a joint public hearing or hearings for the purpose of receiving testimony from the public and from the officials of the regulatory agency involved relative to the effectiveness and efficiency of the agency.

(b) When conducting a performance audit, the state auditor shall take into consideration, among others, the following factors:

(1) Whether the absence of regulation would significantly harm, affect, or endanger the public health, safety, or welfare;

(2) Whether there is a less restrictive method of regulation available which would adequately protect the public;

(3) The extent to which the regulatory agency has permitted qualified applicants to serve the public;

(4) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the regulatory agency or the profession, business, or trade it regulates;

(5) The extent to which the regulatory agency has operated in the

public interest and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, practices, and rules and regulations, and any other circumstances, including budgetary, resource, and personnel matters;

(6) The extent to which the regulatory agency has recommended statutory changes to the General Assembly which would benefit the public as opposed to the persons it regulates;

(7) The extent to which the regulatory agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the regulatory agency on the public regarding improved service, economy of service, and availability of service;

(8) The extent to which persons regulated by the regulatory agency have been required to assess problems in their profession, business, or trade which affect the public;

(9) The extent to which the regulatory agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(10) The efficiency with which formal public complaints filed with the regulatory agency concerning persons subject to regulation have been processed to completion by the regulatory agency; and

(11) The extent to which changes are necessary in the enabling laws of the regulatory agency to comply adequately with the factors listed in this subsection.

History.
Code 1981, § 43-2-3, enacted by Ga. L. 1992, p. 3137, § 1.

43-2-4. Performance audit; submission of copies; response.

(a) The state auditor shall conduct a performance audit of any regulatory agency upon the request of a standing committee of the House or the Senate to which a regulatory agency is assigned. This audit shall include, without being limited to, a summary listing of the audit findings and a determination regarding each finding as to whether the regulatory agency, the division director, or both, or some other entity exercises major responsibilities in the area relating to the finding.

(b) A copy of each performance audit conducted pursuant to subsection (a) of this Code section shall be submitted, within 15 days after completion, to:

(1) Each member of the Senate and House standing committees to

which the regulatory agency has been assigned for review under this chapter;

(2) The presiding officers of the Senate and House of Representatives;

(3) The Governor, the Attorney General, and the legislative counsel;

(4) The chairperson of the audited regulatory agency; and

(5) The division director.

(c) Within 30 days after submission of the performance audit, the regulatory agency and the division director shall each submit a written response as to each audit finding in those areas in which that agency or division director has been determined by the audit to exercise major responsibilities. Such response shall include, without being limited to, the following:

(1) Whether or not the agency or division director agrees with that finding and the reasons therefor;

(2) What steps have been or will be taken to address each issue raised in each finding, whether the steps are regulatory or proposed statutory changes, and the proposed effective date of any such regulatory changes; and

(3) If no steps have been or will be taken to address any issues raised in the finding, the reasons therefor.

(d) At the request of a standing committee assigned review, that response shall be updated and resubmitted by the division director and audited regulatory agency.

(e) Responses required by subsections (c) and (d) of this Code section shall be submitted to those persons designated in paragraphs (1), (2), and (3) of subsection (b) of this Code section to receive copies of performance audits.

History. Code 1981, § 43-2-4, enacted by Ga. L. 1992, p. 3137, § 1; Ga. L. 2000, p. 1706, § 19.

43-2-5. Reports of findings and recommendations.

The Senate and House committees to which a regulatory agency has been assigned for review shall issue reports of their findings and recommendations to the Governor, to the regulatory agency involved, and to each member of the General Assembly. Such reports may be issued separately by the reviewing committees or jointly when a majority of the members of each reviewing committee are in agreement as to the recommendations and findings. Such reports shall contain

copies of any legislation which must be enacted in order to fulfill the requirements of this chapter.

History.
Code 1981, § 43-2-5, enacted by Ga. L. 1992, p. 3137, § 1.

CHAPTER 3

ACCOUNTANTS

Sec.	
43-3-1.	Short title.
43-3-2.	Definitions.
43-3-3.	Georgia State Board of Accountancy; powers and duties; executive director; venue.
43-3-4.	Membership of board; terms; removal; expense reimbursement.
43-3-5.	Chairperson and secretary of board; meetings; seal; records of proceedings; appointment of committees and employees.
43-3-6.	Duties of executive director.
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43-3-9.	Requirements for certificate of certified public accountant; disclosure of commissions from sale of insurance or financial products.
43-3-10.	Examinations for certified public accountants.
43-3-11.	Certificate holder as "certified public accountant" or "public accountant".
43-3-12.	Reciprocity for certified public accountants.
43-3-13.	Individuals holding certified public accountant certificates, live permits, or licenses as of July 1, 2014.
43-3-14.	Application for certification by nonresidents.
43-3-15.	Foreign registered accountant.
43-3-16.	Licensure requirements for firms practicing public accountancy.
43-3-17.	Renewal of firm license.
43-3-18.	Issuance of license to practice accountancy; substantial equivalency practice privilege for nonresidents.
43-3-19.	Continuing professional education requirements.
43-3-20.	Investigations; admissibility of records; filing of complaint; immunity; hearing.
43-3-21.	Revocation or refusal to grant or renew license; immunity.
43-3-22.	Revocation, suspension, or refusal to renew firm license.
43-3-23.	Adjudicative hearings before board.
43-3-23.1.	Redesignated.
43-3-23.2 and 43-3-23.3.	[Repealed].
43-3-24.	Sanctions; probation.
43-3-24.1.	Cease and desist order.
43-3-25.	Civil penalty.
43-3-25.1.	Confidentiality of applicant information.
43-3-26.	Authority of executive director to provide information regarding past or pending investigation of applicant.
43-3-27.	Notification of conviction; time limit; suspension.
43-3-28.	Reinstatement or modification of a revoked or suspended license.
43-3-29.	Accountants' records and communications; peer review data.
43-3-29.1.	[Repealed] Sanctions.
43-3-30.	Injunctions; enforcement.
43-3-31.	Prohibited use of title or designation; false or deceptive practices.
43-3-32.	Exceptions to operation of chapter.
43-3-33.	Expired license of service member.
43-3-34.	Criminal penalty.
43-3-35.	Redesignated.
43-3-36.	Redesignated.
43-3-36.1.	[Repealed] Exempted licensees.
43-3-37.	[Repealed] Use of acquired materials in civil action.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-1.

Code of Professional Conduct, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-12.

Law reviews.

For article, "The Controversy Over Third Party Rights: Toward More Predictable Parameters of Auditor Liability," see 22 Ga. L. Rev. 149 (1987).

For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 84-2 are included in the annotations for this chapter.

Intent of chapter. — Legislature in enacting this chapter sought to control the profession of public accounting, and to prohibit all persons who do not meet the requirements of the chapter from engaging therein. Knight Drug Co. v. Naismith, 73 Ga. App. 793, 38 S.E.2d 87, 1946 Ga. App. LEXIS 413 (1946) (decided under former Code 1933, Ch. 84-2).

Ways in which professions might be regulated by police power. — When purpose of statute is to regulate and control an occupation or profession under police power of legislature, such purpose may be manifested in various ways, such as by requiring all persons seeking license to practice such trade or profession to first take an examination by some prescribed authority as to that person's skill and knowledge of the occupation, or by requiring applicants seeking registration to first give bond and security to benefit any who might be injured by wrongful or unskillful practice, or by requiring proof of good character before being licensed and registered. Knight Drug Co. v. Naismith, 73 Ga. App. 793, 38 S.E.2d 87, 1946 Ga. App. LEXIS 413 (1946) (decided under former Code 1933, Ch. 84-2).

Chapter invalidates contracts by unlicensed practitioner. — This chapter was intended for the purpose of regulating profession of public accounting and it is a condition precedent to engaging in that profession that persons wishing to engage therein obtain license required or suffer peril of having all contracts declared void and unenforceable and further peril of being indicted for a crime. Knight Drug Co. v. Naismith, 73 Ga. App. 793, 38 S.E.2d 87, 1946 Ga. App. LEXIS 413 (1946) (decided under former Code 1933, Ch. 84-2).

Possession of license presumed. — In a civil action brought by one pursuing an occupation required by law to be licensed, to recover for value of services, general rule is that in absence of any statutory provision affecting the question, possession of license will be presumed. Knight Drug Co. v. Naismith, 73 Ga. App. 793, 38 S.E.2d 87, 1946 Ga. App. LEXIS 413 (1946) (decided under former Code 1933, Ch. 84-2).

Accountant's liability is limited to those persons that he or she expressly knows will be given the information he or she generates, or to those persons intended to receive the information. Badische Corp. v. Caylor, 630 F. Supp. 1196, 1986 U.S. Dist. LEXIS 27820 (N.D. Ga. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-2 are included in the annotations for this chapter.

Certified public accountant's signa-

ture to report when principals not certified is misdemeanor. — Signature of certified public accountant to report for firm when the principals are not certified, or when one is certified and another is not, constitutes a misdemeanor, and all members of the firm and certified public accountant signing the report of the firm would be equally guilty under the law. 1950-51 Ga. Op. Att'y Gen. 137 (decided under former Code 1933, Ch. 84-2).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Proof of Facts.

Accountant's Liability to Client for Performance of Duties, 16 POF2d 641.

Am. Jur. Trials.

Accountant Malpractice: Work Papers, 26 Am. Jur. Trials 1.

Third-Party Accountant Liability — Prospective Financial Statements Used in Securities Offerings, 45 Am. Jur. Trials 113.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058. 16C C.J.S., Constitutional Law, § 890 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Liability of independent accountant to investors or shareholders, 54 A.L.R.2d 324; 46 A.L.R.3d 979; 92 A.L.R.3d 396; 48 A.L.R.5th 389.

Regulation of accountants, 70 A.L.R.2d 433; 4 A.L.R.4th 1201.

Application of statute of limitations to damage actions against public accountants for negligence in performance of professional services, 26 A.L.R.3d 1438.

Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 A.L.R.5th 852.

43-3-1. Short title.

This chapter shall be known and may be cited as the "Public Accountancy Act of 2014."

History.

Code 1933, § 84-201, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2014, p. 136, § 1-2/HB 291.

RESEARCH REFERENCES

Am. Jur. 2d.
1 Am. Jur. 2d, Accountants, § 1 et seq.
Am. Jur. Pleading and Practice Forms.
1 Am. Jur. Pleading and Practice Forms, Accountants, § 3.

C.J.S.
1 C.J.S., Accountants, § 1 et seq.

43-3-2. Definitions.

As used in this chapter, the term:

(1) "Any other state" means the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, the Commonwealth of the Northern Marianas Islands, Guam, or a state other than Georgia.

(2) "Attest" means providing the following public accountancy services:

(A) Any audit to be performed in accordance with the professional standards adopted by the board's rules or regulations;

(B) Any review of a financial statement to be performed in accordance with the professional standards adopted by the board's rules or regulations;

(C) Any examination of prospective financial information to be performed in accordance with the professional standards for attestation engagements adopted by the board's rules or regulations;

(D) Any engagement to be performed in accordance with the professional standards related to public companies adopted by the board's rules or regulations; and

(E) Any examination, review, or agreed upon procedures engagement to be performed in accordance with the professional standards adopted by the board's rules or regulations, other than an examination of prospective financial information as described in subparagraph (C) of this paragraph.

(3) "Board" means the Georgia State Board of Accountancy.

(4) "Compilation" means providing a service to be performed in accordance with professional standards adopted by the board's rules or regulations that presents information in the form of financial statements that are the representation of management or owners without undertaking to express any assurance as to the statements.

(5) "CPA" means certified public accountant.

(6) "Executive director" means the individual appointed by the board to serve as the chief executive officer of the board.

(7) "Firm" means any proprietorship, partnership, corporation, association, or any other legal entity which is practicing public accountancy.

(8) "Peer review" means a study, appraisal, or review of one or more aspects of the professional work of a licensee that provides attest or compilation services, by a licensee who is not affiliated with the individual or firm being reviewed.

(9) "Practice of public accountancy" or "practicing public accountancy" means offering to perform or performing attest or compilation services or while holding oneself out in such manner as to state or imply that one is a licensee, offering to perform or performing for an individual or entity services involving:

(A) The use of accounting or auditing skills;

(B) Management advisory or other consulting services;

(C) The preparation of tax returns; or

(D) The furnishing of advice on tax matters.

(10) "Report" when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. Such term includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(11) "State Accounting Office" means the office created under Code Section 50-5B-1.

History.

Code 1933, § 84-202, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1993, p. 123, § 6; Ga. L. 2008, p. 1112, § 2/HB 1055; Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 1/HB 246.

43-3-3. Georgia State Board of Accountancy; powers and duties; executive director; venue.

(a) The State Board of Accountancy on June 30, 2014, is continued in existence as the Georgia State Board of Accountancy, and members serving on the State Board of Accountancy on June 30, 2014, shall continue to serve out his or her term of office on the Georgia State Board of Accountancy and until his or her respective successors are appointed and qualified.

(b) The board shall have all of the duties, powers, and authority granted by or necessary for the enforcement of this chapter.

(c) On and after July 1, 2014, the board shall be an attached agency for administrative purposes only to the State Accounting Office and shall not be considered a division as such term is defined in Code Section 43-1-1. The board shall neither be under the jurisdiction of the Secretary of State nor be under the direction of the director of the Professional Licensing Boards Division of the Secretary of State. The board shall not be subject to the provisions of Chapter 1 of this title.

(d) The board shall fix the compensation of an executive director. The executive director shall serve at the pleasure of the board. The executive director shall have those duties and powers prescribed by the board as further set forth in Code Section 43-3-6.

(e) The venue of any action involving members of the board shall be the county in which is found the primary office of the State Accounting Office. The executive director shall not be considered a member of the board in determining the venue of any such action, and no court shall have jurisdiction over any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

History.
Code 1981, § 43-3-3, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 2/HB 246.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-3 as present Code Section 43-3-4.

43-3-4. Membership of board; terms; removal; expense reimbursement.

(a) The board shall consist of seven members, to be appointed by the Governor with the approval of the Senate. Any such appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate. Each member of the board shall be a resident of this state. Six members of the board shall be certified public accountants, all of whom shall be licensed in this state. One member of the board shall be appointed from the public at large and shall be an

individual to whom neither this state nor any other state has ever issued a certificate, registration, license, or permit to engage in the practice of public accountancy.

(b) Each member of the State Board of Accountancy in office on June 30, 2014, shall remain in office until the expiration of his or her term and the appointment and approval of his or her successor.

(c) Any appointment or reappointment of board members shall be for a period of four years. The remaining portion of any unexpired term shall be filled by appointment by the Governor with the approval of the Senate. Upon the expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed and qualified.

(d) No member of the board shall serve as such for more than two terms, consecutive or otherwise; and, for purposes of calculating the number of terms served, the filling of an unexpired term or terms for a total of more than 30 calendar months shall be treated as the serving of a full term.

(e) Any member of the board may be removed by the Governor for misconduct, incompetence, neglect of duty, or inability to perform the duties required of members. The membership on the board of any member whose license in this state has expired and has not been renewed, has become void, or has been revoked or suspended shall be automatically terminated simultaneously with any such expiration, voiding, revocation, or suspension.

(f) Each member of the board may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a vehicle as that received by other employees of this state or a travel allowance of actual transportation costs if traveling by public carrier. Each board member may be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member subject to the approval of the executive director. For each day's service in any other state as a board member, such member may receive actual expenses as an expense allowance. Expense vouchers submitted by board members shall be subject to approval by the executive director. A board member's travel outside of this state shall be allowed if such travel was approved by the executive director.

History.

Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, § 84-201, enacted by Ga. L. 1935, p. 85, § 1; Ga. L. 1943, p. 363, § 1; Ga. L. 1958, p. 216, § 1; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1980, p. 65, § 1; Code 1981, § 43-3-3; Ga. L. 1983, p. 559, § 1; Ga. L. 2005, p. 1030, § 1/SB 55; Code 1981, § 43-3-4, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effec-

tive July 1, 2014, redesignated former Code Section 43-3-4 as present Code Section 43-3-5.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-3-5. Chairperson and secretary of board; meetings; seal; records of proceedings; appointment of committees and employees.

(a) The board shall elect annually a chairperson from its members.

(b) The executive director shall serve as secretary of the board.

(c) The chairperson shall determine the date, time, and location of board meetings. Board meetings shall be held at the site of the primary office of the State Accounting Office unless otherwise specified by the chairperson. The chairperson shall provide three days' notice of any meeting; provided, however, that notice may be waived by instrument in writing executed before or after the meeting; provided, further, that attendance at a meeting of the board shall constitute a waiver of notice thereof. The chairperson may delegate the responsibility of setting the location, date, and time of board meetings and providing notice of meetings to the executive director. Board meetings may be conducted by audio or video conference calls, and participation in such a conference call shall constitute attendance at the meeting so conducted. Any action that might have been taken at a meeting of the board may be taken by the unanimous written consent of all members of the board.

(d) A majority of the members of the board shall constitute a quorum for the transaction of business of the board.

(e) The board shall have a seal which shall be judicially noticed.

(f) The board shall preserve all applications and keep records of all of its proceedings for six years. In any proceeding in court, civil or criminal, arising out of or founded upon this chapter, copies of the records of the board's proceedings signed by a member of the board and certified as correct under the seal of the board by the executive director shall be admissible in evidence in any court of this state without further proof.

(g) The board may appoint such committees or persons, who need not be members of the board, to advise or assist it in administration, investigation, and enforcement of the provisions of this chapter as the board deems necessary and shall be authorized to compensate any such

persons or members of committees who are not members of the board in such amounts as it shall determine to be reasonable.

History.

Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, §§ 84-203, 84-204, enacted by Ga. L. 1935, p. 85, §§ 3, 4; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-4; Ga. L. 1988, p. 1616, § 1; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-3-5, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 3/HB 246.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-5 as present Code Section 43-3-8.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-1.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-3-6. Duties of executive director.

(a) The executive director shall:

(1) Be a full-time employee of the State Accounting Office and shall serve as the secretary of the board. He or she shall be an individual of good moral character and shall possess such qualifications as the board may require;

(2) Take an oath to discharge faithfully the duties of the office;

(3) Keep all records related to the board;

(4) With the approval of the board, employ and fix the compensation of individuals as deemed necessary to assist in the duties of the board. If an employee will serve as an investigator, he or she shall have a level of experience or knowledge of the area of practice needing to be examined or investigated, including but not limited to accounting, auditing, and taxes, that is acceptable to the board;

(5) Schedule the time and location for all examinations and hearings;

(6) Maintain a schedule of all meetings and hearings of the board that shall be available for public review; and

(7) Make a report to the Governor on or before the second Tuesday in January of each year covering the activities of the board for the previous calendar year, which shall be made available to any member of the General Assembly upon request.

(b) With the approval of the board, the executive director may contract with any person or agency who is not an employee of the State Accounting Office to implement any provision of this chapter and to fulfill the responsibilities of the board.

(c) The executive director and other board employees shall be allowed reimbursement for travel and other expenses necessarily incurred in the performance of their duties in the same manner as other employees of this state and shall receive payment of the same in the manner provided for the board.

History.
Code 1981, § 43-3-6, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 5, § 43/HB 90; Ga. L. 2015, p. 325, § 4/HB 246.
Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-6 as present Code Section 43-3-9.
Ga. L. 2015, p. 5, § 54(e)/HB 90, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to paragraph (a)(5) of this Code section by Ga. L. 2015, p. 5, § 43/HB 90, was not given effect.

43-3-7. Fees authorized.

The board by rule or regulation shall be authorized to charge an examination fee, license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged by rule or regulation. Fees shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the board shall approximate the total of the direct and indirect costs for the operation of the board. Fees may be refunded for good cause, as determined by the executive director.

History.
Code 1981, § 43-3-7, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-7 as present Code Section 43-3-10.

43-3-8. Rules and regulations; notice; hearings.

(a) The board may promulgate and amend, from time to time, such rules or regulations, consistent with this chapter and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," as it deems consistent with or required for the public welfare, for the administration of any provision of this chapter, or for the orderly conduct of the board's affairs. Such rules or regulations may include, without limiting the generality of the foregoing:

(1) Procedure for governing the conduct of matters before the board;

(2) Professional conduct for establishing and maintaining high standards of competence and integrity in the practice of public accountancy;

(3) Continuing professional education requirements for licensure as a certified public accountant;

(4) Governance of individuals or firms engaged in this state in the practice of public accountancy;

(5) Governance of firms established or maintained for the practice of public accountancy in this state and the conditions upon which licensure shall be granted, including any requirements that the board may deem necessary to monitor the practice of public accountancy to determine whether acceptable standards of competence and integrity in the practice of public accountancy are being maintained; and

(6) Any and all other rules or regulations which the board deems necessary or appropriate in exercising its functions under this chapter.

(b) The board shall adopt rules or regulations setting the professional standards in performing attest and compilation services, taking into account the American Institute for Certified Public Accountants Statements on Auditing Standards, the Statements on Standards for Accounting and Review Services, the Statements on Standards for Attestation Engagements, and the standards of the Public Company Accounting Oversight Board.

(c) Prior to the adoption, amendment, or repeal of any rule or regulation, the board shall give notice of its intended action in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In connection with any rule-making proceeding, formal or informal, the board shall have the power to conduct hearings as provided in, and in accordance with, Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." No such notice shall be required prior to the adoption, amendment, or repeal of any interpretive rules, regulations, or general statements of policy, provided that such rules, regulations, or general statements shall be advisory only.

History.

Code 1933, § 84-202, enacted by Ga. L. 1935, p. 85, § 2; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-5; Ga. L. 1988, p. 1616, § 2; Ga. L. 1993, p. 123, § 7; Code 1981, § 43-3-8, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.

This Code section formerly pertained to oral examinations for certified public accountants; permanent record of examinations. The former Code section was based on Code 1933, § 84-208, enacted by Ga. L. 1935, p. 85, § 8; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga.

L. 1983, p. 559, § 4; Ga. L. 1989, p. 1098, § 2; Ga. L. 1995, p. 1302, § 13, and was repealed and reserved by Ga. L. 2002, p. 863, § 3, effective July 1, 2003.

Administrative rules and regulations.

Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Accountancy, Chapter 20-1 et seq.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-3-9. Requirements for certificate of certified public accountant; disclosure of commissions from sale of insurance or financial products.

(a) As used in this Code section, the term "good moral character" means fiscal integrity and a lack of any history of acts involving dishonesty or moral turpitude.

(b) The certificate of certified public accountant shall be granted by the board to any individual:

(1) Who has attained the age of 18;

(2) Who is, in the opinion of the board, of good moral character;

(3) Who meets the following requirements of education and experience:

(A)(i) Presentation to the board of such evidence as it may require that the applicant has received a baccalaureate degree or completed the requirements therefor, conferred by a college or university accredited by a national or regional accrediting organization recognized by the board, with a concentration in accounting or what the board determines to be the substantial equivalent of an accounting concentration, or with a nonaccounting concentration supplemented by what the board determines to be the substantial equivalent of an accounting concentration, including related courses in other areas of business administration.

(ii) After January 1, 1998, any individual who has not previously sat for the uniform written examination for the certificate of certified public accountant must have completed a total of 150 semester hours or 225 quarter hours of college education, including a baccalaureate degree awarded by a college or university accredited by either a national or regional accrediting organization recognized by the board. The total educational program shall

include an undergraduate accounting concentration as defined by the board or what the board determines to be the substantial equivalent of an undergraduate accounting concentration; and

(B) One year of continuous experience in the accounting field relevant to the practice of public accountancy immediately preceding the date of application for the certificate or within a reasonable time prior to the date of such application as provided by the board by rule or regulation; provided, however, that the board may promulgate rules or regulations stating certain circumstances which shall constitute acceptable breaks in the continuity of such experience; provided, further, that the board may accept, in lieu of such year of experience in public accounting, evidence satisfactory to it of one year of continuous employment in the accounting field in industry, business, government, or college teaching; any combination of employment in such fields; or any combination of employment in such fields and the practice of public accountancy immediately preceding the date of application for the certificate or what the board determines to be the equivalent thereof; and provided, further, that any individual certificated as a certified public accountant under the laws of this state on July 1, 1977, shall be deemed to have the experience in the practice of public accountancy required by this subparagraph; and

(4) Who shall have passed an examination approved by the board in such related subjects as the board deems appropriate.

(c) If the board determines that an applicant lacks good moral character, the board may refuse to certify an applicant when it finds by a preponderance of the evidence that there is a substantial connection between the lack of good moral character of the applicant and the potential professional responsibilities of such applicant. When an applicant is found to be unqualified for a certificate because of lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board and a complete listing of the evidence upon which the determination was based, and the applicant may request a hearing on that determination.

(d) Any individual or firm who holds a license as a certified public accountant and who is engaged in the sale of insurance or financial products for which such individual or firm receives commissions shall disclose in writing to the client the fact that the individual or firm will receive commissions from the sale to the client of any such insurance or financial products; provided, however, that the individual or firm shall not be required to disclose the actual amount of such commissions.

History. Ga. L. 1908, p. 86, § 1; Civil Code 1910, § 1995; Code 1933, § 84-201; Code 1933, §§ 84-207, 84-208, enacted by Ga. L.

1935, p. 85, §§ 7, 8; Ga. L. 1943, p. 363, § 2; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-6; Ga. L. 1983, p. 559, § 2; Ga. L. 1991, p. 371, § 1; Ga. L. 2002, p. 863, § 1; Ga. L. 2008, p. 1112, § 3/HB 1055; Code 1981, § 43-3-9, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 5/HB 246.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-9 as present Code Section 43-3-11.

Administrative rules and regulations.

Examinations, application for certificates, and temporary permits — certified public accountants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

OPINIONS OF THE ATTORNEY GENERAL

CPA applying for license must meet present requirements. — An individual who first qualified as a certified public accountant several years ago, but failed to apply for a license until now, must meet the present requirements for licensure. 1980 Op. Att'y Gen. No. 80-98.

43-3-10. Examinations for certified public accountants.

(a) The board may provide, by rule or regulation, for the general scope of the examination described in paragraph (4) of subsection (b) of Code Section 43-3-9. The board may approve the examination and obtain advice and assistance in providing for and grading such examination and the executive director, with approval of the board, may contract with third parties to perform administrative services with respect to the examination as he or she deems appropriate.

(b) As a prerequisite to sit for the examination, applicants shall meet the education requirements provided in division (b)(3)(A)(ii) of Code Section 43-3-9.

(c) An applicant for the certificate of certified public accountant who has successfully completed the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 shall not use the CPA title or hold himself or herself out as a certified public accountant until he or she has the requisite education and experience and has received his or her certificate and license as a certified public accountant.

(d) The board, by rule or regulation, may provide for granting a credit to any applicant for satisfactory completion of an examination in any one or more of the subjects provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 given by the licensing authority in any other state. Such rules or regulations shall include such requirements as the board deems appropriate to ensure that any examination approved as a basis for any such credit, in the judgment of the board, shall be at least as thorough as the examination approved by the board at the time of the granting of such credit.

(e) The board, by rule or regulation, may prescribe the time and

conditions under which an applicant may retain credit for a portion or portions of the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9.

History.
Code 1933, § 84-205, enacted by Ga. L. 1935, p. 85, § 5; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-7; Ga. L. 1983, p. 559, § 3; Ga. L. 1989, p. 1098, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 2; Code 1981, § 43-3-10, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
This Code section formerly pertained to temporary certified public accountant certificates. The former Code section was based on Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 5, and was repealed and reserved by Ga. L. 1989, p. 1098, § 3, effective July 1, 1989.

Administrative rules and regulations.
Examinations, application for certificates, and temporary permits — certified public accountants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

43-3-11. Certificate holder as "certified public accountant" or "public accountant".

Any individual who has received a certificate as a certified public accountant from the board and who holds a license may be styled and known as a "certified public accountant." Any certified public accountant may also be known as a "public accountant."

History.
Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-9; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-3-11, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-11 as present Code Section 43-3-12.

43-3-12. Reciprocity for certified public accountants.

The board, in its discretion, may waive the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 and may issue a certificate as a certified public accountant to any individual who possesses the qualifications specified in paragraphs (1) and (2) of subsection (b) of Code Section 43-3-9 and what the board determines to be the substantial equivalent of the qualifications under paragraph (3) of subsection (b) of Code Section 43-3-9 and who is a holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any other state; provided, however, that the certificate held by such individual was issued by any other state after an examination which, in the judgment of the board, is the equivalent of the standard established by the board for examinations administered pursuant to paragraph (4) of subsection (b) of Code Section 43-3-9; and provided, further, that such privileges are extended to citizens of this state by any other state that originally granted the certificate. Notwith-

standing the foregoing, the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 shall be waived by the board in the case of an applicant who has been engaged in public practice for a period of ten years in any other state pursuant to the authority of such state.

History.
Code 1933, § 84-209, enacted by Ga. L. 1935, p. 85, § 9; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-11; Ga. L. 1983, p. 559, § 6; Code 1981, § 43-3-12, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-12 as present Code Section 43-3-13.

43-3-13. Individuals holding certified public accountant certificates, live permits, or licenses as of July 1, 2014.

Individuals who hold certified public accountant certificates, live permits, or licenses issued prior to July 1, 2014, under the laws of this state as they existed on June 30, 2014, shall not be required to undergo recertification or relicensure under this chapter but shall otherwise be subject to all applicable provisions of this chapter. Such certificates, live permits, and licenses issued prior to July 1, 2014, shall be considered certificates, live permits, and licenses issued under and subject to this chapter for all purposes.

History.
Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-12; Ga. L. 1982, p. 3, § 43; Code 1981, § 43-3-13, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
This Code section formerly pertained to registered public accountants certified as certified public accountants. The former Code section was based on Code 1933, § 84-207, enacted by Ga. L. 1935, p. 85, § 7; Ga. L. 1943, p. 363, § 3; Ga. L. 1964, p. 723, § 3; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 7; Ga. L. 2002, p. 863, § 4; Ga. L. 2005, p. 1030, § 2/SB 55, and was repealed by Ga. L. 2014, p. 136, § 1-2/HB 291.

43-3-14. Application for certification by nonresidents.

Application for certification by individuals who are not residents of this state shall constitute the appointment of the executive director as the agent for service of process in any action or proceeding against such applicant arising out of any transaction, activity, or operation connected with or incidental to the practice of public accountancy in this state by such nonresident holders of certified public accountant certificates.

History.
Code 1981, § 43-3-14, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
This Code section formerly pertained to examinations for registered public accountants. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 559, § 8; Ga. L. 1989, p. 1098, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 5, and was repealed by Ga. L. 2005, p. 1030, § 3, effective July 1, 2005.

43-3-15. Foreign registered accountant.

Notwithstanding any other provision of this chapter, on and after July 1, 2015, each foreign registered accountant who holds a license from the board and who is in good standing shall be certificated as a certified public accountant. On and after July 1, 2015, the board shall not consider any application for a foreign registered accountant.

History.
Code 1933, § 84-211, enacted by Ga. L. 1935, p. 85, § 11; Ga. L. 1958, p. 216, § 2; Ga. L. 1964, p. 723, § 2; Ga. L. 1968, p. 1232, § 1; Code 1933, § 84-206, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, 43-3-20; Ga. L. 1989, p. 1098, § 7; Code 1981, § 43-3-15, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 6/HB 246.
Editor's notes.
This Code section formerly pertained to oral examinations for registered public accountants; permanent record of examinations. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 9; Ga. L. 1989, p. 1098, § 5; Ga. L. 1995, p. 1302, § 13, and was repealed by Ga. L. 2002, p. 863, § 6, effective July 1, 2003.

43-3-16. Licensure requirements for firms practicing public accountancy.

(a) The board shall grant or renew the license of a firm practicing public accountancy to firms that meet the following requirements:

(1)(A) Partners, members, or shareholders owning at least a simple majority of the financial interest and voting rights of the firm shall be certified public accountants of this state or any other state in good standing, except that such partners, members, or shareholders who are certified public accountants and whose office location designated by such partners, members, or shareholders who are certified public accountants for purposes of substantial equivalency and reciprocity is in this state and who perform accounting services in this state shall be required to hold a license from this state.

(B) An individual who has substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who performs services for which a firm licensure is required under paragraph (4) of subsection (b) of Code Section 43-3-18 shall not be required to obtain a certificate or license under this chapter;

(2) The firm shall be in compliance with all requirements and provisions of law governing the organizational form of the firm in any other state that is the firm's office location designation for purposes of substantial equivalency and reciprocity;

(3) The firm shall comply with all rules or regulations pertaining to firms licensed by the board;

(4) The resident manager, as such term is defined in the board's rules or regulations, of each office of the firm within this state in the practice of public accountancy shall be a certified public accountant of this state in good standing;

(5) Any firm that includes nonlicensee owners shall comply with the following rules:

(A) The firm shall designate the holder of a license in this state, or in the case of a firm which is required to be licensed pursuant to subparagraph (b) (1) (C) of this Code section, a licensee of any other state who meets the substantial equivalency practice privileges requirements set forth in subsection (b) of Code Section 43-3-18, who shall be responsible for the proper licensure of the firm and shall identify that individual to the board;

(B) All nonlicensee owners shall provide services or perform functions in the firm or the firm's affiliated entities; and

(C) The firm shall comply with such other requirements as the board may impose by rule or regulation;

(6) Any holder of a license in this state and any individual who qualifies for substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set by the board for such services; and

(7) Any holder of a license in this state and any individual who qualifies for substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set by the board.

(b)(1) The following firms shall be required to be licensed under this Code section:

(A) Any firm with a physical office in this state practicing public accountancy;

(B) Any firm with a physical office in this state that uses the title "CPA" or "CPA firm"; and

(C) Any firm that does not have a physical office in this state but performs any service described in subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 for a client that specifies a location in this state to which such service is directed.

(2) A firm that does not have a physical office in this state may perform services described in subparagraphs (B) and (E) of paragraph (2) or paragraph (4) of Code Section 43-3-2 for a client that specifies a location in this state to which any service described in subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 is directed and may use the title "CPA" or "CPA firm" without being licensed as provided in this Code section only if:

(A) It meets the qualifications described in paragraph (1) of subsection (a) of this Code section;

(B) It complies with the board's rules or regulations regarding peer review; and

(C) It performs such services through an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18.

(3) A firm that does not have a physical office in this state and that is not subject to the requirements of subparagraph (C) of paragraph (1) or paragraph (2) of this subsection may perform other professional services, as such services are defined in the board's rules or regulations, included in the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without being licensed under this Code section only if:

(A) It performs such services through an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18; and

(B) It can lawfully perform such services in any other state where such individuals with substantial equivalency practice privileges have their office location designated by such individuals for purposes of substantial equivalency and reciprocity.

(c) Each firm required to be licensed under paragraph (1) of subsection (b) of this Code section shall be licensed biennially under this chapter with the board, provided that any firm for which such requirement becomes effective between biennial reporting periods shall become licensed with the board within 60 days. Such a firm shall be required to show that all attest and compilation services rendered in this state are under the supervision of an individual holding a license issued by the board or an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18. The board, by rule or regulation, shall prescribe the procedure to be followed

in effecting such licensure and the information which shall be required to be provided regarding the firm and its practice.

(d) A licensed firm shall file written notice to the board, within 60 days after the occurrence of the opening of a new office or the closing or change of address of any of its offices in this state. Each such office shall be under the supervision of a resident manager who may be a partner, principal, shareholder, member, or a staff employee holding a license in this state.

(e) Neither the denial of a firm license under this Code section nor the denial of the renewal of a firm license under Code Section 43-3-17 shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant shall be allowed to appear before the board if he or she requests.

History.

Code 1933, § 84-207, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-21; Ga. L. 1993, p. 123, § 8; Ga. L. 1997, p. 1545, § 1; Ga. L. 2005, p. 1030, § 7/SB 55; Ga. L. 2008, p. 1112, § 4/HB 1055; Code 1981, § 43-3-16, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 7/HB 246.

Editor's notes.

This Code section formerly pertained to certificate holder as "registered public accountant", list of registered public accountants, and periodic registration. The former Code section was based on Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2000, p. 1706, § 19, and was repealed by Ga. L. 2005, p. 1030, § 4, effective July 1, 2005.

Administrative rules and regulations.

Corporations for the practice of public accounting, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-6.

Individuals, partnerships, associations and corporations composed of certified public accountants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-7.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-2 are included in the annotations for this Code section.

State Board of Accountancy cannot prescribe place of office of accountant who has been certified. 1954-56 Ga. Op. Att'y Gen. 532 (decided under former Code 1933, Ch. 84-2).

RESEARCH REFERENCES

ALR.

Right of corporation to engage in business, trade, or activity requiring license from public, 165 A.L.R. 1098.

43-3-17. Renewal of firm license.

(a) In each renewal year, each firm licensed in this state pursuant to Code Section 43-3-16 which has issued an attest or compilation report

within the 24 months preceding the date of expiration of the firm's license shall submit, with the application for renewal, evidence of satisfactory completion of a board approved peer review within the 36 months preceding the date of such firm's license expiration. Satisfactory completion shall mean that the firm has undergone the entire peer review process and that the report of the peer review indicates that the firm maintains acceptable standards of competence and integrity in the practice of public accountancy. Firms which have not issued an attest or compilation report within the 24 months preceding the date of the firm's license expiration shall submit written confirmation of such fact with the application for the firm's license renewal. The board may waive or modify the requirements of this subsection in cases of hardship or other such circumstances which the board deems appropriate. The provisions of this subsection shall not apply to the practice of an enrolled agent before the federal Internal Revenue Service or the Department of Revenue if the enrolled agent is not otherwise engaged in the practice of public accountancy in this state.

(b) No firm shall be licensed in this state which shall have failed to comply with the provisions of this Code section, applicable requirements of law, and rules or regulations promulgated by the board.

(c) This Code section shall be construed to apply only to firms required to be licensed under this chapter.

History.

Code 1981, § 43-3-23.1, enacted by Ga. L. 1988, p. 1616, § 3; Code 1981, § 43-3-23, as redesignated by Ga. L. 1997, p. 1545, § 3; Code 1981, § 43-3-17, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.

Former Code Section 43-3-23.1, relating to renewal of registration, was redesignated as Code Section 43-3-23 by Ga. L. 1997, p. 1545, § 3, effective July 1, 1998.

Former Code Section 43-3-23, based on Code 1933, § 84-209, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1993, p. 123, § 10, relating to registration of certified public accountant offices and resident managers, was repealed by Ga. L. 1997, p. 1545, § 2, effective July 1, 1998.

This Code section formerly pertained to temporary registered public accountant certificates. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 10, and was repealed by Ga. L. 1989, p. 1098, § 6, effective July 1, 1989.

43-3-18. Issuance of license to practice accountancy; substantial equivalency practice privilege for nonresidents.

(a) A license to engage in the practice of public accountancy in this state shall be issued by the executive director, at the direction of the board, to each individual who is certificated as a certified public accountant under Code Section 43-3-9 or 43-3-12 or who shall have furnished evidence, satisfactory to the board, of compliance with the continuing professional education requirements of Code Section 43-3-19, and to firms licensed under Code Section 43-3-16, provided that such firms are maintained and licensed as required under Code

Sections 43-3-16 and 43-3-17. There shall be a biennial license fee in an amount to be determined by the board.

(b) Individuals may practice under substantial equivalency practice privileges as follows:

(1) An individual whose office location designation by such individual for purposes of substantial equivalency and reciprocity is in any other state shall be presumed to have qualifications substantially equivalent to this state's requirements, shall have all the privileges of license holders of this state, and may practice public accountancy in this state without the requirement to obtain a license under this chapter or to otherwise notify the board or pay any license fee if the individual:

(A) Holds a current license as a certified public accountant from any other state which requires, as a condition of licensure, that an individual:

(i) Has at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(ii) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(iii) Possesses at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be obtained through government, industry, academic, or public practice all of which was verified by a licensee; or

(B) Holds a current license as a certified public accountant from any other state which does not meet the requirements of subparagraph (A) of this paragraph but such individual's certified public accountant qualifications are substantially equivalent to those requirements. Any individual who passed the Uniform Certified Public Accountant Examination and holds a current license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in division (1)(A)(i) of this subsection for purposes of this subparagraph;

(2) Notwithstanding any other provision of law, an individual who offers or renders professional services, as such services are defined in the board's rules or regulations, whether in person or by mail, telephone, or electronic means, under this Code section shall be granted substantial equivalency practice privileges in this state and no notice, license, fee, or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of paragraph (3) of this subsection;

(3) An individual licensee of any other state exercising the privilege afforded under this subsection, and any firm that employs such individual, shall simultaneously consent, as a condition of exercising this privilege:

(A) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(B) To comply with the provisions of this chapter and the board's rules or regulations;

(C) That in the event the individual's license issued by any other state designated by such individual for purposes of substantial equivalency and reciprocity is not current, the individual shall cease practicing public accountancy in this state individually and on behalf of a firm; and

(D) To the appointment of the board that issued the individual's license as the individual's agent upon whom process may be served in any action or proceeding by this state's board against the individual;

(4) An individual who qualifies for the substantial equivalency practice privileges under this Code section who, for a client who specifies a location in this state to which any service under subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 is directed, may only perform such services through a firm that is licensed with the board under Code Section 43-3-16; and

(5) An individual qualifying for the substantial equivalency practice privileges under paragraph (1) of this subsection may provide expert witness services in this state and shall be deemed to be in compliance with Code Section 24-7-702 for purposes of such services.

(c) Subsection (b) of this Code section shall not be applied or construed to allow an individual to engage in the practice of public accountancy in this state based on substantial equivalency practice privileges unless such individual holds a current license as a certified public accountant in any other state which grants similar reciprocity to license holders in this state.

History.

Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-24; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1030, § 8/SB 55; Ga. L. 2008, p. 1112, § 5/HB 1055; Ga. L. 2011, p. 99, § 64/HB 24; Code 1981, § 43-3-18, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 8/HB 246.

Editor's notes.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

This Code section formerly pertained to reciprocity for registered public accoun-

tants. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 11, and was repealed by Ga. L. 2005, p. 1030, § 5, effective July 1, 2005.

Administrative rules and regulations.

Examinations, application for certificates, and temporary permits — certified public accountants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-3-19. Continuing professional education requirements.

(a) When an individual for one year or more has been certificated as a certified public accountant and has maintained licensure under such status, his or her application for renewal of a license shall be accompanied or supported by such evidence as the board shall prescribe of satisfactory completion of continuing professional education as provided in this Code section, provided that the board may relax or suspend requirements of continuing professional education in instances where an applicant's health requires it or in instances of individual hardship.

(b) The board shall be authorized to promulgate rules or regulations providing for continuing professional education which shall include:

(1) The number of hours of acceptable continuing professional education, which shall not be less than 60 hours, required to renew a license;

(2) The assignment of credit for hours in excess of the minimum continuing professional education requirement;

(3) The proration of required continuing professional education hours;

(4) Criteria for continuing professional education programs;

(5) Accreditation of continuing professional education programs; and

(6) The assignment of credits for participation in continuing professional education programs.

(c) All provisions of this chapter relating to continuing professional education shall be administered by the board; and, in addition to the other powers conferred on the board by this chapter, the board shall have the authority to appoint a committee or committees composed of certified public accountants, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter

relating to continuing professional education. The board may enter into agreements with sponsors to provide continuing professional education.

(d) Any licensee who has attained the age of 70 shall be exempt from the continuing professional educational requirements of this Code section and paragraph (1) of Code Section 43-3-24.

History.

Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-25; Ga. L. 1989, p. 1098, § 8; Ga. L. 2005, p. 1030, § 9/SB 55; Code 1981, § 43-3-19, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 9/HB 246.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2014, "certified public accountant" was substituted for "certified public account" near the beginning of subsection (a).

Editor's notes.

This Code section formerly pertained to persons holding registered public accountant certificates as of July 1, 1977. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1, and was repealed by Ga. L. 2005, p. 1030, § 6, effective July 1, 2005.

Administrative rules and regulations.

Continuing professional education, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-11.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

43-3-20. Investigations; admissibility of records; filing of complaint; immunity; hearing.

(a) The executive director shall be vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, electronically stored information, or other material relating to the fitness of any licensee or applicant. The executive director or his or her appointed representative may issue subpoenas to compel access to any writing, document, electronically stored information, or other material upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of public accountancy may have occurred.

(b) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the executive director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or licensing authority.

(c) If a licensee is the subject of a board inquiry, all records relating

to any person who receives services rendered by such licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has occurred, regardless of any statutory privilege; provided, however, that any documentary or electronic evidence relating to a person who received such services shall be reviewed in camera and shall not be subject to Article 4 of Chapter 18 of Title 50.

(d) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel for such licensee or applicant.

(e) An individual may file a complaint against a licensee or applicant by submitting his or her complaint to the board or the executive director. When a complaint is filed, within 30 days after the conclusion of the investigation of such complaint, the executive director shall notify the complainant of the disposition of such complaint. In addition, the executive director shall upon request by the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(f) An individual, firm, association, authority, or other entity shall be immune from civil liability and criminal prosecution for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of this chapter relating to a licensee's or applicant's fitness to practice a business or profession licensed under this chapter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any individual who testifies or makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of this chapter relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil liability and criminal prosecution for so testifying.

(g) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the licensee or applicant shall be allowed to appear before the board if he or she so requests. The board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any individual except the licensee or applicant.

(h) If a licensee or applicant after reasonable notice fails to appear at any hearing of the board for such licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the executive director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the executive director, or his or her designee, shall be deemed to be service upon the licensee or applicant.

(i) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of such license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license in the practice of public accountancy and, as a condition thereof, may impose any disciplinary sanction provided by this chapter.

(j) Regulation by the board under this chapter shall not exempt the practice of public accountancy from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(k) For purposes of this Code section, the board may obtain, through subpoena by the executive director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

History.
Code 1981, § 43-3-20, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 10/HB 246.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-20 as present Code Section 43-3-15.

43-3-21. Revocation or refusal to grant or renew license; immunity.

(a) The board may refuse to grant a license to an applicant, revoke any license issued by the board, discipline a licensee, or forbid an individual from exercising the substantial equivalency practice privileges for any one or any combination of the following causes:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications or standards, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of public accountancy or on any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice public accountancy; made a false statement or deceptive registration with the board; or engaged in dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) Had been convicted of any felony or crime involving moral turpitude in the courts of this state, any other state, a territory, or a country or in the courts of the United States. As used in this paragraph, the term:

(A) "Conviction" means and includes a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(B) "Felony" means and includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(4)(A) Had been arrested, charged, and sentenced for the commission of any felony or crime involving moral turpitude when:

(i) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(ii) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

(B) An order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime.

(C) As used in this paragraph, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere;

(5) Had his or her license to practice public accountancy revoked, suspended, or annulled by any lawful licensing authority other than

the board; had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice public accountancy under this chapter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not result in actual injury to any person or be directly related to the practice of public accountancy but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of public accountancy;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice public accountancy or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a law or any rule or regulation of the board, this state, any other state, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which law or rule or regulation relates to or in part regulates the practice of public accountancy, when the licensee or applicant knows or should have known that such action is violative of such law or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Had been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended so long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice under this chapter with reasonable skill and safety to the public or has become unable to practice public accountancy with reasonable skill and safety to the public by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Failed to comply with an order for child support pursuant to Code Section 19-11-9.3; it shall be incumbent upon the applicant or

licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may be issued or granted if all other conditions for licensure are met;

(12) Suspension or revocation of the right to practice any profession before any state or federal agency;

(13) Failure to furnish evidence of satisfaction of requirements of continuing professional education as required by the board pursuant to Code Section 43-3-19 or to meet any conditions with respect to continuing professional education which the board may have ordered under Code Section 43-3-19;

(14) Conduct which discredits the accounting profession; or

(15) Failure of such holder's firm to renew its license under Code Sections 43-3-16 and 43-3-17 or the failure of such firm to comply with any of the provisions of Code Section 43-3-17.

(b) An individual, firm, association, authority, or other entity shall be immune from civil liability and criminal prosecution for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice public accountancy or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any individual who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice public accountancy shall be immune from civil liability and criminal prosecution for so testifying.

History.

Code 1933, § 84-210, enacted by Ga. L. 1935, p. 85, § 10; Ga. L. 1950, p. 163, § 1; Code 1933, § 84-211, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-28; Ga. L. 1988, p. 1616, § 4; Ga. L. 1997, p. 1545, § 6; Ga. L. 2005, p. 1030, § 10/SB 55; Ga. L. 2008, p. 1112, § 6/HB 1055; Code 1981, § 43-3-21, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 11/HB 246.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-21 as present Code Section 43-3-16.

RESEARCH REFERENCES

ALR.

Liability of independent accountant to investors or shareholders, 54 A.L.R.2d 324; 46 A.L.R.3d 979; 92 A.L.R.3d 396; 48 A.L.R.5th 389.

Disciplinary action against attorney or

accountant for misconduct related to preparation of tax returns for others, 81 A.L.R.3d 1140.

43-3-22. Revocation, suspension, or refusal to renew firm license.

(a) After notice and hearing, as provided in Code Section 43-3-23, the board, may revoke the license to practice of a firm if at any time it does not have all the qualifications prescribed by the Code section under which it qualified for licensure.

(b) After notice and hearing as provided in Code Section 43-3-23, the board may revoke or suspend the license of a firm or may revoke, suspend, or refuse to renew its license or may censure the holder of any license for any of the following causes in addition to those enumerated in Code Section 43-3-21:

(1) The revocation or suspension of the certificate or license or the revocation, suspension, or refusal to renew the license to practice of any partner, member, or shareholder required by law to have such certificate or license as a condition to the firm's licensure;

(2) The cancellation, revocation, suspension, or refusal to renew the authority of the firm, or any partner, member, or shareholder thereof, to practice public accountancy in any other state for any cause other than voluntary withdrawal or failure to pay licensing fees in such other state; or

(3) The failure of such firm to become licensed or renew its license under Code Section 43-3-16 or the failure of such firm to comply with any of the provisions of Code Section 43-3-17.

History.
Code 1933, § 84-212, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-29; Ga. L. 1988, p. 1616, § 5; Ga. L. 1993, p. 123, § 12; Ga. L. 1997, p. 1545, § 7; Code 1981, § 43-3-22, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
This Code section formerly pertained to partnerships and professional associations composed of public accountants. The former Code section was based on Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11, and was repealed by Ga. L. 1993, p. 123, § 9, effective March 1, 1994.

43-3-23. Adjudicative hearings before board.

(a) The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

(b) Notice, rules of procedure, right to review, and any other matters arising with respect to all adjudicative hearings conducted by the board

shall be determined in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Before the board shall revoke or suspend a license, a certificate, or substantial equivalency practice privileges, it shall provide for a hearing for the holder of such license, certificate, or practice privileges in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case shall be entitled to judicial review in accordance with Chapter 13 of Title 50.

(d) Initial judicial review of a final decision of the board shall be held solely in the superior court of the county of domicile of the State Accounting Office.

History.
Code 1933, § 84-213, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-30; Ga. L. 2008, p. 1112, § 7/HB 1055; Code 1981, § 43-3-23, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-23 as present Code Section 43-3-17.

43-3-23.1. Redesignated.

Redesignated as Code Section 43-3-23, by Ga. L. 1997, p. 1545, § 3, effective July 1, 1998.

43-3-23.2 and 43-3-23.3. [Repealed]

History.
Code 1981, §§ 43-3-23.2, 43-3-23.3, Code 1981, § 43-3-23.3, enacted by Ga. L. 1988, p. 1616, § 3; repealed by Ga. L. 1997, p. 1545, § 4, effective July 1, 1998.

43-3-24. Sanctions; probation.

(a) After notice and hearing as provided in Code Section 43-3-23, the board may impose any one or more of the following sanctions in addition to the actions described in Code Sections 43-3-21, 43-3-22, and 43-3-25 for any of the causes described in Code Sections 43-3-21, 43-3-22, and 43-3-25:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite

period in connection with any condition that may be attached to the restoration of such license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding;

(8) Require the licensee to complete successfully the specific courses or types of continuing professional education as specified by the board in accordance with Code Section 43-3-19 or pass special examinations as specified by the board, all at the cost and expense of the licensee;

(9) Require the licensee or firm holding a license to submit to a preissuance review prior to the issuance of any future reports, in a manner and for a duration as set by the board by a reviewer selected by the board at the licensee's cost and expense;

(10) Require a licensee or firm holding a license to submit to a peer review of its accounting and auditing practices upon such terms and conditions as shall be determined by the board at the cost and expense of such licensee; or

(11) Impose a civil penalty pursuant to Code Section 43-3-25.

(b) In addition to and in conjunction with the actions described in subsection (a) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which may be vacated upon noncompliance with such reasonable terms as the board may impose.

History.

Code 1981, § 43-3-24, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 12/HB 246.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-24 as present Code Section 43-3-18.

43-3-24.1. Cease and desist order.

(a) Notwithstanding any other provisions of the law to the contrary, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the practice of public accountancy without a license.

(b) The violation of any cease and desist order of the board issued under subsection (a) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed $500.00 for each transaction constituting a violation thereof. Each day that a person practices in violation of this chapter shall constitute a separate violation.

(c) Initial judicial review of the decision of the board entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the board.

(d) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by law without first seeking a cease and desist order in accordance with the provisions of this Code section.

History.
Code 1981, § 43-3-24.1, enacted by Ga. L. 2015, p. 325, § 13/HB 246.

43-3-25. Civil penalty.

(a) Upon a finding by the board that an individual or firm governed by this chapter has violated any rule, regulation, or order promulgated by the board or any provision of this chapter, the board may impose a civil penalty, not to exceed $5,000.00 for each violation.

(b) In determining the amount of the penalty to impose for a violation, the board shall consider:

(1) The seriousness of the violation, including:

(A) The nature, circumstances, extent, and gravity of any prohibited act; and

(B) The hazard or potential hazard to the public;

(2) The economic damage to property caused by the violation;

(3) The history of any previous violation by the individual or firm;

(4) The amount necessary to deter a future violation;

(5) Any efforts on the part of the individual or firm to correct the violation; and

(6) Any other matter that justice may require.

(c) The board by rule or regulation may adopt a schedule for purposes of this Code section that prescribes ranges in the amounts of civil penalties to be imposed for specified types of conduct and circumstances.

History.
Code 1981, § 43-3-25, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-25 as present Code Section 43-3-19.

43-3-25.1. Confidentiality of applicant information.

(a) The following shall be available to the board and the board's employees and agents, but shall be treated as confidential, not subject to Article 4 of Chapter 18 of Title 50, and shall not be disclosed without the approval of the board:

(1) Applications and other personal information submitted by applicants, except to the applicant;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant; and

(3) Examination questions and other examination materials.

(b) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes, shall be treated as confidential and not subject to Article 4 of Chapter 18 of Title 50; provided, however, that such deliberations may be released only to a federal enforcement agency or licensing authority or any other state's enforcement agency or licensing authority.

(c) Releasing the documents pursuant to this Code section shall not subject any otherwise privileged documents to the provisions of Article 4 of Chapter 18 of Title 50.

History.
Code 1981, § 43-3-25.1, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 14/HB 246.

43-3-26. Authority of executive director to provide information regarding past or pending investigation of applicant.

The executive director shall be authorized to provide to any licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure by the board or licensee of the board notwithstanding the provisions of subsection (b) of Code

Section 43-3-20 or any other law to the contrary regarding the confidentiality of that information; provided, however, that such information shall only be shared after receiving written confirmation from the recipient authority that it assures preservation of confidentiality and the licensee has been given reasonable notice that the information shall be provided to another entity. Nothing in this chapter shall be construed to prohibit or limit the authority of the executive director to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure by the board.

History.
Code 1981, § 43-3-26, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
This Code section formerly pertained to extension of time for compliance with licensing requirements. The former Code section was based on Ga. L. 1980, p. 1543, § 1, and was repealed by Ga. L. 1983, p. 559, § 13, effective March 15, 1983.

43-3-27. Notification of conviction; time limit; suspension.

(a) Any individual issued a license or certification under this chapter or providing services under substantial equivalency practice privileges and convicted under the laws of this state, the United States, any other state, or any other country of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-1-19 shall be required to notify the board of such conviction within 30 days of such conviction. The failure of such individual to notify the board of a conviction shall be considered grounds for revocation of his or her license or other authorization issued pursuant to this chapter.

(b) The board may not suspend the license of an individual because he or she is a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

History.
Code 1981, § 43-3-27, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2019, p. 462, § 1-13/SB 214.
Editor's notes.
This Code section formerly pertained to biennial inactive status licenses. The former Code section was based on Ga. L. 1980, p. 1543, § 1, and was repealed by Ga. L. 1983, p. 559, § 14, effective March 15, 1983.

43-3-28. Reinstatement or modification of a revoked or suspended license.

Upon written application after a hearing pursuant to Chapter 13 of

Title 50, the "Georgia Administrative Procedure Act," the board may recertificate a certified public accountant whose certification has been revoked or may reissue or modify the suspension of a license or substantial equivalency practice privileges which have been revoked or suspended.

History.
Code 1933, § 84-214, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-31; Ga. L. 2008, p. 1112, § 8/HB 1055; Code 1981, § 43-3-28, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 15/HB 246.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-28 as present Code Section 43-3-21.

43-3-29. Accountants' records and communications; peer review data.

(a) All statements, records, schedules, working papers, computer printouts, computer tapes, and memoranda made by a certified public accountant incident to, or in the course of, professional service to clients by such certified public accountant, except reports submitted by a certified public accountant to a client, shall be and remain the property of such certified public accountant and his or her partners, fellow shareholders, or fellow members of the firm, in the absence of an express agreement between such certified public accountant and his or her client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, fellow shareholders, or fellow members of the firm of such certified public accountant.

(b) All communications between a certified public accountant or employee of such certified public accountant acting in the scope of such employment and the person for whom such certified public accountant or employee shall have made any audit or other investigation in a professional capacity and all information obtained by a certified public accountant or such an employee in his or her professional capacity concerning the business and affairs of clients shall be deemed privileged communications in all courts or in any other proceedings whatsoever; and no such certified public accountant or employee shall be permitted to testify with respect to any of such matters, except with the written consent of such person or client or such person's or client's legal representative; provided, however, that nothing in this subsection shall be construed as prohibiting a certified public accountant or such an employee from:

(1) Disclosing any data required to be disclosed by the standards of the accounting profession in rendering an opinion on the presentation

of financial statements or in making disclosure where the practices or diligence of the accountant in preparing, or in expressing an opinion upon, such financial statements are contested;

(2) Disclosing any data when the practice of public accountancy by the accountant is being contested by or against the client for whom the practice of public accountancy was performed or any representative or assignee of such client;

(3) Disclosing any data to other certified public accountants or employees thereof in connection with practice reviews and ethics reviews sponsored by professional groups, the purpose of which reviews is to survey such accountant's business practices, audits, and work papers or to review ethical considerations concerning such accountant; or

(4) Disclosing any data pertaining to an application, investigation by the board, or hearing on its behalf, so long as such data shall be received by the board in camera and shall not be disclosed to the public; and provided, further, that no disclosure provided for in this paragraph shall constitute a waiver of the privilege established in this subsection.

(c) The proceedings of and data obtained through peer review or by the board pursuant to paragraph (3) of subsection (b) of this Code section shall not be subject to discovery or introduction into evidence in any civil action, except in a hearing before the board, against a certified public accountant for matters which are the subject of evaluation and review by such peer review or the board; and no individual who was in attendance at a meeting of such peer review or the board shall be permitted or required to testify in any such civil action, except in a hearing before the board, as to any evidence or the matters produced or presented during the proceedings of such peer review or the board or as to any findings, recommendations, evaluations, opinions, or actions of such peer review or the board or any members thereof; provided, however, that any information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such peer review or the board; and provided, further, that no individual who testifies before such peer review or the board or who is a member of such peer review or the board shall be prevented from testifying as to matters within his or her knowledge, provided that such witness may not be questioned regarding such witness's testimony before such peer review or the board or opinions formed by the witness as a result of such hearings of such peer review or the board.

History.

Code 1933, § 84-220, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-32; Ga. L. 1988, p. 1616, § 7; Ga. L. 1993, p. 123, § 14; Ga. L. 1997, p. 1545, § 8; Code 1981, § 43-3-29, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Cross references.

Privileged communications generally, § 24-5-501 et seq.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-29 as present Code Section 43-3-22.

Law reviews.

For note discussing confidential communication privileges in Georgia, see 2 Ga. St. B.J. 356 (1966).

For annual survey of the law of evidence, see 38 Mercer L. Rev. 215 (1986).

For annual survey of evidence law, see 56 Mercer L. Rev. 235 (2004).

For article, "How Companies Can Keep Their Sensitive Information Away from Adversaries but Still Cooperate with Auditors," see 22 Ga. St. Bar. J. 27 (Feb. 2017).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1943, p. 363, § 4 are included in the annotations for this Code section.

O.C.G.A. § 43-3-32 creates a privilege for all confidential communications between an accountant and a client made for or in the rendition of accounting services and all other confidential information concerning the business affairs of clients and obtained by the accountant for the purposes of preparing financial reports or giving accounting advice. Nashville City Bank & Trust Co. v. Reliable Tractor, Inc., 90 F.R.D. 709, 1981 U.S. Dist. LEXIS 14889 (M.D. Ga. 1981).

No privilege without accountant-client relationship. — It is elemental that the predicate for the assertion of the accountant-client privilege is that an accountant-client relationship existed. GMAC v. Bowen Motors, Inc., 167 Ga. App. 463, 306 S.E.2d 675, 1983 Ga. App. LEXIS 2523 (1983).

Federal courts should recognize state privileges if possible. — Georgia General Assembly has decided that the accountant-client relationship needs the protection of an evidentiary privilege, and the court agrees that federal courts should recognize state privileges when this can be done at no substantial cost to federal policies. International Horizons, Inc. v. Committee of Unsecured Creditors, 16 B.R. 484, 1981 U.S. Dist. LEXIS 16624 (N.D. Ga. 1981), aff'd, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Accountant's privilege inapplicable in federal question case. — In a federal question case, a state privilege need not be honored if the state privilege is broader than those recognized at common law; thus, in a case based almost totally on federal securities laws, the United States District Court will not recognize an accountant's privilege invoked pursuant to Georgia statutory law. Osterneck v. E.T. Barwick Indus., Inc., 82 F.R.D. 81, 1979 U.S. Dist. LEXIS 13528 (N.D. Ga. 1979).

Bankruptcy court is not required to apply the accountant-client privilege when the bankruptcy proceeding does not involve state claims, there is no accountant-client privilege as a matter of federal common law, and considerations of comity do not require federal courts to embrace the privilege. International Horizons, Inc. v. Committee of Unsecured Creditors, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Accountant-client privilege not applied in federal law proceeding initiated by client. — In a federal law proceeding initiated by an accountant's client, in which a committee for unsecured creditors is seeking discovery pursuant to federal law, the court will decline to apply the Georgia accountant-client privilege. International Horizons, Inc. v. Committee of Unsecured Creditors, 16 B.R. 484, 1981 U.S. Dist. LEXIS 16624 (N.D. Ga. 1981),

aff'd, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Liability for disclosing information to federal agent. — Accountants are not insulated from liability under state law when the accountants voluntarily disclose information to a federal agent during the course of a federal tax investigation. Roberts v. Chaple, 187 Ga. App. 123, 369 S.E.2d 482, 1988 Ga. App. LEXIS 554 (1988).

Liability of accounting firm for letter sent to controller's firm. — With regard to a controller's claims for defamation and tortious interference against an accounting/auditing firm that wrote a letter to the controller's employer that resulted in the controller's termination from employment, the trial court erred by dismissing the complaint after concluding that the alleged defamatory statements were inactionable privileged communications that had not been published since the controller sufficiently alleged malice, the communications between the accounting/auditing firm and the employer were conditionally privileged under O.C.G.A. § 51-5-7, and the controller sufficiently alleged publication of the statements. Saye v. Deloitte & Touche, LLP, 295 Ga. App. 128, 670 S.E.2d 818, 2008 Ga. App. LEXIS 1328 (2008), cert. denied, No. S09C0612, 2009 Ga. LEXIS 111 (Ga. Mar. 9, 2009).

Reliance on statute unreasonable when communications occurred before enactment. — Georgia's statutory accountant-client privilege was not enacted until 1977, which was long after some of the communications at issue in this case. Thus, any reliance by the parties on the confidentiality of their communication was not reasonable. International Horizons, Inc. v. Committee of Unsecured Creditors, 16 B.R. 484, 1981 U.S. Dist. LEXIS 16624 (N.D. Ga. 1981), aff'd, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Privilege inapplicable to client lists. — Requirement under O.C.G.A. § 43-3-32(a) that a client consent to the transfer of the accountant's working papers does not apply to an accounting firm's client list. Crews v. Wahl, 238 Ga. App. 892, 520 S.E.2d 727, 1999 Ga. App. LEXIS 1263 (1999).

Privilege inapplicable to subpoenas. — O.C.G.A. § 43-3-32 did not apply in an action by the Inspector General of the United States Department of Agriculture to enforce subpoenas seeking information on possible payment errors with respect to Agricultural Stabilization and Conservation Service Programs. Inspector Gen. of USDA v. Griffin, 972 F. Supp. 676 (M.D. Ga. 1997).

Privilege is inapplicable to communications which occurred before perpetration of fraud or crime. In re Hall County Grand Jury Proceedings, 175 Ga. App. 349, 333 S.E.2d 389, 1985 Ga. App. LEXIS 2800, cert. vacated, 255 Ga. 241, 338 S.E.2d 864, 1985 Ga. LEXIS 966 (1985).

Privilege was not necessary when debtors' full disclosure to accountant was guaranteed by the debtors' need for the accountant's certification of their financial statements, and by the unwillingness of a firm of the accountant's stature to make such a certification unless the firm was convinced that the debtors had made full disclosure. International Horizons, Inc. v. Committee of Unsecured Creditors, 16 B.R. 484, 1981 U.S. Dist. LEXIS 16624 (N.D. Ga. 1981), aff'd, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Unsecured creditors permitted access to accountant's work papers. — When an accountant has not convinced the court that the court should recognize the accountant-client privilege in the absence of "compelling justification," and has failed to present such justification, the committee of unsecured creditors will be permitted access to the accountant's financial documents and work papers in its possession. International Horizons, Inc. v. Committee of Unsecured Creditors, 16 B.R. 484, 1981 U.S. Dist. LEXIS 16624 (N.D. Ga. 1981), aff'd, 689 F.2d 996, 1982 U.S. App. LEXIS 24662 (11th Cir. 1982).

Audit reports concerning financial condition of debtor's subsidiary. — State law determined the existence of accountant-client privilege to protect audit reports concerning financial condition of

debtor's subsidiary, even though the proceeding was subject to the jurisdiction of the bankruptcy court as claims ancillary to a Title XI case. Providers Fid. Life Ins. Co. v. Tidewater Group, Inc., 65 B.R. 179, 1986 Bankr. LEXIS 5290 (Bankr. N.D. Ga. 1986).

Claims of breach of contract and tortious conspiracy to defraud did not raise the issue of the defendant's financial condition so as to allow the claimant to discover audit reports to which the defendant had not waived the defendant's accountant-client privilege. Providers Fid. Life Ins. Co. v. Tidewater Group, Inc., 65 B.R. 179, 1986 Bankr. LEXIS 5290 (Bankr. N.D. Ga. 1986).

Accountant upon leaving accounting firm could properly copy records, statements, working papers, and other materials "prepared" by that accountant, but copying such materials "made" by other accountants in the firm was not proper when done for that accountant's own use. Singer v. Habif, Arogeti & Wynne, P.C., 250 Ga. 376, 297 S.E.2d 473, 1982 Ga. LEXIS 1066 (1982).

Waiver of accountant-client privilege. — Since the defendant's disclosure of audit reports in another proceeding had been compelled by the court, this did not constitute a voluntary waiver of the accountant-client privilege to allow another claimant in a separate proceeding access to the reports. Providers Fid. Life Ins. Co. v. Tidewater Group, Inc., 65 B.R. 179, 1986 Bankr. LEXIS 5290 (Bankr. N.D. Ga. 1986).

Testimony in regard to accountant's employment itself is admissible. Gearhart v. Etheridge, 131 Ga. App. 285, 205 S.E.2d 456, 1974 Ga. App. LEXIS 1404, aff'd, 232 Ga. 638, 208 S.E.2d 460, 1974 Ga. LEXIS 1041 (1974) (decided under Ga. L. 1943, p. 363, § 4).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1943, p. 363, § 4 are included in the annotations for this Code section.

Accountant may not disclose confidential communications for practice review. — Certified public accountant may not for purpose of practice review disclose to third parties a client's communications to that accountant which are made confidential. 1973 Op. Att'y Gen. No. 73-158 (decided under Ga. L. 1943, p. 363, § 4).

RESEARCH REFERENCES

ALR.

Right of accountant to lien upon client's books and records in former's possession, 76 A.L.R.2d 1322.

Ownership of, and literary property in, working papers and data of accountant, 90 A.L.R.2d 784.

Privileged communications between accountant and client, 33 A.L.R.4th 539.

43-3-29.1. [Repealed] Sanctions.

History.

Ga. L. 1988, p. 1616, § 6; Ga. L. 1993, p. 123, § 13; repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

43-3-30. Injunctions; enforcement.

(a) Whenever, in the judgment of the board, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, the board may make application to the superior court of the county in which such acts or practices have

occurred or may be reasonably expected to occur for an order enjoining such acts or practices; and upon a showing by the board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court.

(b) The Attorney General shall assist in the enforcement of this chapter. The board is authorized to retain such attorneys as it deems necessary, with the approval of the Attorney General, to assist the board in bringing any action authorized by law.

(c) The electronic, printed, engraved, or written display or uttering by a person of a card, sign, advertisement, instrument, or other device bearing an individual's name in conjunction with the words "certified public accountant" or any abbreviation thereof shall be prima-facie evidence in any action brought under this Code section or Code Section 43-3-34 that the individual whose name is so displayed caused or procured the electronic, printed, engraved, or written display or uttering of such card, sign, advertisement, instrument, or other device and that such individual is holding himself or herself out to be a certified public accountant holding a license or otherwise claims to be qualified to use such title by virtue of the substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 or of the firm practice provisions of subsection (b) of Code Section 43-3-16. In any such action, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

History.
Code 1933, § 84-217, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-33; Code 1981, § 43-3-30, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-30 as present Code Section 43-3-23.

RESEARCH REFERENCES

Am. Jur. 2d.
7 Am. Jur. 2d, Attorney General, §§ 1, 17 et seq.

43-3-31. Prohibited use of title or designation; false or deceptive practices.

(a) No individual shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such individual is a certified public accountant unless such individual has received a certificate as a certified public accountant under this chapter, holds a license, and all of such individu-

al's physical offices in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(b) No firm shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of certified public accountants unless such firm is licensed as a firm of certified public accountants under Code Section 43-3-16, and all physical offices of such firm in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(c) No individual or firm shall assume or use:

(1) Any title or designation likely to be confused with "certified public accountant," including, without limiting the generality of the foregoing, "certified accountant," "enrolled accountant," "licensed accountant," "licensed public accountant," or "registered accountant"; or

(2) Any abbreviation likely to be confused with "CPA," including, without limiting the generality of the foregoing, "C.A.," "E.A.," "R.A.," "L.A.," or "L.P.A."

(d) No individual shall sign or affix his or her name or any trade assumed name used by him or her in his or her profession or business to any report or compiled financial statement that states or implies assurance as to the reliability of any representation or estimate in regard to any person or organization embracing financial or attested information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, rules, regulations, grants, loans, and appropriations, together with any wording accompanying, contained in, or affixed on such report or compiled financial statement, which indicates that he or she has expert knowledge in accounting or auditing unless he or she holds a license and all of his or her physical offices in this state are maintained and licensed under Code Sections 43-3-16 and 43-3-17, provided that this subsection shall not prohibit any officer, employee, partner, member, or principal of any organization from affixing his or her signature to any statement or report in reference to the affairs of such organization with any wording designating the position, title, or office which he or she holds in such organization, nor shall this subsection prohibit any act of a public official or public employee in the performance of his or her duties as such.

(e) No individual shall sign or affix, or cause to be signed or affixed, a firm name to any report or compiled financial statement that states or implies assurance as to the reliability of any representation or estimate in regard to any person or organization embracing financial or attested

information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, rules, grants, loans, and appropriations, together with any wording accompanying or contained in such report or compiled financial statement, which indicates that such firm is composed of or employs individuals having expert knowledge in accounting or auditing unless the firm holds a license and all of its physical offices in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(f) A licensee shall not use or participate in the use of any form of public communication having reference to his or her practice of public accountancy which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but shall not be limited to, a statement or claim which:

(1) Contains a misrepresentation of fact;

(2) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(3) Contains any testimonial, laudatory, or other statement or implication that the licensee's practice of public accountancy is of exceptional quality, if not supported by verifiable facts;

(4) Is intended or likely to create false or unjustified expectations of favorable results;

(5) Implies educational or professional attainments or licensing recognition not supported in fact;

(6) States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy, except in accordance with rules or regulations adopted by the board;

(7) Represents that the practice of public accountancy can or will be completely performed for a stated fee when this is not the case or makes representations with respect to fees for such services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; or

(8) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(g) The board may by rule or regulation prohibit a licensee from soliciting by any direct personal communication an engagement to practice public accountancy.

(h) It shall not be a violation of this Code section or chapter for an

individual who does not hold a license under this chapter but who qualifies for the substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 to use the title or designation "certified public accountant" or "CPA" or other titles to indicate that the individual is a certified public accountant, and such individual may engage in the practice of public accountancy in this state with the same privileges as a license holder so long as the individual complies with paragraph (4) of subsection (b) of Code Section 43-3-18.

(i) It shall not be a violation of this Code section or chapter for a firm that has not obtained a license under this chapter and that does not have an office in this state to use the title or designation "certified public accountant" or "CPA" or other titles to indicate that the firm is composed of certified public accountants, and such firm may engage in the practice of public accountancy in this state with the same privileges as a firm with a license so long as it complies with subsection (b) of Code Section 43-3-16.

History.

Ga. L. 1908, p. 86, § 1; Penal Code 1910, § 702; Code 1933, § 84-9902; Code 1933, § 84-213, enacted by Ga. L. 1935, p. 85, § 13; Ga. L. 1943, p. 363, § 5; Ga. L. 1968, p. 1232, § 2; Code 1933, § 84-215, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-35; Ga. L. 1983, p. 559, § 15; Ga. L. 1993, p. 123, § 15; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 10; Ga. L. 2005, p. 1030, § 11/SB 55; Ga. L. 2008, p. 1112, § 10/HB 1055; Code 1981, § 43-3-31, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 16/HB 246.

Cross references.

False or fraudulent advertising, § 10-1-420 et seq.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-31 as present Code Section 43-3-28.

JUDICIAL DECISIONS

Individual accountants in firm subject to city occupational tax. — Accountants who were licensed as certified public accountants, but who worked on the audit staff of a large firm, had no contact with the public, and whose work was the same as others who were not licensed certified public accountants, were engaged in "public accounting" and were subject to the city occupational tax. City of Atlanta v. Daley, 257 Ga. 674, 362 S.E.2d 348, 1987 Ga. LEXIS 1018 (1987).

Business manager not registered as public accountant can testify as an expert bookkeeper. — Witness who is privately employed as a business manager and financial advisor of an office can testify as an expert in bookkeeping even though the witness is not registered as a public accountant. Stephens v. Parrino & Ware, 138 Ga. App. 634, 226 S.E.2d 809, 1976 Ga. App. LEXIS 2264 (1976).

OPINIONS OF THE ATTORNEY GENERAL

One maintaining an office for and practicing public accounting without a license is guilty of a misdemeanor. 1948-49 Ga. Op. Att'y Gen. 294.

Uncertified individual practicing accounting violates chapter although not holding self out as registered or certified. — Person with an established

office who is practicing public accounting such as doing audits, rendering reports thereon, and installing accounting systems without a license is violating the statutes although the individual neither calls themselves a registered public accountant nor a certified public accountant. 1948-49 Ga. Op. Att'y Gen. 293; 1948-49 Ga. Op. Att'y Gen. 294.

Certified public accountant's signature to report when principals not certified is misdemeanor. — Signature of a certified public accountant to a report for a firm when the principals are not certified, or when one is certified and another is not, would be guilty of a misdemeanor, and all members of the firm and the certified public accountant signing the report of the firm would be equally guilty under the law. 1950-51 Ga. Op. Att'y Gen. 137.

RESEARCH REFERENCES

C.J.S.

15A C.J.S., Conspiracy, § 34 et seq. 35 C.J.S., False Pretenses, § 16 et seq. 65 C.J.S., Negligence, §§ 427, 428, 458 et seq.

ALR.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-3-32. Exceptions to operation of chapter.

(a) Nothing contained in this chapter shall prohibit any individual who is not a certified public accountant from serving as an employee of or an assistant to a certified public accountant or firm of certified public accountants holding a license, provided that such employee or assistant shall not issue or attest to any accounting or financial statement over his or her name.

(b) Nothing contained in this chapter shall prohibit any person from offering to perform or performing for the public, for compensation, any of the following services:

(1) The recording of financial transactions in books of record;

(2) The making of adjustments of such transactions in books of record;

(3) The making of trial balances from books of record;

(4) Internal verification and analysis of books or accounts of original entry;

(5) The preparation of unaudited financial statements, schedules, or reports;

(6) The devising and installing of systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data; or

(7) The preparation of tax returns and related forms.

History.

Code 1933, § 84-216, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-36; Ga. L. 1983, p. 559, § 16; Ga. L. 1993, p. 123, § 16; Code 1981, § 43-3-32, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 17/HB 246.

Cross references.

Substantial equivalency practice privileges for nonresidents, § 43-3-18.

Editor's notes.

Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-32 as present Code Section 43-3-29.

JUDICIAL DECISIONS

Conduct alleged in complaint did not constitute practice of public accountancy. — Since: (1) the defendants performed an audit as a matter of private agreement pursuant to subcontracts between the parties; (2) the plaintiff did not allege that the defendants held themselves out as licensed public accountants or that the defendants performed accounting services for clients; and (3) acting at all times as employees of the defendant corporation, the individual defendants merely verified and analyzed the plaintiff's books and accounts for the benefit of the defendant corporation, the defendants did not practice public accountancy. Project Control Servs., Inc. v. Reynolds, 247 Ga. App. 889, 545 S.E.2d 593, 2001 Ga. App. LEXIS 153 (2001).

RESEARCH REFERENCES

ALR.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-3-33. Expired license of service member.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to any provision of this chapter expired while such service member was serving on active duty outside this state shall be permitted to practice public accountancy in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing a profession with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within this state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within this state. The service member shall present to the board either a copy of the official military orders or a written verifica-

tion signed by the service member's commanding officer in order to waive any violation of this chapter relating to practicing public accountancy with an expired license.

History.
Code 1981, § 43-3-33, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-33 as present Code Section 43-3-30.

43-3-34. Criminal penalty.

Any person who violates this chapter shall be guilty of a misdemeanor.

History.
Code 1933, § 84-218, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-38, as redesignated by Ga. L. 1997, p. 1545, § 11; Code 1981, § 43-3-34, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.
Editor's notes.
Ga. L. 1992, p. 3137, § 2, effective July 1, 1992, repealed former Code Section 43-3-38, which was based on Ga. L. 1982, p. 1782, §§ 1, 2 and Ga. L. 1988, p. 307, § 1, relating to termination.

This Code section formerly pertained to holding oneself out to be a licensed certified public accountant or public accountant; single prohibited act as grounds for injunction or conviction. The former Code section was based on Code 1933, § 84-219, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1997, p. 1545, § 9; Ga. L. 2008, p. 1112, § 9/HB 1055, and was repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

RESEARCH REFERENCES

ALR.
Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 A.L.R. 915.

43-3-35. Redesignated.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-35 as present Code Section 43-3-31.

43-3-36. Redesignated.

Editor's notes.
Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-36 as present Code Section 43-3-32.

43-3-36.1. [Repealed] Exempted licensees.

History.
Ga. L. 1988, p. 1616, § 8; Ga. L. 2000, p. 136, § 43; repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

43-3-37. [Repealed] Use of acquired materials in civil action.

History. Ga. L. 1997, p. 1545, § 11; Ga. L. 1998, p. 128, § 43; repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

CHAPTER 4

ARCHITECTS

Article 1

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43-4-35. Applicability of provisions of Chapter 1 of this title.
43-4-36. Registration of persons certified or registered in other states or foreign countries.
43-4-37. Unlawful use of title "registered interior designer."

Cross references.

Professional corporations generally, T. 14, C. 7.

Landscape architects, T. 43, C. 23.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-1.

Fees, architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-5.

Law reviews.

For article discussing site architect or engineer's duty of care to construction workers, see 28 Emory L.J. 291 (1979).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 18 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Proof of Facts.

Architect's Negligence, 33 POF3d 57.

Am. Jur. Trials. —

Architectural Malpractice Litigation, 19 Am. Jur. Trials 231.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058. 16C C.J.S., Constitutional Law, § 890 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Liability of architect or engineer for improper issuance of certificate, 43 A.L.R.2d 1227.

Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed in the latter state, 32 A.L.R.3d 1151.

Tort liability of project architect for economic damages suffered by contractor, 65 A.L.R.3d 249.

Architect's or engineer's liability for injury or death of construction worker on construction site project, 56 A.L.R.7th 7.

ARTICLE 1

GENERAL PROVISIONS

43-4-1. Definitions.

As used in this chapter, the term:

(1) "Architect" means an individual technically and legally qualified to engage in the practice of architecture.

(2) "Architectural construction contract administration services" shall include at a minimum the following services:

(A) Visiting the construction site on a regular basis to determine that the work is proceeding in accordance with the technical submissions submitted to the building official at the time the building permit was issued; and

(B) Processing shop drawings, samples, and other submissions required of the contractor by the terms of construction contract documents.

(3) "Board" means the Georgia State Board of Architects and Interior Designers.

(4) "Building" means any structure consisting of foundation, floors, walls, columns, girders, beams, and roof or a combination of any of these parts, with or without other parts or appurtenances.

(5) "Building official" means the person appointed by the county, municipality, or other political subdivision of the state having responsibility for the issuance of building permits and the administration and enforcement of the Georgia State Minimum Construction Codes, or a state fire marshal where there is not such local official.

(6) "Building shell" means a building framework, perimeter and exterior walls, the building core and columns, and other structural, mechanical, and load-bearing elements of the building.

(7) "Building shell system" means a mechanical, plumbing, fire protection, electrical, structural, or motorized vertical transportation system designed for or located within a building shell.

(8) "Interior construction document" means detailed drawings and specifications sealed and signed by a registered interior designer certifying compliance with applicable current building codes, ordinances, laws, and regulations that define the work to be constructed in such form as is required for approval of a construction permit by a building official or fire marshal. Such document may be combined with documents prepared under the responsible control, seal, and signature of other registered or licensed professionals.

(9)(A) "Interior design" means the rendering of or the offering to render designs, consultations, studies, planning, drawings, specifications, contract documents, or other technical submissions and the administration of interior construction and contracts relating to nonstructural interior construction of a building by a registered interior designer. Such term includes:

(i) Space planning, finishes, furnishings, and the design for fabrication of nonstructural interior construction within interior spaces of buildings;

(ii) Responsibility for life safety design of proposed or modification of existing nonstructural and nonengineered elements of construction such as partitions, doors, stairways, and paths of egress connecting to exits or exit ways; and

(iii) Modification of existing building construction so as to alter the number of persons for which the egress systems of the building are designed.

(B) Registered interior designers shall collaborate and coordinate their work with registered architects or engineers for work that is excluded by this definition, including without limitation:

(i) The design of or responsibility for the building shell or any building shell systems; or

(ii) Construction which materially affects building life safety systems pertaining to fire safety protection such as fire-rated vertical shafts in multistory structures and fire-rated protection of structural elements with the exception of incidental restoration of fire protection to elements impacted by nonstructural elements of construction, smoke evacuation, emergency sprinkler systems, and emergency alarm systems.

(10) "Nonstructural interior construction" means the construction of elements which do not include a load-bearing wall, a load-bearing column, or other load-bearing elements of a building essential to the structural integrity of the building.

(11) "Practice of architecture" means the rendering of or offer to render the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings and the space within and surrounding such buildings, which may have human occupancy or habitation: planning; providing preliminary studies, designs, drawings, specifications, and other technical submissions; the architectural administering of construction contracts; and coordinating elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers, registered interior designers, and landscape architects. As part of the practice of architecture, a registered architect may perform such engineering work as is incidental to his or her work. Nothing in this paragraph shall be construed to prohibit a licensed engineer from coordinating technical submittals related to the practice of engineering. Nothing in this paragraph shall be construed to prohibit a registered interior designer from coordinating submittals related to the practice of interior design.

(12) "Registered architect" means a person who is technically and legally qualified and currently registered with the board to practice architecture in the State of Georgia.

(13) "Registered interior designer" means a person who is registered under Article 2 of this chapter as being qualified by education, experience, and examination to use the title "registered interior designer" in the State of Georgia and as further defined in Code Section 43-4-30. Nothing in this paragraph or in this article shall be construed as prohibiting or restricting the practice or activities of an interior decorator or individual offering interior decorating services, including, but not limited to, selection of surface materials, window treatments, wall coverings, paints, floor coverings, and lighting fixtures.

(14) "Registration" means the certificate of registration issued by the board.

(15) "Responsible control" means the amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered or licensed professionals applying the required professional standard of care, as defined by rules and regulations adopted by the respective boards governing such professionals.

(16) "Technical submissions" means designs, drawings, specifications, studies, and other technical reports prepared or reviewed in the course of professional practice.

History.

Ga. L. 1919, p. 125, § 16; Code 1933, § 84-301; Ga. L. 1952, p. 457, § 1; Ga. L. 1974, p. 162, § 1; Ga. L. 1984, p. 448, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2010, p. 748, § 1/HB 231; Ga. L. 2011, p. 752, § 43/HB 142.

Law reviews.

For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Cost of interior parts and appurtenances. — Language "with or without other parts or appurtenances" in O.C.G.A. § 43-4-1(2) (now paragraph (4)) was sufficiently clear to notify an unregistered person that, for purposes of O.C.G.A. § 43-4-14, the cost of a building for which the unregistered individual designed only the foundation, floor, exterior walls, and roof would also include the cost of such interior parts and appurtenances as would be reasonably necessary for the building to become functional for the purposes for which the building was designed. Meyer von Bremen v. Georgia State Bd. of Architects, 259 Ga. 842, 389 S.E.2d 213, 1990 Ga. LEXIS 90 (1990).

Cities cannot tax certified architects employed by principals responsible for final design decision. — City cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see now O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Engineers may not design or supervise construction like architects. — Extent to which an engineer may practice should not be determined solely by looking to provisions defining practice of engineering; the legislature did not intend that engineers should be permitted to plan, design, or supervise construction of structures and buildings to the same extent that an architect may do so. 1967 Op. Att'y Gen. No. 67-144.

Submission of plans by registered interior designers. — Registered interior designers are authorized to sign and seal documents related to nonstructural interior construction for their submission

to building officials or fire marshals for permitting purposes to the extent that it does not conflict with the provisions of O.C.G.A. § 25-2-14. 2017 Op. Att'y Gen. No. U17-1.

RESEARCH REFERENCES

Am. Jur. 2d.
5 Am. Jur. 2d, Architects, § 1 et seq.
C.J.S.
6 C.J.S., Architects, § 1 et seq.
ALR.
Construction of contract for compensation of architect, 20 A.L.R. 1356.
What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.
What constitutes a "building" within restrictive covenant, 18 A.L.R.3d 850.
Liability to one injured in course of construction, based upon architect's alleged failure to carry out supervisory responsibilities, 59 A.L.R.3d 869.
When statute of limitations begins to run on negligent design claim against architect, 90 A.L.R.3d 507.

43-4-2. Georgia State Board of Architects and Interior Designers; composition; qualifications of members; terms of office; vacancies.

There is created the Georgia State Board of Architects and Interior Designers, which shall be composed of nine appointed members. Six of the members shall be registered architects who hold a current license in this state and who shall be residents of this state. Two members shall be registered interior designers who are residents of this state and who have been interior designers for at least ten years immediately preceding the appointment and who shall have passed an examination approved by the board. One member shall be a resident of this state and shall have no connection whatsoever with the practice or profession of architecture or interior design. The members of the predecessor State Board of Architects including the interior designer members who were formerly only full voting members for purposes of Article 2 of this chapter in office on June 30, 2000, shall be members of the Georgia State Board of Architects and Interior Designers and shall serve out the remainder of their respective terms and until their successors are appointed and qualified. The citizen member who is not a practicing architect or interior designer may vote only on matters relating to administration and policy which do not directly relate to practical and scientific examination of architects or interior designers in this state. The Governor shall appoint successors to the present members of the board, as their respective terms of office expire, for a term of office of five years each. The successor members so appointed shall possess the qualifications specified in this Code section and shall be confirmed by the Senate as provided in Code Section 43-1-16. In case a successor is not appointed at the expiration of the term of any member, such member shall hold office until his or her successor has been duly

appointed and qualified. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term, and such member shall be confirmed by the Senate as provided in Code Section 43-1-16.

History.
Ga. L. 1919, p. 125, § 1; Code 1933, § 84-304; Ga. L. 1952, p. 457, § 4; Ga. L. 1972, p. 744, § 1; Ga. L. 1979, p. 610, § 1; Ga. L. 1984, p. 448, § 2; Ga. L. 1986, p. 434, § 1; Ga. L. 2000, p. 1527, § 1.

RESEARCH REFERENCES

ALR.
Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-4-3. Oath of office.

The members of the board, before entering upon the discharge of their duties, shall subscribe to and file with the Secretary of State the constitutional oath of officers.

History.
Ga. L. 1919, p. 125, § 2; Code 1933, § 84-305; Ga. L. 2000, p. 1527, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
58 Am. Jur. 2d, Oath and Affirmation, §§ 1, 3.

43-4-4. Election of board president and vice president.

The board shall elect from its membership a president and a vice president.

History.
Ga. L. 1919, p. 125, § 3; Code 1933, § 84-306; Ga. L. 2000, p. 1527, § 1.

43-4-5. Record of proceedings.

The division director shall keep a true record of all proceedings of the board.

History.
Ga. L. 1919, p. 125, § 6; Code 1933, § 84-309; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19.

43-4-6. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1919, p. 125, § 12; Ga. L. 1931, p. 7, § 89A; Code 1933, § 84-311; Ga. L. 1979, p. 635, § 1; Ga. L. 2000, p. 1527, § 1.

43-4-7. Authority to confer and attend meetings.

The board, or any member designated by the board, may confer with similar boards of other states or attend meetings or conferences for the purpose of obtaining information for the advancement of the profession and standards thereof.

History.
Ga. L. 1979, p. 635, § 1; Ga. L. 2000, p. 1527, § 1.

43-4-8. Enforcement of chapter; expenses.

The board shall be charged with the duty of enforcing this chapter and may incur such expenses as shall be necessary, all of which expenses shall be paid as provided in Chapter 1 of this title.

History.
Ga. L. 1919, p. 125, § 7; Code 1933, § 84-310; Ga. L. 2000, p. 1527, § 1.

43-4-9. Adoption of rules, regulations, and standards of conduct; posting of information.

(a) The board shall adopt all necessary rules, regulations, and standards of conduct, not inconsistent with this chapter and the Constitution and laws of this state and of the United States, to carry out this chapter and to safeguard life, health, and property.

(b) The board shall post all current laws, rules, regulations, and standards of conduct relating to the practice of architecture in this state on the board's official website. The board shall also provide on the website notification of recent changes in such laws, rules, regulations, or standards and information pertaining to disciplinary actions taken by the board.

History.
Ga. L. 1919, p. 125, § 4; Code 1933, § 84-307; Ga. L. 1974, p. 162, § 4; Ga. L. 1982, p. 1019, § 2; Ga. L. 2000, p. 1527, § 1; Ga. L. 2007, p. 350, § 1/SB 237; Ga. L. 2010, p. 266, § 12/SB 195.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Architects and Interior Designers, Chapter 50-1 et seq.

43-4-10. Compliance with requirements of article; practice of architecture by firms, sole proprietorships, partnerships, and corporations.

(a) Except as otherwise provided in this article, no person shall practice architecture in this state or use the title "architect" or "registered architect" or any word, letter, figure, or any other device indicating or intending to imply that he or she is an architect unless he or she holds a current registration as an architect in this state.

(b) No firm, sole proprietorship, partnership, limited liability company, corporation, or other similar organization shall be registered as architects. Firms, sole proprietorships, partnerships, limited liability companies, and corporations may practice architecture, as defined by this article, and perform the services heretofore enumerated common to the practice of architecture, provided that all such work and services are performed under the responsible control of an architect registered in this state who is a director, in the case of a corporation, or who is a partner, in the case of a partnership, or who is a member, in the case of a limited liability company, or who is an employee with an ownership interest who has been designated in writing as holding a position of authority within the firm which authorizes him or her to direct the architectural services offered by that firm; and provided, further, that the administration of construction contracts shall be under the responsible control of such registered architect and that such plans, drawings, and specifications shall be prepared under the responsible control of such registered architect and bear the architect's individual signature and seal.

History.

Ga. L. 1919, p. 125, § 21; Code 1933, § 84-302; Ga. L. 1952, p. 457, § 2; Ga. L. 1955, p. 602, § 1; Ga. L. 1974, p. 162, § 2; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 17; Ga. L. 2000, p. 1527, § 1.

Cross references.

False or fraudulent advertising, § 10-1-420 et seq.

Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations.

Registration to practice under title of architect, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-2.

Firms, partnerships, corporations — proper names — architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-3.

JUDICIAL DECISIONS

Restriction applies only to natural persons. — Word "person" as used in this section was modified by the pronoun "he" which restricts the meaning of the word as used in the law and which compels the construction that the word "person" used in its context means natural persons only. Folsom v. Summer, Locatell & Co., 90 Ga. App. 696, 83 S.E.2d 855, 1954 Ga. App. LEXIS 786 (1954).

There is no prohibition against corporation using title "architects and engineers" in the corporation's contracts. Folsom v. Summer, Locatell & Co., 90 Ga. App. 696, 83 S.E.2d 855, 1954 Ga. App. LEXIS 786 (1954).

Contract for architectural services by nonarchitect void. — It is forbidden for any individual or any firm no member of which is an architect to enter into a contract for performance of architectural services, and such contracts are void. Boroughs, Dale & Griffin v. St. Elias E. Orthodox Church, 120 Ga. App. 434, 170 S.E.2d 865, 1969 Ga. App. LEXIS 807 (1969).

Joint contract when only one of three is unlicensed not void. — Contracts to perform architectural services on part of one or more persons none of whom is a licensed architect are void, but fact that one of three people jointly agreeing to perform such services is not licensed, the others being properly registered as architects, will not void contract when no fraud or deception is practiced. Boroughs, Dale & Griffin v. St. Elias E. Orthodox Church, 120 Ga. App. 434, 170 S.E.2d 865, 1969 Ga. App. LEXIS 807 (1969).

Cities cannot tax certified architects employed by principals responsible for final design decisions. — City cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see now O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964).

Liability for malpractice. — Fact that an architectural firm is not a professional corporation does not mean it is incapable of committing and being liable for professional malpractice by and through its individual agents. Under former O.C.G.A. § 43-4-10(c), a corporation may not be registered to practice architecture but may practice only through registered individuals. Housing Auth. v. Gilpin & Bazemore/Architects & Planners, Inc., 191 Ga. App. 400, 381 S.E.2d 550, 1989 Ga. App. LEXIS 601, aff'd, 259 Ga. 435, 383 S.E.2d 867, 1989 Ga. LEXIS 393 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Local officials may issue building permit without architect's signature on documents. — Former Code 1933, § 84-9903 (see now O.C.G.A. § 43-4-17) placed no obligation upon county or municipal building officials to accept only those construction documents which are properly signed and sealed by an architect or engineer before issuing a permit. 1977 Op. Att'y Gen. No. 77-31. (But see 1987 Op. Att'y Gen. No. 87-31).

RESEARCH REFERENCES

ALR.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 A.L.R.2d 1085.

Practice of architecture by corporation, 56 A.L.R.2d 726.

43-4-11. Qualifications of applicants for examination or certificate of registration; regulatory authority.

(a) Any person may apply to the board for such examinations as are required for certification under this article if qualified as set forth in

subsection (b) of this Code section, or any person who has been registered as an architect by another jurisdiction may apply for a certificate of registration if qualified as set forth in subsection (c) of this Code section. No person shall be eligible for registration as an architect who has been found by the board to have committed any of the acts set forth in this article for which an architect's certificate might be revoked or suspended unless that individual establishes to the satisfaction of the board that he or she has fully reformed.

(b) The examinations shall be the examinations prepared and graded by the National Council of Architectural Registration Boards (NCARB). The candidate for examination shall submit to the board satisfactory evidence of one of the following qualifications:

(1)(A)(i) A professional degree in architecture from a school or college approved by the National Architectural Accrediting Board; or

(ii) Active participation in a National Council of Architectural Registration Boards accepted Integrated Path to Architectural Licensure option within a National Architectural Accrediting Board accredited professional degree program in architecture; and

(B) Practical experience as the board, by rules and regulations uniformly applied, shall deem appropriate;

(2) A minimum of ten years' practical experience, including academic training, following completion of high school or the equivalent thereof, as the board, by rules and regulations uniformly applied, shall deem appropriate. An individual who intends to qualify as a candidate for examination under the provisions of this paragraph shall notify the board of such intent in writing prior to July 1, 1985. After July 1, 1985, all candidates for examination shall meet the requirements of paragraph (1) of this subsection; provided, however, that those candidates and only those candidates who have met the requirements of this paragraph shall be admitted as a candidate for examination; or

(3) A bachelor's degree in architectural engineering technology from a school or college in this state approved by the Accrediting Board for Engineering and Technology, or any other bachelor's degree with a substantial concentration in architecture approved by the board from a board approved school or college in this state, and at least six years of practical experience as the board, by regulations uniformly applied, shall deem appropriate. An individual who intends to qualify as a candidate for examination under the provisions of this paragraph shall notify the board of such intent in writing prior to July 1, 2004. After July 1, 2004, all candidates for examination shall meet the requirements of paragraph (1) of this subsection.

(c) The applicant for a certificate of registration who has been registered as an architect by another jurisdiction shall hold a National Council of Architectural Registration Boards certificate and a certificate of registration in such other jurisdiction, both of which shall be current and in good standing in order to meet the requirements of this subsection.

(d) The board may require applicants under subsection (c) of this Code section to provide such other evidence as the board may require to demonstrate knowledge of professional practice.

(e) No certificate of registration shall be issued to an applicant under this article, if he or she was a candidate for examination under the provisions of paragraph (1) of subsection (b) of this Code section, unless and until such applicant for certification shows the board satisfactory evidence of a professional degree in architecture from a school or college approved by the National Architectural Accrediting Board.

(f) The board may promulgate such rules and regulations as may be reasonable and necessary for the administration and enforcement of this Code section.

History.

Ga. L. 1919, p. 125, § 18; Code 1933, § 84-303; Ga. L. 1952, p. 457, § 3; Ga. L. 1955, p. 602, § 2; Ga. L. 1961, p. 462, §§ 1-3; Ga. L. 1963, p. 383, § 1; Ga. L. 1971, p. 836, § 1; Ga. L. 1972, p. 545, § 1; Ga. L. 1974, p. 162, § 3; Ga. L. 1982, p. 1019, § 3; Ga. L. 1983, p. 734, § 1; Ga. L. 1984, p. 448, § 3; Ga. L. 1984, p. 595, § 1; Ga. L. 1990, p. 560, § 1; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 606, § 1; Ga. L. 2007, p. 350, § 2/SB 237; Ga. L. 2017, p. 127, § 1/HB 41.

Administrative rules and regulations.

Registration to practice under title of architect, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-2.

Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-4.

Education and acceptable practical experience — architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-7.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

If license law enacted to protect public, all practitioners must be licensed. — When statute requiring license and registration for those seeking to engage in practice of trade or profession is not enacted to raise revenue, and the statute's primary intent is protection of the public from injury by incompetent, irresponsible, or unfit persons practicing such trade or profession, only those meeting the prerequisites of the statute may engage in such practice. Brown v. Glass, 46 Ga. App. 323, 167 S.E. 722, 1933 Ga. App. LEXIS 48 (1933).

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Grant or denial of license to practice architecture, 2 A.L.R.4th 1103.

43-4-12. Certificate of registration; renewal.

A certificate of registration as a registered architect shall be valid for two years and shall be renewed biennially as provided by rule of the board. It is unlawful to identify oneself as being able to practice architecture in this state without a current and valid registration in this state. An applicant for a renewal of a certificate of registration shall meet such professional development requirements as the board may require by rule or regulation. Such rule or regulation shall describe professional development activities acceptable to the board and the form of documentation of such activities required by the board. The board shall be authorized to waive the professional development requirement in cases of hardship, disability, age, illness, or under such other circumstances as the board deems appropriate. Failure to meet the minimum qualifications for renewal of a license shall be grounds for denial of a renewal application.

History.

Ga. L. 1919, p. 125, § 21; Code 1933, § 84-314; Ga. L. 1982, p. 1019, § 4; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19.

43-4-13. Suspension or revocation of certificate; reprimand; hearing; reinstatement.

(a) In addition to the authority provided in Code Section 43-1-19, the board shall have the power to suspend or revoke the certificate of registration or reprimand any registrant who is found by the board to have:

(1) Committed any fraud, deceit, or misrepresentation in obtaining a certificate of registration;

(2) Committed any gross negligence, incompetence, unprofessional conduct, or recklessness in his or her professional practice;

(3) Permitted the use of his or her seal by any firm, partnership, limited liability company, or corporation without complying with the provisions of Code Section 43-4-10 as to his or her personal direction and supervision of architectural services performed by such firm, sole proprietorship, partnership, limited liability company, or corporation or the provisions of Code Section 43-4-16;

(4) Been convicted by any court of record of the United States of

any act which would constitute a felony or a crime involving moral turpitude in this state or a plea of nolo contendere or the affording of first offender treatment to any such charge; or

(5) Violated this article or any rule, regulation, or standard of conduct promulgated by the board pursuant to the powers conferred upon it by this article.

(b) Prior to revoking or suspending a registrant's certificate, the board shall provide for a hearing into the charges against the registrant. The board shall issue a notice of hearing to the registrant in compliance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," at least ten days prior to the hearing. The hearing will be conducted in accordance with the procedures set forth in Chapter 13 of Title 50 and this article.

(c) The board may reinstate a registration to any person whose registration has been revoked who has met the qualifications for reinstatement. Application for the reissuance of said registration shall be made in such a manner as the board may direct and shall be accompanied by a fee established by the board. Neither the denial of a request for reinstatement of a revoked registration nor the refusal to issue a previously denied registration shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Ga. L. 1919, p. 125, §§ 23, 24; Code 1933, § 84-319; Ga. L. 1955, p. 602, § 4; Ga. L. 1974, p. 162, § 8; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 18; Ga. L. 2000, p. 1527, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "Chapter 13" was substituted for "Article 13" in two places in subsection (b).

Administrative rules and regulations.

Standards of conduct — architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects, Chapter 50-8.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Misrepresentation not regarded by board in issuing certificate cannot be basis for revoking certificate; the misrepresentation must be material to issuing the certificate. Doughtery County Council of Architects v. Beckanstin, 100 Ga. App. 790, 112 S.E.2d 423, 1959 Ga. App. LEXIS 730 (1959).

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Revocation or suspension of license to practice architecture, 58 A.L.R.3d 543.

43-4-14. Qualification for practice of architecture; exemptions.

(a) In order to safeguard health, safety, and welfare, no person shall be allowed to practice architecture unless he or she has the qualifications and competency required by this article. Any person who is practicing architecture as defined in paragraph (11) of Code Section 43-4-1 shall be required to register under this article and to secure all renewals of such registration before beginning or continuing to practice architecture.

(b) Construction documents for the following structures do not require the seal of a registered architect:

(1) One and two-family residences and domestic outbuildings regardless of cost;

(2) Any building classified as an agricultural occupancy upon any farm for the use of any farmer; any state owned farmer's market;

(3) Any building which is a single story building, not exceeding more than 5,000 square feet in area, except new or existing assembly occupancies, educational occupancies, health care occupancies, correctional or detention facilities, hotels, dormitories or lodging facilities, multifamily housing or apartment complexes, and care facilities;

(4) Preengineered buildings that are one story in height, except new or existing assembly occupancies, educational occupancies, health care occupancies, correctional or detention facilities, hotels, dormitories or lodging facilities, multifamily housing or apartment complexes, care facilities, and facilities classified as high hazard; provided, however, that the services of a duly registered architect shall be required for the design of any business or mercantile occupancies that exceed 5,000 square feet in area that are incidental to the operation in such building; and

(5) Nonstructural interior construction within existing or planned structures which were designed by a registered architect, where drawings and specifications are prepared by a registered interior designer who by sealing and signing such interior construction documents submits to the responsible building official certification that the plans and specifications as submitted are in compliance with the applicable current building codes and regulations in effect.

(c) The following persons are exempt from registration as an architect in this state:

(1) A nonresident who holds a license to practice architecture in the state or country in which he or she resides and holds an NCARB certificate, but who is not registered in this state, may offer architectural services in a response to a request for qualifications, an

interview, or a design competition only. Any offering or practice beyond this exception shall require registration as an architect in Georgia;

(2) An employee of a registered architect or firm under subsection (b) of Code Section 43-4-10 who is not in charge of design or supervision and who works under the supervision of a registered architect;

(3) An employee of the United States government while working in the scope of his or her employment for the United States government; and

(4) A registered professional engineer or his or her employee or subordinate under his or her responsible supervising control may perform architectural services which are incidental to such engineering practice; provided, however, that no professional engineer shall practice architecture or use the designation "architect" or any term derived therefrom unless registered under this article.

(d) Nothing in this article shall be construed to prohibit interior designers from performing services authorized by Article 2 of this chapter.

(e) Nothing in this article shall be construed to prohibit a general contractor for construction from offering to perform a design-build contract; provided, however, that such offer shall clearly indicate at the time of such offer that all design services shall be performed by a duly licensed and registered architect or engineer in compliance with all other provisions of this chapter.

(f) Nothing in this article shall be construed to mean that predesign services, as defined in Code Section 50-22-7, are required to be performed exclusively by architects.

(g) Nothing in this article shall be construed to mean that construction contract administration services are required to be performed exclusively by architects.

History.
Ga. L. 1919, p. 125, § 15; Code 1933, § 84-321; Ga. L. 1952, p. 457, § 8; Ga. L. 1974, p. 162, § 10; Ga. L. 1982, p. 903, §§ 1, 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2001, p. 741, § 1; Ga. L. 2010, p. 748, § 2/HB 231.

JUDICIAL DECISIONS

Constitutionality. — Exception for buildings costing less than $100,000 is not unconstitutionally vague. Meyer von Bremen v. Georgia State Bd. of Architects, 259 Ga. 842, 389 S.E.2d 213, 1990 Ga. LEXIS 90 (1990).

Cost of building. — There is a rational relationship between the cost of a building

and the stated purpose of O.C.G.A. § 43-4-14 "to safeguard life and property." Meyer von Bremen v. Georgia State Bd. of Architects, 259 Ga. 842, 389 S.E.2d 213, 1990 Ga. LEXIS 90 (1990).

Language "with or without other parts or appurtenances" in O.C.G.A. § 43-4-1(2) (now paragraph (4)) was sufficiently clear to notify an unregistered person that, for purposes of O.C.G.A. § 43-4-14, the cost of a building for which the unregistered person designed only the foundation, floor, exterior walls, and roof would also include the cost of such interior parts and appurtenances as would be reasonably necessary for the building to become functional for the purposes for which the building was designed. Meyer von Bremen v. Georgia State Bd. of Architects, 259 Ga. 842, 389 S.E.2d 213, 1990 Ga. LEXIS 90 (1990).

County engineer may design fire station. — Design and supervision of building of fire station by professional engineer employee of county does not constitute unlawful practice of architecture since building fire station falls within legislative definitions of both professions and because this title explicitly recognizes some overlap between the professions. Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142, 1977 Ga. LEXIS 1516 (1977).

Structure designed to serve as commercial office and residence not within residence exemption of this section. Dudley v. Monsour, 155 Ga. App. 269, 270 S.E.2d 686, 1980 Ga. App. LEXIS 2554 (1980).

Plaintiff has burden of proving entitlement to an exemption under provision that no person shall be required to register as an architect in order to make plans and specifications for or supervise erection, enlargement, or alteration of any one- or two-family residence buildings, regardless of cost. To rule otherwise would be to require that any defendant in suit to collect for professional services must negate every possible exception to applicable licensing statute in order to raise statute as a defense. Dudley v. Monsour, 155 Ga. App. 269, 270 S.E.2d 686, 1980 Ga. App. LEXIS 2554 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Authority to draft engineering plans containing incidental architectural work. — Exemption in O.C.G.A. § 43-4-14 clearly authorizes a registered professional engineer to draft and file engineering plans, drawings, and specifications that contain incidental architectural work. 1982 Op. Att'y Gen. No. 82-26.

RESEARCH REFERENCES

ALR.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 A.L.R.2d 1085.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Liability to one injured in course of construction, based upon architect's alleged failure to carry out supervisory responsibilities, 59 A.L.R.3d 869.

43-4-15. Enforcement of Code Section 43-4-14.

Except as provided in Code Section 25-2-14, it shall be the duty of all public officials charged with the responsibility of enforcing codes related to the construction of buildings to require compliance with Code Section 43-4-14 before architectural plans, drawings, and specifications are approved for construction. Except as provided in Code Section 25-2-14, no building subject to Code Section 43-4-14 and requiring the

services of an architect shall be built without such approval prior to construction.

History.

Code 1933, § 84-321.1, enacted by Ga. L. 1981, p. 822, § 1; Ga. L. 1982, p. 1019, §§ 1A, 4A; Ga. L. 2000, p. 1527, § 1.

Cross references.

Enforcement of building codes generally, § 8-2-26.

Regulation of fire and other hazards to persons and property, T. 25, C. 2.

Prohibition against use of construction plans and specifications not prepared by or under supervision of registered professional engineer or architect, § 43-15-24.

OPINIONS OF THE ATTORNEY GENERAL

Approval of plans submitted under Fire Safety Code. — Approval of proposed building plans submitted pursuant to the Fire Safety Code is governed by O.C.G.A. § 25-2-14. 1987 Op. Att'y Gen. No. 87-8.

State Fire Marshal can approve any set of plans which come under jurisdiction and which are under the classifications enumerated in O.C.G.A. § 25-2-14, regardless of what features the plans contain, if the plans have the seal of either an architect or an engineer or otherwise have the approval of the commissioner and are in compliance with other applicable codes. 1987 Op. Att'y Gen. No. 87-8.

Approval of engineer's plan with incidental architectural work. — O.C.G.A. § 43-4-15 does not prohibit a public official from approving a registered professional engineer's plan, drawing, or specification that lacks a registered architect's seal or signature but contains incidental architectural work. 1982 Op. Att'y Gen. No. 82-26.

Exemption in O.C.G.A. § 43-4-14 clearly authorizes a registered professional engineer to draft and file engineering plans, drawings, and specifications that contain incidental architectural work. 1982 Op. Att'y Gen. No. 82-26.

Approval of architect's plan with incidental engineering work. — O.C.G.A. § 43-4-15 does not bar a public official from approving a registered architect's plan, drawing, or specification that does not have a registered professional engineer's seal but contains incidental engineering work. 1982 Op. Att'y Gen. No. 82-26.

43-4-16. Registered architect seal; requirements.

(a) Every architect registered under this chapter shall have a seal in the design authorized by the board, bearing the registrant's name, certificate number, and the legends "Registered Architect" and "State of Georgia."

(b) Plans, specifications, drawings, reports, or other architectural documents issued for the purpose of obtaining a building permit or for other requirements set forth by law shall be sealed by the architect and across the face of the seal shall be affixed the signature of the owner of the seal. The location of the seal on such documents, the identification of the pages which must be sealed, and the form of any title blocks may be established by the board in its rules and regulations.

(c) No plans, specifications, drawings, reports, or other documents shall be sealed and signed by an architect unless:

(1) The architect has a current registration to practice in this state

and is competent in the subject matter of the documents by virtue of education or experience or both;

(2) The architect personally prepared the plans, specifications, drawings, reports, or other documents, or the plans, specifications, drawings, reports, or other documents were prepared under the architect's responsible control as provided in subsection (b) of Code Section 43-4-10; and

(3) The architect has been given full authority in writing by the original architect to make document revisions and has made a substantive review and inspection of the documents with regard to the laws and regulations of this state, and the documents are prototypical drawings. For purposes of this paragraph, prototypical drawings are drawings that may be prepared by an architect licensed in any country or United States jurisdiction, that have been prepared in connection with the design of a commercial chain establishment, and that have been successfully constructed in other states or countries.

(d) The registered architect who signs and seals the plans, specifications, drawings, reports, or other documents shall be considered the architect of record.

(e) No registered architect shall affix his or her seal to any plan, specification, drawing, report, or other document unless he or she has assumed the responsibility for the accuracy and adequacy of the work involved.

(f) If the registered architect who sealed the technical submissions submitted to the building official at the time the building permit is issued has not been employed to furnish construction administration services, he or she shall so note on such technical submissions in such manner as defined by board rules. If the architect's responsibility for construction contract administration is terminated following the issuance of a building permit, the building official shall be notified by the architect in writing accordingly.

(g) Any violation of this Code section shall be grounds for the suspension or revocation of the registration of the architect.

(h) Nothing in this Code section shall be construed to prohibit a registered architect from sealing drawings or documents prepared by a registered interior designer when such registered architect has reviewed or supervised the preparation of the drawings or documents as provided in Code Section 43-4-33.

(i) Nothing in this Code section shall be construed to prohibit a licensed engineer from sealing engineering drawings and documents as provided in Code Section 43-4-14.

History.
Ga. L. 1955, p. 602, § 5; Ga. L. 1974, p. 162, § 11; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 19; Ga. L. 2000, p. 1527, § 1; Ga. L. 2001, p. 741, § 2.

JUDICIAL DECISIONS

Only members, not board itself, may petition. — While it is true that the Act creating the Georgia State Board of Examination, Qualification and Registration of Architects authorizes the Board to file equitable petition in the Board's own name, there is no way the Board can bring the petition as provided by this section except through the Board's members acting in the member's official capacities. Harvey v. Flatman, 217 Ga. 764, 125 S.E.2d 55, 1962 Ga. LEXIS 388 (1962).

Injunction provisions inapplicable to city building inspectors. — Provisions of former Code 1933, § 84-9903 (see now O.C.G.A. § 43-4-17) that officer or citizen may apply for injunction against any person violating provisions of former Code 1933, § 84-301 et seq. (see now O.C.G.A. Art. 1, Ch. 4, T. 43) applied only to the enumerated class of persons coming within article provisions; there is nothing in the article that pertains to duties or conduct of municipal building inspectors. Edenfield v. Hazard, 220 Ga. 373, 138 S.E.2d 884, 1964 Ga. LEXIS 554 (1964).

43-4-17. Unlawful practice of architecture; enforcement; injunctions.

(a) Any person who uses the title "architect" or "registered architect" or uses any word, letters, or figures indicating or intending to imply that the person using the same is an architect or registered architect without compliance with this article, or who makes any willfully false oath or affirmation in any matter or proceeding where an oath or affirmation is required by this article, or who practices architecture without compliance with this article shall be guilty of a misdemeanor.

(b) It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce this article and to prosecute any persons violating this article. Upon application of any officer or citizen of this state complaining that this article has been violated by any person and upon proof of such violation, the superior courts of this state are authorized to and shall enjoin further violations of this article.

History.
Ga. L. 1919, p. 125, § 26; Code 1933, § 84-9903; Ga. L. 1953, Jan.-Feb. Sess., p. 387, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1.

JUDICIAL DECISIONS

County engineer designing fire station not unlawful practice of architecture. — Design and supervision of building of fire station by professional engineer employee of county does not constitute unlawful practice of architecture since the building of a fire station falls within the legislative definitions of both professions and because the Code explicitly recognizes some overlap between the

professions. Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142, 1977 Ga. LEXIS 1516 (1977).

Provisions inapplicable to duties or conduct of municipal building inspectors. — Provisions of former Code 1933, § 84-9903 (see now O.C.G.A. § 43-4-17) that an officer or citizen may apply for injunction against any person violating provisions of former Code 1933, § 84-301 et seq. (see now O.C.G.A. Ch. 4, T. 43) applied only to the class of persons enumerated in that chapter; nothing in that chapter pertains to duties or conduct of municipal building inspectors. Edenfield v. Hazard, 220 Ga. 373, 138 S.E.2d 884, 1964 Ga. LEXIS 554 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Only officers of the law are authorized to enforce provisions of former Code 1933, Ch. 84-3 (see O.C.G.A. Ch. 4, T. 43). 1977 Op. Att'y Gen. No. 77-31. (But see 1987 Op. Att'y Gen. No. 87-31).

Building officials may accept construction documents not signed by architect. — Statute placed no obligation upon county or municipal building officials to accept only those construction documents which are properly signed and sealed by an architect or engineer before issuing a permit. 1977 Op. Att'y Gen. No. 77-31. (But see 1987 Op. Att'y Gen. No. 87-31).

Opinion of the Attorney General No. 77-31 is still a correct interpretation of O.C.G.A. § 43-4-17; however, in certain circumstances other statutes do place a duty on local building officials to accept only construction documents having the seal and signature of an architect. 1984 Op. Att'y Gen. No. 84-30.

43-4-17.1. Redesignated.

Editor's notes.

Ga. L. 2000, p. 1527, § 1, redesignated this Code section as Code Section 43-4-18.

43-4-18. Cease and desist orders; violations; notice and hearing; judicial review.

(a) Notwithstanding any other provisions of the law to the contrary, upon the board determining that a person is violating the provisions of Code Section 43-4-14, 43-4-16, or 43-4-17, the board may issue a cease and desist order prohibiting the person from committing further violations and may impose a fine not to exceed $10,000.00 for each violation. In determining the fine amount to be imposed, the board shall consider the severity of the violation.

(b) For purposes of this Code section, each day a person is in violation of the provisions of Code Section 43-4-14, 43-4-16, or 43-4-17 shall constitute a separate violation.

(c) A determination by the board pursuant to subsection (a) of this Code section shall be made only after notice to such person is given and a hearing is held.

(d) Initial judicial review of any decision of the board made pursuant to this Code section or any action for enforcement thereof shall be

available solely in the superior court of the county of domicile of the board.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

History.
Code 1981, § 43-4-17.1, enacted by Ga. L. 1986, p. 434, § 2; Code 1981, § 43-4-18, as redesignated by Ga. L. 2000, p. 1527, § 1; Ga. L. 2007, p. 350, § 3/SB 237.
Editor's notes.
Former Code Section 43-4-18, relating to termination of the State Board of Architects was based on Ga. L. 1982, p. 1019, §§ 1, 5; Ga. L. 1984, p. 448, § 4; and Ga. L. 1988, p. 313, § 1, and was repealed by Ga. L. 1992, p. 3137, § 3, effective July 1, 1992.
Ga. L. 2007, p. 350, § 4/SB 237, not codified by the General Assembly, provides that the amendment to this Code section shall apply to violations committed on or after May 24, 2007.

43-4-19. Issuance of restraining order or injunction.

As cumulative of any other remedy or criminal prosecution, whenever it appears to the board that any person, firm, sole proprietorship, partnership, limited liability company, or corporation is or has been violating any of the provisions of this article, or the lawful rules, regulations, or orders of the board, or any of the laws of this state relating to the practice of architecture, the board, on its own motion, may bring an action in its own name in the superior courts of this state alleging the facts and praying for a temporary restraining order and an injunction against such person, firm, sole proprietorship, partnership, limited liability company, or corporation, restraining him, her, or it from violating such law, order, rule, or regulation. Upon proof of such facts, the court shall issue a restraining order or injunction, or both, without requiring allegation or proof that the petitioner therefor has no adequate remedy at law.

History.
Code 1981, § 43-4-19, enacted by Ga. L. 2000, p. 1527, § 1.

ARTICLE 2

REGISTERED INTERIOR DESIGNERS

43-4-30. "Registered interior designer" defined.

As used in this article, the term "registered interior designer" means a person registered under this article as being qualified by education, experience, and examination to use the title "registered interior designer." In general, an interior designer performs services including preparation of documents relative to nonstructural interior construction, furnishings, finishes, fixtures, and equipment.

History. Code 1981, § 43-4-30, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2010, p. 748, § 3/HB 231.

43-4-31. Duty of State Board of Architects and Interior Designers to grant certificates and administer provisions of article; registry.

The Georgia State Board of Architects and Interior Designers shall grant certificates and administer the provisions of this article, and the board shall keep a registry of registered interior designers.

History. Code 1981, § 43-4-31, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2000, p. 1527, § 2.

43-4-32. Application for certificate of registration; requirements; term of certificate; renewal.

(a) Any person wishing to use the title "registered interior designer" shall apply to the board for a certificate of registration as a registered interior designer.

(b) Each applicant for certification as a registered interior designer shall meet the following requirements:

(1) Is at least 21 years of age;

(2) Has submitted a completed application as required by the board;

(3) Has submitted the fees required by the board;

(4) Provides proof of having passed the examination promulgated by the National Council for Interior Design Qualification or an examination approved by the board; and

(5) Except as otherwise provided in subsection (c) of this Code section, provides proof that the applicant has acquired a minimum four-year degree or first professional degree conferred by a college or university whose program is accredited by the National Architectural Accrediting Board or by another national or regional accrediting organization recognized by the board in a program of study in architecture or in a program of study in interior design approved by the Council for Interior Design Accreditation or in a substantially equivalent program of study approved by the board.

(c) The examination requirement and education requirement specified in paragraph (4) of subsection (b) of this Code section shall be waived by the board until June 30, 1996, for any applicant who provides proof satisfactory to the board that the applicant has been an interior designer for at least ten years immediately prior to the date of the application and who:

(1) Provides proof of having passed the entire examination promulgated by the National Council for Interior Design Qualification or an examination approved by the board; or

(2) Has a four-year degree conferred by a college or university and who passes an examination approved by the board on life safety and accessibility codes, which examination is passed after January 1, 1990, and prior to the application for a certificate of registration.

(d) A certificate of registration as a registered interior designer shall be valid for two years and shall be renewed biennially. An applicant for renewal of a certificate of registration shall pay a renewal fee and shall meet such continuing education requirements as the board may require by rule or regulation. The continuing education requirements shall not exceed 40 hours biennially.

History.
Code 1981, § 43-4-32, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 1994, p. 1759, § 1; Ga. L. 2008, p. 1112, § 11/HB 1055.

Administrative rules and regulations.
Registered interior designer registration, renewal, and reinstatement, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-9.

Registered interior designer registration requirements, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-10.

43-4-33. Form of certificate of registration; seal.

(a) The board shall prescribe the form of a certificate of registration as a registered interior designer issued pursuant to the provisions of this article.

(b) A registered interior designer shall be authorized to have a seal separate from the seal of registered architects. The seal of a registered interior designer shall be applied to drawings or other documents prepared by or under the responsible control of the registered interior designer, provided that the foregoing shall not prohibit any registered architect who has reviewed or supervised the preparation of drawings or other documents prepared by a registered interior designer from applying his or her seal to such drawings or other documents.

History.
Code 1981, § 43-4-33, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2010, p. 748, § 4/HB 231.

43-4-34. Scope of practice; effect on practice of architecture and interior decoration.

(a) Nothing in this article shall be construed as amending or in any manner affecting the definition of or practice of architecture as provided in Code Sections 43-4-1 and 43-4-14.

(b) Nothing in this article shall be construed as prohibiting an architect from practicing interior design, provided that an architect shall not use the title "registered interior designer" unless the architect has been granted a certificate of registration under this article.

(c) Nothing in this article shall be construed as prohibiting or restricting the practice or activities of an interior decorator or individual offering interior decorating services, including, but not limited to, selection of surface materials, window treatments, wall coverings, paint, floor coverings, and lighting fixtures.

History.
Code 1981, § 43-4-34, enacted by Ga. L. 1992, p. 3318, § 2.

43-4-35. Applicability of provisions of Chapter 1 of this title.

For the purposes of this article, all the powers and duties provided in Chapter 1 of this title apply, including but not limited to the authority to sanction or deny registration as provided for applicants and licensees in Code Section 43-1-19.

History.
Code 1981, § 43-4-35, enacted by Ga. L. 1992, p. 3318, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "this title" was substituted for "Title 43".

43-4-36. Registration of persons certified or registered in other states or foreign countries.

Any person who has been certified or registered as an interior designer in another state or foreign country may be issued a certificate of registration by the board to use the title "registered interior designer," provided that such person demonstrates to the satisfaction of the board that he meets the requirements for registration in this state.

History.
Code 1981, § 43-4-36, enacted by Ga. L. 1992, p. 3318, § 2.

43-4-37. Unlawful use of title "registered interior designer."

(a) It shall be unlawful for any person to use the title "registered interior designer" unless that person has been issued a certificate of registration as a registered interior designer as provided in this article.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 43-4-37, enacted by Ga. L. 1992, p. 3318, § 2.

CHAPTER 4A

ATHLETE AGENTS

Sec.	
43-4A-1.	Short title.
43-4A-2.	Definitions.
43-4A-3.	Service of process agent for nonresident athlete agents.
43-4A-4.	Certification of registration required; exception; agency contract void for noncompliance.
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43-4A-6.	Issuance, renewal, and term of certificate of registration.
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43-4A-15.	Requirements for agency contract; notice to student athlete; penalty for noncompliance; record for student athlete.
43-4A-16.	Cancellation of contract by student athlete.
43-4A-16.1.	Redesignated.
43-4A-17.	Civil penalty.
43-4A-18.	Damages to educational institution; recovery.
43-4A-19.	Uniformity in application between states.
43-4A-20.	Electronic signatures.

Editor's notes.

Ga. L. 1990, p. 8, § 55, repealed Ga. L. 1988, p. 651, § 2, relating to the applicability of the Act to certain athletes.

Ga. L. 1990, p. 8, § 55, repealed Ga. L. 1989, p. 370, § 10A, which provided that this chapter should not apply to a person or agreement involving an athlete and an amateur athletic team.

Law reviews.

For note on 2000 amendments of O.C.G.A. §§ 43-4A-7, 43-4A-11, 43-4A-16 and 2000 enactment of §§ 43-4A-16.1, 43-4A-20, see 17 Ga. St. U.L. Rev. 265 (2000).

For survey article discussing developments in law of business associations for the period from June 1, 1999, through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

For note, "Amateur Hour Is Over: Time for College Athletes to Clock in Under the FLSA," see 37 Ga. St. U.L. Rev. 471 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Limited applicability of provisions of chapter. — Legal entities and individuals who seek to obtain collegiate athletic scholarships for high school athletes do not fall under the provisions of O.C.G.A. §§ 20-2-317 and 20-2-318, or the 2003 amendments to O.C.G.A. § 43-4-1 et seq. 2004 Op. Att'y Gen. No. U2004-1.

RESEARCH REFERENCES

Am. Jur. 2d.
27A Am. Jur. 2d, Entertainment and Sports Law, § 4 et seq.

43-4A-1. Short title.

This chapter shall be known and may be cited as the "Uniform Athlete Agents Act."

History.
Code 1981, § 43-4A-1, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 1; Ga. L. 2010, p. 376, § 2/SB 149.

43-4A-2. Definitions.

As used in this chapter, the term:

(1) "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. This term includes an individual who represents to the public that the individual is an athlete agent. This term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(8) "Professional sports services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this chapter.

(11) "Secretary of State" means the Secretary of State of the State of Georgia and his or her designee.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(13) "Student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

History.

Code 1981, § 43-4A-2, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 1; Ga. L. 1993, p. 776, § 1; Ga. L. 2003, p. 774, § 2; Ga. L. 2010, p. 376, § 2/SB 149.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 189 (1993).

43-4A-3. Service of process agent for nonresident athlete agents.

By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

History.

Code 1981, § 43-4A-4, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 2; Ga. L. 1993, p. 776, § 2; Ga. L. 2003, p. 774, § 4; Code 1981, § 43-4A-3, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

This Code section formerly pertained to creation of the Georgia Athlete Agent

Regulatory Commission, members, terms, removal, election of chairperson and vice chairperson, quorum, rules and standards of conduct, reimbursement of members, and the role of the secretary. The former Code section was based on Code 1981, § 43-4A-3, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 774, § 3, and was repealed by Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-4. Certification of registration required; exception; agency contract void for noncompliance.

(a) Except as otherwise provided in subsection (b) of this Code section, an individual shall not act as an athlete agent in this state without holding a certificate of registration under this chapter.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes, except signing an agency contract, if:

(1) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(c) An agency contract resulting from conduct in violation of this Code section shall be void, and the athlete agent shall return any consideration received under the contract.

History.

Code 1981, § 43-4A-4.1, enacted by Ga. L. 2003, p. 774, § 5; Code 1981, § 43-4A-4, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-4 as present Code Section 43-4A-3.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 43-4A-4 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

43-4A-4.1. Redesignated.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-4.1 as present Code Section 43-4A-4.

43-4A-5. Application for registration.

An applicant for registration shall submit an application for regis-

tration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this Code section is a public record. The application shall be in the name of an individual and state or contain the following and any other information required by the Secretary of State:

(1) The name of the applicant and the address of the applicant's residence and principal place of business;

(2) The name of the applicant's business or employer, if applicable;

(3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) A description of the applicant's:

(A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and

(C) Educational background relating to the applicant's activities as an athlete agent;

(5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) The names and addresses of all persons who are:

(A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and

(B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater;

(8) Whether the applicant or any person named pursuant to paragraph (7) of this Code section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this Code section has made a false, misleading, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this Code section resulted in the imposition of a sanction, suspension, or declaration of ineligi-

bility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this Code section arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this Code section as an athlete agent in any state.

History.

Code 1981, § 43-4A-5, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 3; Ga. L. 1993, p. 123, § 20; Ga. L. 2003, p. 774, § 6; Ga. L. 2010, p. 376, § 2/SB 149.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2003, "Code section" was substituted for "subsection" in paragraph (8).

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-6. Issuance, renewal, and term of certificate of registration.

(a) Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall issue a certificate of registration to an individual who complies with Code Section 43-4A-5.

(b) The Secretary of State may refuse to issue a certificate of registration if it is determined that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(2) Made a material false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by this chapter;

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b) of this Code section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) The refusal to grant a registration shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of such chapter shall not be required. Notice of refusal to grant a registration shall be sent by registered mail or statutory overnight delivery or personal service setting forth the particular reasons for the refusal. The written notice shall be sent to the applicant's address of record with the Secretary of State, and the applicant shall be allowed to appear before the Secretary of State if the applicant requests to do so in writing.

(e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this subsection is a public record.

(f) A certificate of registration or a renewal of a registration shall be valid for a period of up to two years.

History.

Code 1981, § 43-4A-7, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 4; Ga. L. 2000, p. 1396, § 1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2003, p. 774, § 8; Code 1981, § 43-4A-6, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (d) is applicable with respect to notices delivered on or after July 1, 2000.

This Code section formerly pertained to evaluation and investigation of applicant. The former Code section was based on Code 1981, § 43-4A-6, enacted by Ga. L. 1988, p. 651, § 1, and was repealed and reserved by Ga. L. 2003, p. 774, § 7, effective June 4, 2003.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-7. Discipline of registered agents; notice and hearing required.

(a) The Secretary of State may suspend, revoke, or refuse to renew a registration or may discipline a person registered by the Secretary of

State for conduct that would have justified denial of registration under Code Section 43-4A-6.

(b) The Secretary of State may discipline, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing.

(c) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the Secretary of State and the provisions of this chapter.

History.
Code 1981, § 43-4A-8, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 5; Ga. L. 2003, p. 774, § 9; Ga. L. 2005, p. 60, § 43/HB 95; Code 1981, § 43-4A-7, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.
Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-7 as present Code Section 43-4A-6.
Law reviews.
For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-8. Fee for registration or renewal.

An application for registration or renewal of registration shall be accompanied by such fee as shall be prescribed by the Secretary of State and a renewal bond, if applicable. The fee shall be the same for all applicants regardless of previous or current registrations or licenses in other states or jurisdictions as an athlete agent.

History.
Code 1981, § 43-4A-9, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 10; Code 1981, § 43-4A-8, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.
Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-8 as present Code Section 43-4A-7.

43-4A-9. Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending, upon receipt by the Secretary of State of a completed application for registration, surety bond, and fee and after approval by the Secretary of State. The Secretary of State may in his or her discretion issue a temporary registration to the applicant, which registration shall have the same force and effect as a permanent registration for such period of time prescribed by the Secretary of State, after which the temporary registration shall become void. A temporary registration may be voided by the Secretary of State at any time.

History.
Code 1981, § 43-4A-10, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 6; Ga. L. 1993, p. 776, § 3; Ga. L. 2000,

p. 1706, § 19; Ga. L. 2003, p. 774, § 11; Code 1981, § 43-4A-9, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-9 as present Code Section 43-4A-8.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-10. Required records; inspection by Secretary of State.

(a) An athlete agent shall retain the following records for a period of five years:

(1) The name and address of each individual represented by the athlete agent;

(2) Any agency contract entered into by the athlete agent; and

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(b) Records required by subsection (a) of this Code section to be retained shall be open to inspection by the Secretary of State during normal business hours.

History.

Code 1981, § 43-4A-11, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 7; Ga. L. 2000, p. 1396, § 2; Ga. L. 2003, p. 774, § 12; Code 1981, § 43-4A-10, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (a) is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-10 as present Code Section 43-4A-9.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-11. Penalty for violation.

An athlete agent who violates Code Section 43-4A-14 shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than $5,000.00 nor more than $100,000.00, by imprisonment of one to five years, or both such fine and imprisonment.

History.

Code 1981, § 43-4A-12, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 8; Ga. L. 2003, p. 774, § 13; Code 1981, § 43-4A-11, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-11 as present Code Section 43-4A-10.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-12. Surety bond requirement; suspension for failure to maintain.

(a) An athlete agent shall deposit or have deposited with the Secretary of State, prior to the issuance of a registration or renewal of a registration, a surety bond in the penal sum of not less than $10,000.00, as established by the Secretary of State. Such surety bond shall be executed in the favor of the state with a surety company authorized to do business in this state and conditioned to pay damages in the amount of such bond to any athletic department aggrieved by any act of the principal named in such bond, which act is in violation of Code Section 43-4A-13 or would be grounds for revocation of a license under this chapter. If more than one athletic department suffers damages by the actions of an athlete agent, each athletic department shall receive a pro rata share of the amount of the bond based on the entitlement of one share of such amount of the bond for each student athlete who loses his or her eligibility to participate in intercollegiate sports contests as a member of a sports team at an institution of higher education as a result of actions of the athlete agent.

(b) If any registrant fails to maintain such bond so as to comply with the provisions of this Code section, the registration issued to the athlete agent shall be suspended until such time as a new bond is obtained. An athlete agent whose registration is suspended pursuant to this Code section shall not carry on any business as an athlete agent during the period of suspension.

History.

Code 1981, § 43-4A-13, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 9; Ga. L. 2003, p. 774, § 14; Code 1981, § 43-4A-12, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-12 as present Code Section 43-4A-11.

Law reviews.

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-13. Prohibited activities of athlete agent.

(a) An athlete agent shall not, with the intent to induce a student athlete to enter into an agency contract:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student athlete before the student athlete enters into the agency contract; or

(3) Furnish anything of value to an individual other than the student athlete or another registered athlete agent.

(b) An athlete agent shall not intentionally:

(1) Initiate contact with a student athlete unless registered under this chapter;

(2) Refuse or fail to retain or permit inspection of the records required to be retained by this chapter;

(3) Fail to register when required by this chapter;

(4) Provide materially false or misleading information in an application for registration or renewal of registration;

(5) Predate or postdate an agency contract; or

(6) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that such signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

History.
Code 1981, § 43-4A-14, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 15; Code 1981, § 43-4A-13, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-13 as present Code Section 43-4A-12.

43-4A-14. Notice of agency contract to athletic director of educational institution.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agency contract.

History.
Code 1981, § 43-4A-16, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 10; Ga. L. 2000, p. 1396, § 3; Ga. L. 2003, p. 774, § 17; Code 1981, § 43-4A-14, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.
Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-14 as present Code Section 43-4A-13.

Law reviews. For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 298 (1989).

43-4A-15. Requirements for agency contract; notice to student athlete; penalty for noncompliance; record for student athlete.

(a) An agency contract shall be in a record that is signed or otherwise authenticated by the parties.

(b) An agency contract shall state or contain:

(1) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract;

(3) A description of any expenses that the student athlete agrees to reimburse;

(4) A description of the services to be provided to the student athlete;

(5) The duration of the contract; and

(6) The date of execution.

(c) An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

"WARNING TO STUDENT ATHLETE IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

(d) An agency contract that does not conform to this Code section shall be voidable by the student athlete. If a student athlete voids an

agency contract, the student athlete shall not be required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

History.
Code 1981, § 43-4A-16.1, enacted by Ga. L. 2000, p. 1396, § 4; Ga. L. 2003, p. 774, § 18; Code 1981, § 43-4A-15, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.
Editor's notes.
Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to acts occurring on or after July 1, 2000.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-15 as present Code Section 43-4A-17.

43-4A-16. Cancellation of contract by student athlete.

(a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) A student athlete shall not waive the right to cancel an agency contract.

(c) If a student athlete cancels an agency contract, the student athlete shall not be required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

History.
Code 1981, § 43-4A-17, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 19; Code 1981, § 43-4A-16, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.
Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-16 as present Code Section 43-4A-14.

43-4A-16.1. Redesignated.

Editor's notes.
Ga. L. 2010, p. 376, § 2/sb 149, effective July 1, 2010, redesignated former Code Section 43-4A-16.1 as present Code Section 43-4A-15.

43-4A-17. Civil penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed $25,000.00 for a violation of this chapter.

History.
Code 1981, § 43-4A-15, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 16; Code 1981, § 43-4A-17, as redesig-

nated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-17 as present Code Section 43-4A-16.

43-4A-18. Damages to educational institution; recovery.

(a) An educational institution has a right of action against an athlete agent or former student athlete for damages caused by a violation of this chapter. In an action under this Code section, the court may award to the prevailing party costs and reasonable attorney's fees.

(b) Damages to an educational institution under subsection (a) of this Code section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this Code section shall not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

(d) Any liability of the athlete agent or the former student athlete under this Code section shall be several and not joint.

(e) This chapter shall not restrict rights, remedies, or defenses of any person under law or equity.

History.

Code 1981, § 43-4A-20, enacted by Ga. L. 2000, p. 1396, § 5; Ga. L. 2003, p. 774, § 22; Code 1981, § 43-4A-18, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.

Ga. L. 1992, p. 3137, § 4, effective July 1, 1992, repealed former Code Section 43-4A-18, which was based on Ga. L. 1988, p. 651, § 1, relating to termination.

Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-18 as present Code Section 43-4A-19.

43-4A-19. Uniformity in application between states.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Code 1981, § 43-4A-18, enacted by Ga. L. 2003, p. 774, § 20; Code 1981, § 43-4A-19, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-19 as present Code Section 43-4A-20.

43-4A-20. Electronic signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

History.
Code 1981, § 43-4A-19, enacted by Ga. L. 1990, p. 8, § 43; Ga. L. 2003, p. 774, § 21; Code 1981, § 43-4A-20, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.

Editor's notes.
Ga. L. 2010, p. 376, § 2/SB 149, effective July 1, 2010, redesignated former Code Section 43-4A-20 as present Code Section 43-4A-18.

CHAPTER 4B

GEORGIA ATHLETIC AND ENTERTAINMENT COMMISSION

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43-4B-54. Suspension, revocation, or denial of licenses or permits; fines.

Sec.
43-4B-55. Exemptions.

Administrative rules and regulations.
Professional boxing, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Athletic and Entertainment Commission, Chapter 85-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. T. 31, C. 31 are included in the annotations for this Code section.

Scope of commission's authority. — State Boxing Commission has authority to require licensure of professional boxing promoters; but the Commission does not have authority to license other participants, establish ring and equipment requirements and standards, or establish ring safety and conduct of bout standards by rule or regulation. 1984 Op. Att'y Gen. No. 84-10 (decided prior to 1984 amendment of O.C.G.A. § 31-31-2).

Ultimate fighting matches that encompass boxing, kick boxing, or contact karate were subject to former O.C.G.A. § 31-31-1 et seq. 1996 Op. Att'y Gen. No. 96-21 (decided under former O.C.G.A. Ch. 31, T. 31).

RESEARCH REFERENCES

Am. Jur. 2d.
27A Am. Jur. 2d, Entertainment and Sports, § 1 et seq.

ARTICLE 1

GENERAL PROVISIONS

43-4B-1. Definitions.

As used in this chapter, the term:

(1) "Amateur," when applied to a person engaged in boxing, wrestling, or a martial art, means a person who receives no compensation and engages in a match, contest, or exhibition of boxing, wrestling, or a martial art that is governed or authorized by:

(A) U.S.A. Boxing;

(B) The Georgia High School Athletic Association;

(C) The National Collegiate Athletic Association;

(D) Amateur Athletic Union;

(E) Golden Gloves;

(F) Team Georgia Amateur Wrestling;

(G) USA Wrestling;

(H) National High School Coaches Association;

(I) North American Sport Karate Association;

(J) International Sport Kick Boxing/Karate Association;

(K) World Kick Boxing Association;

(L) United States Kick Boxing Association;

(M) International Sport Combat Federation;

(N) Professional Karate Commission;

(O) International Kick Boxing Federation; or

(P) The local affiliate of any organization listed in this paragraph.

(2) "Boxing match" means a contest between two individuals in which contestants score points in rounds of two or three minutes by striking with padded fists the head and upper torso of the opponent or by knocking the opponent down and rendering the opponent unconscious or incapable of continuing the contest by such blows, which contest is held in a square ring supervised by a referee and scored by three judges.

(3) "Boxing registry" means a registry created or designated pursuant to subsection (j) of Code Section 43-4B-4.

(3.1) "Charitable organization" means an entity described by:

(A) Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(B) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)).

(4) "Commission" means the Georgia Athletic and Entertainment Commission.

(5) "Exhibition" means a contest where the participants engage in the use of boxing, wrestling, or martial arts skills and techniques and where the objective is to display such skills and techniques without striving to win.

(6) "Face value" means the dollar value of a ticket or order, which value shall reflect the dollar amount that the customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the match, contest, exhibition, or entertainment event. A complimentary ticket shall not have a face value of $0.00. A complimentary ticket shall not have a face value of less than that of the least expensive ticket available for sale to the general public. Face value shall include

any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees which are charged to and must be paid by the customer in order to view the match, contest, exhibition, or entertainment event. It shall exclude any portion paid by the customer for federal, state, or local taxes.

(7) "Gross proceeds" means the total revenue received solely from the sale of tickets used or intended to be used by the audience physically attending any event required to be licensed under this chapter.

(8) "Gross receipts" means:

(A) The gross price charged for the sale or lease of broadcasting, television, pay per view, closed circuit, or motion picture rights without any deductions for commissions, brokerage fees, distribution fees, production fees, advertising, or other expenses or charges;

(B) The face value of all tickets sold and complimentary tickets issued, provided, or given; and

(C) The face value of any seats issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event.

(9) "Local tax" means any occupation tax or other tax owed to a county or municipality in order to hold a match, contest, or exhibition or to carry on a business as a ticket broker within such county or municipality.

(9.1) "Kickboxing" means unarmed combat involving the use of striking techniques delivered with the upper and lower body and in which the competitors remain standing while striking.

(10) "Manager" means a person who under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a matter related to boxing on behalf of a boxer. Such term includes, but is not limited to, a person who functions as a booking agent, adviser, or consultant.

(10.1) "Martial art" means any form of unarmed combative sport or unarmed combative entertainment that allows contact striking, except boxing or wrestling.

(10.2) "Matchmaker" means a person who is employed by or associated with a promoter in the capacity of booking and arranging professional matches, contests, or exhibitions between opponents or who proposes professional matches, contests, or exhibitions and selects and arranges for the participants in such events and for whose activities in this regard the promoter is legally responsible.

(11) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts, including but not limited to grappling, submission holds, and strikes with the upper and lower body.

(11.1) "Original purchaser for personal use" means a person who buys one or more tickets with the intention of using the ticket or tickets solely for the use of the purchaser or the purchaser's invitees, employees, and agents. An original purchaser who resells more than six tickets to the same athletic contest or entertainment event and who resells tickets to an athletic contest or entertainment event for more than 105 percent of their face value shall be rebuttably presumed to be engaging in the business of a ticket broker in any criminal prosecution or civil action, order, or penalty by the commission.

(11.2) "Patron boxing," "patron wrestling," or "patron martial arts" means boxing, wrestling, or martial arts that is not:

(A) Governed or authorized by any organization listed in paragraph (1) of this Code section;

(B) Governed or authorized by an organization licensed by the commission in accordance with this chapter;

(C) Governed or authorized by an organization exempted from licensure by the commission in accordance with this chapter; and

(D) Licensed by the commission in accordance with Article 2 of this chapter.

(11.3) "Pay per view" means a telecast for which a fee is required in addition to any other fee paid by the viewer for any other services of the telecaster.

(12) "Person" means any individual, partnership, firm, association, corporation, or combination of individuals of whatever form or character.

(13) "Physician" means a doctor of medicine or other medical professional legally authorized by any state to practice medicine.

(14) "Professional" means a person who is participating or has participated in a match, contest, or exhibition which is not governed or authorized by one or more of the organizations listed in paragraph (1) of this Code section and:

(A) Has received or competed for or is receiving or competing for any cash as a salary, purse, or prize for participating in any match, contest, or exhibition;

(B) Is participating or has participated in any match, contest, or

exhibition to which admission is granted upon payment of any ticket for admission or other evidence of the right of entry;

(C) Is participating or has participated in any match, contest, or exhibition which is or was filmed, broadcast, or transmitted for viewing; or

(D) Is participating or has participated in any match, contest, or exhibition which provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise.

(15) "Professional match, contest, or exhibition" means a match, contest, or exhibition which is not governed or authorized by one or more of the organizations listed in paragraph (1) of this Code section and:

(A) Rewards a participant with cash as a salary, purse, or prize for such participation;

(B) Requires for admission payment of a ticket for admission or other evidence of the right of entry;

(C) Is filmed, broadcast, or transmitted for viewing; or

(D) Provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise.

(16) "Promoter" means the person primarily responsible for organizing, promoting, and producing a professional match, contest, or exhibition and who is legally responsible for the lawful conduct of such professional match, contest, or exhibition.

(16.1) "Promotion of unarmed combat" means the organization, promotion, production, publicizing, or arranging of, or provision of a venue for, a competition of unarmed combat by a person who receives some compensation or commercial benefit from such competition.

(17) "Purse" or "ring earnings" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or wrestlers are participating in a match, contest, or exhibition and includes the boxer's or wrestler's share of any payment received for radio broadcasting, television, or motion picture rights.

(17.1) "Shidokan" means unarmed combat involving three separate, segregated rounds in which karate rules and techniques are exclusively used in one round, kickboxing rules and techniques are exclusively used in one round, and grappling rules and techniques are exclusively used in one round.

(18) "State" means any of the 50 states, Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(19) "Ticket broker" means:

(A) Any person who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment events held in this state to which the general public is admitted and who charges a premium in excess of the price of the ticket; or

(B) Any person who has a permanent office or place of business in this state who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment events held inside or outside this state to which the general public is admitted and who charges a premium in excess of the price of the ticket.

The term ticket broker shall not include the owner, operator, lessee, or tenant of the property in which an athletic contest or entertainment event is being held or the sponsor of such a contest or event or the authorized ticket agent of such persons.

(20)(A) "Unarmed combat" means any form of competition between human beings or one or more human beings and one or more animals in which:

(i) One or more blows are struck which may reasonably be expected to inflict injury on a human being; and

(ii) There is some compensation or commercial benefit arising from such competition, whether in the form of cash or noncash payment to the competitors or the person arranging the competition; the sale of the right to film, broadcast, transmit, or view the competition; or the use of the competition to attract persons to a particular location for some commercial advantage or to promote a commercial product or commercial enterprise.

Such term also means any amateur kickboxing match in which the competitors are not wearing protective gear.

(B) Unarmed combat shall include but shall not be limited to: tough man fights, bad man fights, nude boxing, nude wrestling, patron boxing, patron martial arts, and patron wrestling.

(C) Unarmed combat shall not include:

(i) Professional boxing licensed in accordance with this chapter;

(ii) Professional wrestling governed or authorized by an organization licensed or exempted from licensure in accordance with this chapter;

(iii) Amateur boxing governed or authorized by an organization listed in paragraph (1) of this Code section;

(iv) Amateur wrestling governed or authorized by an organization listed in paragraph (1) of this Code section;

(v) Any competition displaying the skills of a single form of an Oriental system of unarmed combative sports or unarmed combative entertainment, including, but not limited to, kickboxing, karate, or full-contact karate, that is held pursuant to the rules of that form and governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter;

(vi) Shidokan when the competition is governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter;

(vii) Mixed martial arts fighting when the competition is governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter; or

(viii) Other martial arts competitions, when governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter.

(21) "Wrestling" means:

(A) A staged performance of fighting and gymnastic skills and techniques by two or more human beings who are not required to use their best efforts in order to win and for which the winner may have been selected before the performance commences; or

(B) A performance of fighting and gymnastic skills and techniques by two or more human beings.

History.

Code 1981, § 43-4B-1, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, §§ 23, 24; Ga. L. 2005, p. 984, § 1/SB 224; Ga. L. 2011, p. 752, § 43/HB 142.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, former paragraph (10.2) was redesignated as present paragraph (11) and former paragraph (11) was redesignated as present paragraph (10.2); in paragraph (17.1), "in which" was substituted for "of which" near the beginning; in division (20)(C)(v), "kickboxing" was substituted for "kick boxing" near the middle; and, in division (20)(C)(vi), "or" was deleted from the end.

Administrative rules and regulations.

Professional boxing, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Athletic and Entertainment Commission, Chapter 85-1.

43-4B-2. Application.

(a) The provisions of this chapter shall not be construed to apply to any match, contest, or exhibition:

(1) In which the contestants are all amateurs; and

(2) Which is governed or authorized by:

(A) U.S.A. Boxing;

(B) The Georgia High School Athletic Association;

(C) The National Collegiate Athletic Association;

(D) Amateur Athletic Union;

(E) Golden Gloves;

(F) Team Georgia Amateur Wrestling;

(G) USA Wrestling;

(H) National High School Coaches Association;

(I) North American Sport Karate Association;

(J) International Sport Kick Boxing/Karate Association;

(K) World Kick Boxing Association;

(L) United States Kick Boxing Association;

(M) International Sport Combat Federation;

(N) Professional Karate Commission;

(O) International Kick Boxing Federation; or

(P) The local affiliate of any organization listed in this paragraph.

(b) The provisions of this chapter shall not apply to any matches, contests, or exhibitions of professional wrestling or to a promoter or organization that promotes, organizes, or governs such matches, contests, or exhibitions where such promoter or organization is a corporation that, at the time of such matches, contests, or exhibitions:

(1) Is registered under the federal Securities Exchange Act of 1934; and

(2) Has total assets of not less than $25 million.

History.
Code 1981, § 43-4B-2, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 2/SB 224; Ga. L. 2011, p. 752, § 43/HB 142.

43-4B-3. Georgia Athletic and Entertainment Commission; membership; medical advisory panel; reimbursement of members.

(a) The State Boxing Commission in existence immediately prior to July 1, 2001, is continued in existence subject to the provisions of this

chapter. On and after July 1, 2001, the name of such commission shall be the Georgia Athletic and Entertainment Commission. The membership of the commission shall continue unchanged except as otherwise expressly provided by this chapter.

(b) The commission shall be composed of five members appointed by the Governor. Each member of the commission shall be appointed for a term of four years and until his or her successor is appointed. Vacancies shall be filled for the unexpired terms under the same procedures and requirements as appointments for full terms.

(c) The commission shall elect a chairperson from among its membership for a term of one year. The commission may elect a vice chairperson from its membership for a term of one year. Any member serving as chairperson shall be eligible for successive election to such office by the commission.

(d) The commission's medical advisory panel, appointed by the Governor, shall consist of four persons licensed to practice medicine in Georgia pursuant to the provisions of Chapter 34 of this title. They shall represent the specialties of neurology, ophthalmology, sports medicine, and general medicine. The medical advisory panel shall advise and assist the commission and its staff regarding issues and questions concerning the medical safety of applicants or licensees, including, but not limited to, matters relating to medical suspensions. The medical advisory panel may meet separately from the commission to discuss and formulate recommendations for the commission in connection with medical safety. Members of the medical advisory panel shall not be counted in determining a quorum of the commission and shall not vote as commission members.

(e) Each member of the commission and the medical advisory panel shall be reimbursed for expenses and travel as provided for members of various professional licensing boards in subsection (f) of Code Section 43-1-2.

History.

Code 1981, § 43-4B-3, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 3/SB 224.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "July 1, 2001," was substituted for "the effective date of this chapter," twice in subsection (a).

43-4B-4. Authority of commission.

(a) The commission is the sole regulator of professional boxing in Georgia and shall have authority to protect the physical safety and welfare of professional boxers and serve the public interest by closely supervising all professional boxing in Georgia.

(b) The commission shall have the sole jurisdiction to license the promotion or holding of each professional match, contest, or exhibition of boxing promoted or held within this state.

(c) The commission shall have the sole authority to license participants in any professional match, contest, or exhibition of boxing held in this state.

(d) The commission has the authority to direct, manage, control, and supervise all professional matches, contests, or exhibitions of boxing. It may adopt bylaws for its own management and promulgate and enforce rules and regulations consistent with this chapter.

(e) The commission may appoint one or more inspectors as duly authorized representatives of the commission to ensure that the rules are strictly observed. Such inspectors shall be present at all professional matches, contests, or exhibitions of boxing.

(f) The commission may designate physicians as duly authorized representatives of the commission to conduct physical examinations of boxers licensed under this chapter and shall designate a roster of physicians authorized to conduct prefight physicals and serve as ringside physicians in all professional boxing matches held in this state.

(g) The commission or any agent duly designated by the commission may make investigations. The commission may hold hearings; issue subpoenas to compel the attendance of witnesses and the production of books, papers, and records; and administer oaths to and examine any witnesses for the purpose of determining any question coming before it under this chapter or under the rules and regulations adopted pursuant to this chapter. During an investigation of any allegation which, if proven, would result in criminal or civil sanctions as provided in this chapter, the commission may withhold all or a portion of the gross receipts to which the person under investigation is entitled until such time as the matter has been resolved.

(h) The commission shall be authorized to engage in activities which promote amateur boxing in this state and to contract with any nonprofit organization which is exempted from the taxation of income pursuant to Code Section 48-7-25 for the provision of services related to the promotion of amateur boxing in this state. To support amateur boxing in this state, the commission may promote voluntary contributions through the application process or through any fund raising or other promotional technique deemed appropriate by the commission.

(i) Pursuant to 15 U.S.C.A. Section 6301, et seq., the commission is authorized to issue to each boxer who is a resident of this state an identification card bearing the boxer's photograph and in such form and containing such information as the commission deems necessary and appropriate. The commission is expressly authorized to ensure that the

form and manner of issuance of such identification cards comply with any applicable federal law or regulation. The commission is authorized to charge an amount not to exceed $100.00 per card for the issuance or replacement of each identification card.

(j) The commission is authorized to create a boxing registry or to designate a nationally recognized boxing registry and to register each boxer who is a resident of this state or who is a resident of another state which has no boxing registry.

(k) The commission is authorized to inquire into the financial backing of any professional match, contest, or exhibition of boxing and obtain answers to written or oral questions propounded to all persons associated with such professional event.

(l) The commission is authorized to receive tax payments in accordance with Code Section 43-4B-20, and to remit such tax payments to the general treasury.

History.
Code 1981, § 43-4B-4, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 25.

U.S. Code.
Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 et seq.

43-4B-5. Secretary of commission.

The Secretary of State shall designate the secretary of the commission, who shall issue licenses and identification cards and perform such other duties as the commission may direct to carry out the provisions of this chapter.

History.
Code 1981, § 43-4B-5, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-6. Commission meetings.

(a) The commission shall meet upon the call of the chairperson or upon the call of any two members. The business of the commission shall be conducted by a majority vote of the members present. A majority of the commission members shall constitute a quorum.

(b) The chairperson, if necessary, may within ten days of receiving an application and license fee call a meeting of the commission for the purpose of approving or rejecting an application for a license or match permit which has been submitted to the commission. The meeting shall be held within 20 days of the chairperson's call at a place designated by the chairperson.

History.
Code 1981, § 43-4B-6, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-7. Rules and regulations governing professional boxing.

The commission shall adopt rules and regulations governing professional boxing to establish the following:

(1) Procedures to evaluate the professional records and physicians' certifications of each boxer participating in a professional match, contest, or exhibition of boxing and to deny authorization for a professional boxer to fight where appropriate;

(2) Procedures to ensure that, except as otherwise provided in subsection (c) of Code Section 43-4B-13, no professional boxer is permitted to box while under suspension from any state boxing commission because of:

(A) A recent knockout, technical knockout, or series of consecutive losses;

(B) An injury, requirement for a medical procedure, or physician's denial of certification;

(C) Failure of a drug test; or

(D) The use of false aliases or falsifying official identification cards or documents; and

(3) Procedures to report to the boxing registry the results of all professional matches, contests, or exhibitions of boxing held in this state or being supervised by the commission and any related suspensions.

History.
Code 1981, § 43-4B-7, enacted by Ga. L. 2001, p. 752, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2001, "Code Section 43-4B-13" was substituted for "Code Section 43-4B-14" in paragraph (2).

43-4B-8. Prohibited compensation to commission members.

No member or employee of the commission and no person who administers or enforces the provisions of this chapter or rules promulgated in accordance with this chapter may belong to, contract with, or receive any compensation from any person or organization who authorizes, arranges, or promotes professional matches, contests, or exhibitions of boxing, martial arts, or wrestling or who otherwise has a financial interest in any activity or licensee regulated by this commission. The term "compensation" does not include funds held in escrow for

payment to another person in connection with a professional match, contest, or exhibition of boxing, martial arts, or wrestling.

History. Code 1981, § 43-4B-8, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 4/SB 224.

ARTICLE 2

LICENSING AND PARTICIPATORY REQUIREMENTS

43-4B-10. Promoter's license and match permit requirements; applications; performance bond; fees.

(a) No person shall promote or hold a professional match, contest, or exhibition of boxing within this state without first applying for and obtaining a promoter's license from the commission. Licenses shall be issued annually and shall expire on December 31 of each calendar year.

(b) Promoters shall apply to the commission for a license required by subsection (a) of this Code section on a form provided by the commission. The application shall be accompanied by a nonrefundable fee not to exceed $250.00 in the form of a cashier's check made out to the commission. The application shall also be accompanied by a performance bond in an amount and under such conditions as the commission may require.

(c) No person shall promote or hold a professional match, contest, or exhibition of boxing within this state without first applying for and obtaining a match permit from the commission for such professional match, contest, or exhibition of boxing in addition to the license required by subsection (a) of this Code section. Each application for a match permit shall be on a form provided by the commission and shall be accompanied by a nonrefundable application fee not to exceed $250.00 in the form of a cashier's check made out to the commission. The commission may charge an additional match fee in accordance with rules and regulations promulgated by the commission to implement the provisions of this article.

(d) The commission may, prior to issuing any match permit, require a performance bond in addition to that required in subsection (b) of this Code section.

(e) The commission may refund any portion of the match permit fee in excess of $250.00 to any person who paid such excess fee in the event the professional match, contest, or exhibition of boxing for which such fees were paid is not held.

History.
Code 1981, § 43-4B-10, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-11. Required licenses for boxers and nonboxing participants; prerequisites to licenses.

(a) Prior to participating in a professional match, contest, or exhibition of boxing supervised by the commission, referees, judges, timekeepers, matchmakers, boxers, managers, trainers, and each person who assists a boxer immediately before and after a match, contest, or exhibition of boxing and between rounds during a match, contest, or exhibition of boxing shall apply for and be issued licenses. Licenses shall be issued annually and shall expire on December 31 of each calendar year. Each applicant shall make application on a form provided by the commission and pay an annual license fee not to exceed $250.00. Any boxer who has been licensed by the commission during a previous year shall be deemed to be an applicant for a license in any year for which such boxer has entered into a written contract to participate in a professional match, contest, or exhibition of boxing in this state upon the date of entering into such a contract. Any party to such a contract may notify the commission that such a contract has been signed.

(b) The commission shall issue a license under this Code section only if:

(1) The commission has determined to the best of its ability that the applicant has the training or skills necessary to perform in a manner appropriate to the license;

(2) The applicant has complied with all applicable requirements of this chapter and any rules and regulations promulgated pursuant to this chapter; and

(3) The commission or its designated representative has determined from information provided by the applicant and from any medical evaluation required by the commission that the health, welfare, and physical safety of the applicant will not be unduly jeopardized by the issuance of the license.

History.
Code 1981, § 43-4B-11, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 26.

43-4B-12. Registry requirements for boxers; identification card; fees.

In addition to the license required in Code Section 43-4B-11, each professional boxer who is a resident of this state or another state which has no state boxing commission is required to register with a boxing

registry created or designated by the commission and renew his or her registration as prescribed by rules of the commission. At the time of registration and renewal, the boxer shall provide the boxing registry with a recent photograph of the boxer and the social security number of the boxer or, in the case of a foreign boxer, any similar citizen identification number or boxer number from the country of residence of the boxer, along with any other information the commission requires. The boxing registry shall issue a personal identification number to each boxer and such number shall appear on the identification card issued to the boxer as a result of registration. Each boxer is required to present to the boxing commission an identification card issued by the state in which he or she resides not later than the time of the weigh-in for a professional match, contest, or exhibition. The commission may charge a registration fee in an amount calculated to cover the administrative expense of such registration.

History.
Code 1981, § 43-4B-12, enacted by Ga. L. 2001, p. 752, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2001, "Code Section 43-4B-11" was substituted for "Code Section 43-4B-12" near the beginning of this Code section.

43-4B-13. Authority to refuse to grant or to revoke or suspend license; fines; revoking suspension.

(a) The commission shall have the authority to refuse to grant a license to an applicant upon a finding by a majority of the entire commission that the applicant has failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, and regulations under which licensure is sought. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the commission that he or she meets all the requirements for the issuance of a license, and, if the commission is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the commission if he or she so desires.

(b) The commission may, by majority vote, after prior notice to the holder of any state license and after affording such a holder an opportunity to be heard, fine the license holder, revoke or suspend a state license, or take other disciplinary action against the licensee, and:

(1) The commission shall, upon the recommendation of any officially designated representative for reasons involving the medical or physical safety of any professional boxer licensed by the commission, summarily suspend any license previously issued by the commission or take other disciplinary action against any licensee; provided, however, that such licensee shall, after such summary suspension, be

afforded an opportunity to be heard, in accordance with the rules of the commission and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any such summary suspension imposed against such a licensee may include, but shall not be limited to:

(A) Prohibiting any boxer from competing, appearing in, or participating in any professional match, contest, or exhibition within 60 days of having suffered a knockout; or

(B) Prohibiting any boxer from competing, appearing in, or participating in any professional match, contest, or exhibition within 30 days of having suffered a technical knockout where evidence of head trauma has been determined by the attending ringside physician.

The length of any summary suspension invoked pursuant to subparagraph (A) or (B) of this paragraph, upon recommendation of the ringside physician, may be extended to any number of days. Terms and conditions of the suspension or revocation may require that the boxer submit to further medical evaluation as determined by the ringside physician; and

(2) The commission, its secretary, or its duly authorized representative may, at any time prior to the completion of a permitted professional match, contest, or exhibition of boxing, summarily suspend or revoke the match permit or the license of any specific boxer should it be determined by such person that the continuation of said professional match, contest, or exhibition of boxing may jeopardize the health, welfare, morals, or safety of the citizens of this state or may jeopardize the health or personal safety of any participant of such professional match, contest, or exhibition of boxing; provided, however, that such licensee shall, after such summary suspension, be afforded an opportunity to be heard, in accordance with the rules of the commission and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The commission may revoke a suspension of a boxer if:

(1) The boxer was suspended pursuant to rules and regulations adopted pursuant to subparagraph (A) or (B) of paragraph (2) of Code Section 43-4B-7 and has furnished proof of a sufficiently improved medical or physical condition; or

(2) The boxer furnishes proof that a suspension pursuant to subparagraph (D) of paragraph (2) of Code Section 43-4B-7 was not or is no longer merited by the facts.

History. Code 1981, § 43-4B-13, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 60, § 43/HB 95.

43-4B-14. Prequalification requirements for events.

No person may arrange, promote, organize, produce, or participate in a professional match, contest, or exhibition of boxing without meeting the following requirements:

(1) Each boxer must be examined by a physician who must then certify that the boxer is physically fit to compete safely. Copies of each such certificate shall be provided to the commission prior to the professional match, contest, or exhibition of boxing. The commission is authorized at any time to require a boxer to undergo a physical examination, including neurological or neuropsychological tests and procedures;

(2) A physician approved by the commission must be continuously present at ringside during every professional match, contest, or exhibition of boxing. The physician shall observe the physical condition of the boxers and advise the referee with regards thereto;

(3) One or more inspectors appointed by the commission as duly authorized representatives of the commission shall be present at each professional match, contest, or exhibition of boxing to ensure that the rules are strictly observed. An inspector or other duly authorized representative of the commission must be present at the weigh-in and at the ring during the conduct of the professional match, contest, or exhibition of boxing. Inspectors and other duly authorized representatives of the commission shall have free access to the dressing rooms of the boxers;

(4) Each boxer shall be covered by health insurance which will cover injuries sustained during the professional match, contest, or exhibition of boxing; and

(5) An ambulance and medical personnel with appropriate resuscitation equipment must be continuously present at the site during any professional match, contest, or exhibition of boxing.

History.
Code 1981, § 43-4B-14, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-15. Alcohol and drug use prohibited.

It shall be unlawful for any boxer to participate or attempt to participate in a professional match, contest, or exhibition of boxing while under the influence of alcohol or any drug. A boxer shall be deemed under the influence of alcohol or a drug for the purposes of this Code section if a physical examination made during a period of time beginning not more than six hours prior to the beginning of the professional match, contest, or exhibition of boxing and ending not more

than one hour after the completion of the professional match, contest, or exhibition of boxing reveals that the boxer's mental or physical ability is impaired in any way as a direct result of the use of alcohol or a drug.

History.
Code 1981, § 43-4B-15, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-16. Building standards and regulations for matches.

All buildings or structures used or intended to be used for holding or giving professional matches, contests, or exhibitions of boxing shall be safe and shall in all manner conform to the laws, ordinances, and regulations pertaining to buildings in the city or unincorporated area of the county where the building or structure is situated.

History.
Code 1981, § 43-4B-16, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-17. Age requirements.

(a) No person under the age of 18 years shall participate as a contestant in any professional match, contest, or exhibition of boxing.

(b) A primary duty of the commission is ensuring that any person whose health does not permit safely engaging in boxing as a contestant is not licensed as a professional boxer. The General Assembly finds that adequate protection of the health of persons who are 50 years of age or older requires additional precautions by the commission. A person who is 50 years of age or older shall be licensed as a professional boxer and permitted to participate in a professional match, contest, or exhibition of boxing only if such person:

(1) Has participated as a contestant in at least ten professional matches or contests of boxing in the immediately preceding ten years, including at least four professional matches or contests of boxing in the immediately preceding four years; and

(2) Is declared medically and physically able to participate as a contestant in a professional match, contest, or exhibition of boxing by a physician who has conducted a more rigorous examination than examinations performed in accordance with this chapter for persons who are younger than 50 years of age.

(c) The commission shall promulgate and adopt rules and regulations for the more rigorous examination required by this Code section for persons who are 50 years of age or older.

History.
Code 1981, § 43-4B-17, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 27.

43-4B-18. Jurisdiction of commission.

The commission shall have jurisdiction over any professional match, contest, or exhibition of boxing which occurs or is held within this state, is filmed in this state, or is broadcast or transmitted from this state.

History.
Code 1981, § 43-4B-18, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-19. Proceedings for violations of article.

(a) Whenever it may appear to the commission that any person is violating or has violated any provision of this article or Article 1 of this chapter and that proceedings would be in the public interest:

(1) Subject to notice and opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the right to notice is waived by the person against whom the sanction is imposed, the commission may:

(A) Issue a cease and desist order prohibiting any violation of this article or Article 1 of this chapter;

(B) Issue an order against a person who violates this article or Article 1 of this chapter, imposing a civil penalty up to a maximum of $1,000.00 per violation; or

(C) Issue an order suspending or revoking the license of the person violating this article or Article 1 of this chapter; or

(2) Upon a showing by the commission in any superior court of competent jurisdiction that a person has violated or is about to violate this article or Article 1 of this chapter, a rule promulgated under this article or Article 1 of this chapter, or an order of the commission, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or a temporary or permanent injunction;

(B) A civil penalty up to a maximum of $2,000.00 per violation of this article or Article 1 of this chapter;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's action in violation of this article or Article 1 of this chapter; or

(E) Other relief as the court deems just or reasonable.

(b) Unless the commission determines that a person subject to this article intends to depart quickly from this state or to remove his or her property from this state or to conceal his or her person or property in this state or that there is immediate danger of harm to citizens of this state or another state, the commission shall give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the commission and execute an assurance of voluntary compliance. The determination of the commission under this subsection shall be final and not subject to review.

(c) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the provisions of such chapter are contrary to the express provisions of this article or Article 1 of this chapter.

History.
Code 1981, § 43-4B-19, enacted by Ga. L. 2003, p. 774, § 28.

43-4B-20. Required submission of reports and tax payments by promoters.

(a) A promoter holding a match, contest, or exhibition of boxing shall, within three business days after the match, file with the commission a written report which includes the number of tickets sold, the amount of gross receipts, the amount of gross proceeds, and any other facts the commission may require. Within ten days following the match, contest, or exhibition of boxing, the promoter shall remit to the commission a tax payment in the amount of 5 percent of the gross proceeds exclusive of any federal taxes.

(b) A promoter who sells, transfers, or extends to another the rights to telecast by pay per view for viewing in this state, whether the telecast originates inside or outside this state, a match, contest, or exhibition of boxing that would be subject to regulation by the commission in accordance with this chapter if the match, contest, or exhibition were held in this state, shall, within three business days after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the gross price charged for the rights to telecast by pay per view, the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

(c) Any written report required to be filed with the commission under this Code section shall be postmarked within three business days after

the conclusion of the match or telecast, if the telecast is later than the match, and an additional five days shall be allowed for mailing.

(d) Each promoter subject to subsection (b) of this Code Section shall remit to the commission within ten days following a match, contest, or exhibition a tax payment in the amount of 5 percent of total gross receipts, as defined in subparagraph (A) of paragraph (8) of Code Section 43-4B-1, exclusive of any federal taxes, except that the tax payment derived from the gross price charged for the sale or lease of pay per view telecasting and motion picture rights shall not exceed $40,000.00 for any single event.

(e)(1) Any promoter who willfully makes a false and fraudulent report under this Code section is guilty of perjury and, upon conviction, is subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this chapter.

(2) Any promoter who willfully fails, neglects, or refuses to make a report or to pay the taxes as prescribed or who refuses to allow the commission to examine the books, papers, and records of any promotion is guilty of a misdemeanor.

(f) The commission shall remit all tax payments to the general treasury of the state.

History. Code 1981, § 43-4B-20, enacted by Ga. L. 2003, p. 774, § 28; Ga. L. 2005, p. 984, § 5/SB 224.

43-4B-21. Injunctions; penalty for violations of article; unarmed combat.

(a) Whenever the Attorney General has reasonable cause to believe that a person is engaged in a violation of this article, the Attorney General may bring a civil action requesting such relief, including a permanent or temporary injunction, restraining order, or other order against such person as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional match, contest, or exhibition of boxing in violation of this article.

(b)(1) Any manager, promoter, matchmaker, or licensee who knowingly violates or coerces or causes any other person to violate any provision of this article shall, upon conviction, be imprisoned for not more than one year or fined not more than $20,000.00, or both.

(2) Any member or employee of the commission or any person who administers or enforces this chapter or rules and regulations promulgated pursuant to this chapter who knowingly violates Code Section 43-4B-14 or Code Section 43-4B-15 shall, upon conviction, be impris-

oned for not more than one year or fined not more than $20,000.00, or both.

(3) Any professional boxer who knowingly violates any provision of this article except Code Section 43-4B-15 shall, upon conviction, be fined not more than $1,000.00 for each violation.

(4) Any professional boxer who violates the provisions of Code Section 43-4B-15 may be punished by a fine not to exceed $25,000.00 together with a percentage of the purse not to exceed 15 percent for each violation.

(c) Unarmed combat, as defined in Code Section 43-4B-1, is a misdemeanor of a high and aggravated nature.

(d) Promotion of unarmed combat, as defined in Code Section 43-4B-1, is a misdemeanor for the first offense; a high and aggravated misdemeanor for the second offense; and a felony for the third and subsequent offenses, punishable upon conviction by a fine not to exceed $10,000.00 or imprisonment not to exceed two years, or both such fine and imprisonment.

History. Code 1981, § 43-4B-21, enacted by Ga. L. 2003, p. 774, § 28; Ga. L. 2005, p. 984, § 6/SB 224.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 43-4B-21 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

ARTICLE 3

TICKET BROKERS

43-4B-25. Authority to resell tickets; service charges.

(a) Except as otherwise provided in Code Section 43-4B-29, it shall be unlawful for any person other than a ticket broker to resell or offer for resale any ticket of admission or other evidence of the right of entry to any athletic contest, concert, theater performance, amusement, exhibition, or other entertainment event to which the general public is admitted for a price in excess of the face value of the ticket. Notwithstanding any other provision of this article to the contrary, a service charge not to exceed $3.00 may be charged when tickets or other evidences of the right of entry are sold by an authorized ticket agent through places of established business licensed to do business by the municipality or county, where applicable, in which such places of business are located. Notwithstanding any other provision of this article to the contrary, the owner, operator, lessee, or tenant of the

property on which such athletic contest or entertainment event is to be held or is being held or the sponsor of such contest or event may charge or may authorize, in writing, any person to charge a service charge for the sale of such ticket, privilege, or license of admission in addition to the face value of the ticket. Such writing granting authority to another shall specify the amount of the service charge to be charged for the sale of each ticket, privilege, or license of admission.

(b) Notwithstanding any other provision of this article to the contrary, in the case of any athletic contest or entertainment event that is described in Code Section 43-4B-30, a sponsor of such a contest or event may contractually restrict the resale of a ticket to such contest or event by giving notice of such restriction on the back of the ticket. Notwithstanding any other provision of this article to the contrary, in the case of any athletic contest or entertainment event, an owner, operator, lessee, or tenant of the property on which such contest or event is to be held or is being held may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area by giving notice in writing of such restriction.

History.
Code 1981, § 43-4B-25, enacted by Ga. L. 2001, p. 752, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 43-4B-25. 2001 Op. Att'y Gen. No. 2001-11.

43-4B-26. Requirements.

In order to engage in the practice or business of a ticket broker a person shall be required to:

(1) Maintain a permanent office or place of business in this state, excluding a post office box, for the purpose of engaging in the business of a ticket broker;

(2) Apply to the commission for a ticket broker's license on a form designated by the commission, pay an annual license fee of $500.00, and renew the license annually;

(3) Pay any local tax required by a local government; and

(4) Register for sales and use tax purposes pursuant to Article 1 of Chapter 8 of Title 48.

History.
Code 1981, § 43-4B-26, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 29; Ga. L. 2005, p. 984, § 7/SB 224.

43-4B-27. Disqualification for felony conviction.

No person shall engage in the practice or business of a ticket broker, or be employed as general manager for a person engaged in the practice or business of a ticket broker, who has been convicted of a felony and who has not been pardoned or had his or her civil rights restored.

History.
Code 1981, § 43-4B-27, enacted by Ga. L. 2001, p. 752, § 2.
Cross references.
Equal protection, U.S. Const., amend. 14, and Ga. Const. 1983, Art. I, Sec. I, Para. II.

43-4B-28. Resale by ticket brokers; disclosure requirements; sale and resale restrictions; refunds.

(a) The ticket broker shall be required to:

(1) Post at its established place of business the terms of the purchaser's right to cancel the purchase of a ticket from a ticket broker;

(2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled;

(3) Disclose to the purchaser in writing the difference between the face value of the ticket and the amount which the ticket broker is charging for such ticket; and

(4) Sell tickets only at its permanent office, place of business, or through the Internet; provided, however, that delivery of one or more tickets after the transaction is completed to a place other than the ticket broker's office or place of business shall not violate this paragraph.

(b)(1) A ticket broker shall be prohibited from employing any agent or employee for the purpose of making future purchases of tickets from the owner, operator, lessee, or tenant of the property on which an athletic contest or entertainment event is to be held.

(2) Each ticket broker, including any affiliated group of ticket brokers, shall be prohibited from acquiring and reselling in excess of 1 percent of the total tickets allocated for any contest or event.

(3) Unless otherwise provided in a written agreement between a ticket broker and the purchaser, a ticket broker shall be required to refund any payment received for the purchase of a ticket under this article if the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such return is made more than 72 hours preceding the athletic contest or entertainment event.

(4) A ticket broker shall be required to refund any payment received for the purchase of a ticket under this article if the athletic contest or entertainment event is canceled and not rescheduled.

(5) If a ticket broker guarantees in writing delivery of a ticket or tickets to an athletic contest or entertainment event as provided under this article to a purchaser and fails to complete such delivery, the ticket broker shall be required to provide within 15 days a full refund of any amount paid by the purchaser and, in addition, shall pay the purchaser a refund fee of three times the amount paid by the purchaser for each such ticket.

(c)(1) For all venues which seat or admit less than 15,000 persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within 1,500 feet from the venue where an event or contest is to be held or is being held.

(2) For all venues which seat or admit 15,000 or more persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within 2,700 feet from the venue where an event or contest is to be held or is being held.

(d) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast, or Internet advertising shall include in such advertising the license number of such ticket broker offering such tickets for resale.

History. Code 1981, § 43-4B-28, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 30; Ga. L. 2005, p. 984, § 8/SB 224.

43-4B-29. Resale of tickets by original purchaser; charitable organizations.

(a) No provision of this article or any other provision of law shall criminally prohibit any person who is the original purchaser for personal use of one or more tickets to an athletic contest or entertainment event covered under this article from reselling or offering for resale any of such tickets for any price, provided that such person does not sell or offer to sell such tickets within 2,700 feet of a venue which seats or admits 15,000 or more persons for such a contest or event or a public entrance to such a contest or event.

(b) Charitable organizations and their employees and volunteers shall not be subject to the provisions of this article when offering for sale any tickets of admission in a raffle, auction, or similar fundraising activity for the benefit of the organization's charitable purposes.

History.
Code 1981, § 43-4B-29, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 984, § 9/SB 224.

43-4B-29.1. Resale within zone authorized by the event organizer and the venue owner or operator.

(a) Notwithstanding subsection (c) of Code Section 43-4B-28 and subsection (b) of Code Section 43-4B-30, no provision of this article or any other provision of law shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets to an athletic contest or entertainment event covered under this article by a ticket broker or a ticket broker's employees, agents, and assigns in a zone or zones within the area where such resale or offering for resale is prohibited by such subsections, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

(b) Notwithstanding subsection (a) of Code Section 43-4B-29 and subsection (b) of Code Section 43-4B-30, no provision of this article or any other provision of law shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets purchased by any person who is the original purchaser for personal use of such ticket or tickets to an athletic contest or entertainment event covered under this article in a zone or zones within the area where such resale or offering for resale is prohibited by such subsections, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

History.
Code 1981, § 43-4B-29.1, enacted by Ga. L. 2005, p. 984, § 10/SB 224.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2005, a comma was deleted following "Code Section 43-4B-28" in subsection (a).

43-4B-30. County and municipal ordinances.

(a) With regard to any single athletic contest or entertainment event which occurs no more often than once annually and with regard to any series of athletic contests which occur no more often than once annually and which occur within a time period not exceeding ten days, the municipal corporation in which such contest, event, or series of contests is to be held, or if the contest, event, or series of contests is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact by ordinance regulations governing ticket brokers for such contest, event, or series of contests which are more restrictive than the provisions of this article.

(b) The municipal corporation in which an athletic contest or enter-

tainment event is to be held, or if the contest or entertainment event is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact an ordinance prohibiting the resale or offering for resale of one or more tickets by a ticket broker or by a person who is the original purchaser for personal use of one or more tickets within 2,700 feet of a venue which seats or admits 15,000 or more persons.

History.
Code 1981, § 43-4B-30, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 31; Ga. L. 2005, p. 984, § 11/SB 224.

43-4B-31. Violation of article a misdemeanor.

Any person who violates this article is guilty of a misdemeanor of a high and aggravated nature.

History.
Code 1981, § 43-4B-31, enacted by Ga. L. 2001, p. 752, § 2.

43-4B-32. Powers of commission upon violation of article.

(a) In addition to the powers and duties set out in Code Section 43-4B-3, the commission is authorized to promulgate rules and regulations to accomplish the purposes of this article in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commission shall enforce the provisions of this article. The enforcement powers of the commission set out in this Code section shall be in addition to the criminal penalty provided by Code Section 43-4B-31.

(b) Whenever it may appear to the commission that any person is violating or has violated any provision of this article and that proceedings would be in the public interest:

(1) Subject to notice and opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the right to notice is waived by the person against whom the sanction is imposed, the commission may:

(A) Issue a cease and desist order prohibiting any violation of this article;

(B) Issue an order against a person who violates this article, imposing a civil penalty up to a maximum of $1,000.00 per violation; or

(C) Issue an order suspending or revoking the ticket broker's license; or

(2) Upon a showing by the commission in any superior court of competent jurisdiction that a person has violated or is about to violate

this article, a rule promulgated under this article, or an order of the commission, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or a temporary or permanent injunction;

(B) A civil penalty up to a maximum of $2,000.00 per violation of this article;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's action in violation of this article; or

(E) Other relief as the court deems just or reasonable.

(c) Unless the commission determines that a person subject to this article intends to depart quickly from this state or to remove his or her property from this state or to conceal his or her person or property in this state or that there is immediate danger of harm to citizens of this state or another state, the commission shall give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the commission and execute an assurance of voluntary compliance. The determination of the commission under this subsection shall be final and not subject to review.

(d) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the provisions of such chapter are contrary to the express provisions of this article.

History.
Code 1981, § 43-4B-32, enacted by Ga. L. 2001, p. 752, § 2.

ARTICLE 4

REGULATION OF MARTIAL ARTS AND WRESTLING

43-4B-50. Authority and duties of the commission with regard to licensure, exemption from licensure, and regulation.

(a) The commission shall have the sole authority to license organizations that govern and authorize matches, contests, and exhibitions of martial arts and wrestling and to exempt organizations from licensure in accordance with this article. The commission shall have the sole authority to permit and regulate matches, contests, and exhibitions of

martial arts and wrestling. The commission shall have the sole authority to license promoters of matches, contests, and exhibitions of martial arts. The commission shall have the duty to safeguard the public health, to protect competitors, and to provide for competitive matches by requiring licensed organizations to abide by rules promulgated by the commission for basic minimum medical and safety requirements based on the nature of the activity and the anticipated level of physical conditioning and training of competitors. The commission shall have the authority to inquire as to a licensed organization's plans or arrangements for compliance with such rules. The commission shall have the authority to require annual fees for licensure and a fee for each such match, contest, or exhibition or for each show and to penalize licensed organizations, licensed promoters, and the holders of match permits that violate the provisions of this article or rules of the commission promulgated in accordance with this article.

(b) If requested by a licensed organization, the commission shall have the authority to provide direct oversight services, including but not limited to on-site inspectors, to a licensed organization for a fee negotiated between the commission and the licensed organization.

History.
Code 1981, § 43-4B-50, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

43-4B-51. Fees.

(a) Except as otherwise provided in subsection (c) of this Code section, the annual fee for licensure of organizations subject to this article is $1,000.00.

(b) As used in this subsection, the term "show" includes all matches, contests, or exhibitions held at the same venue on the same date and included in the same admission fee if an admission fee is charged. Except as otherwise provided in subsection (c) of this Code section, the maximum permit fee for each show authorized or governed by an organization licensed in accordance with this article is $250.00. The maximum permit fee for each match, contest, or exhibition that is not a component of a show and is authorized by an organization licensed in accordance with this article is $250.00, except as otherwise provided in subsection (c) of this Code section. Such fee shall be paid to the commission on or before the date of the match, contest, or exhibition. The commission may provide by rule for a refund of a portion of the fee if the match, contest, or exhibition is not held.

(c) For organizations authorizing or governing matches, contests, or exhibitions of wrestling as defined in subparagraph (A) of paragraph (21) of Code Section 43-4B-1, the annual fee for licensure is $100.00. There shall be no permit fee for matches, contests, or exhibitions of

wrestling as defined in such subparagraph. Organizations subject to this subsection shall make reports to the commission in accordance with rules and regulations promulgated by the commission.

(d) The annual fee for a promoter's license for promoters of martial arts matches, contests, or exhibitions shall be $500.00.

History.
Code 1981, § 43-4B-51, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2005, "exhibitions" was substituted for "exhibits" in the first sentence of subsection (b).

43-4B-52. Requirements for matches, contests, and exhibitions.

(a) A licensed organization shall provide written notice to the commission of a match, contest, or exhibition authorized and governed by the organization no later than 15 days before the date of the match, contest, or exhibition. The licensed organization governing the match, contest, or exhibition shall provide information required by the commission relating to the contestants, venue, rules for the competition, and anticipated level of physical conditioning and training of the contestants.

(b) A licensed organization shall, after a match, contest, or exhibition authorized and governed by the organization, file with the commission an affidavit that includes the number of tickets sold, the amount of gross receipts, the amount of sales tax to be paid to the Department of Revenue, and any other facts the commission may require. Such affidavit shall be postmarked within three business days after the conclusion of the match, contest, or exhibition.

History.
Code 1981, § 43-4B-52, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

43-4B-53. Prohibited activities for felons or persons convicted of crime of moral turpitude.

(a) Notwithstanding any other provision of this chapter or any other law to the contrary, no person or entity shall directly or indirectly engage in the practice of being a promoter of kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, exhibitions of any type, or be employed or otherwise serve as a manager, matchmaker, or organizer for any person or entity engaged in the practice of being a promoter of kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, or martial arts matches, contests, or exhibitions of any type, who has been convicted of, has pleaded guilty to, has entered a plea of nolo

contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state for a period of ten years from the date of such conviction or plea. For purposes of this Code section, a conviction shall include but not be limited to disposition under Article 3 of Chapter 8 of Title 42.

(b) Notwithstanding any other provision of this chapter or any other law to the contrary, no person or entity shall be retained, employed, or otherwise serve as a sanctioning, governing, licensing, authorizing, or ranking body or organization or act as an employee or representative thereof for any kickboxing, muay thai, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, or exhibitions of any type promoted, managed, or organized in violation of subsection (a) of this Code section.

(c) Notwithstanding any other provision of this chapter or any other law to the contrary, no sanctioning, governing, licensing, authorizing, or ranking body or organization for any kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, or exhibitions of any type shall employ, designate, or otherwise assign or utilize any person as a representative or official who has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state for a period of ten years from the date of such conviction or plea. For purposes of this Code section, a conviction shall include but not be limited to disposition under Article 3 of Chapter 8 of Title 42.

(d) The first violation of this Code section by any individual or entity shall constitute a misdemeanor of a high and aggravated nature. Any second and subsequent conviction under this Code section shall constitute a felony and shall be punished by imprisonment for not less than one nor more than five years.

History.

Code 1981, § 43-4B-53, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, "kickboxing" was substituted for "kick boxing" in subsections (a), (b) and (c).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 43-4B-53 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

43-4B-54. Suspension, revocation, or denial of licenses or permits; fines.

(a) The commission is authorized to suspend, revoke, or deny a license or renewal of a license of an organization or a promoter for violation of this article or rules of the commission promulgated in accordance with this article. The commission is authorized to fine a licensed organization or promoter for violation of this article or rules of the commission promulgated in accordance with this article.

(b) The commission is authorized to suspend, revoke, or deny issuance of a permit for a show, match, contest, or exhibition issued in accordance with this article in the interest of the safety or health of the competitors or public, or for violation of this article or rules of the commission promulgated in accordance with this article.

History.
Code 1981, § 43-4B-54, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

43-4B-55. Exemptions.

(a) Subject to the restriction set forth in Code Section 43-4B-53, the commission is authorized to exempt organizations from the requirements of licensure and permitting when the commission, in its discretion, deems the matches, contests, and exhibitions authorized or governed by the organization present little or no danger to the health and safety of the competitors and the public.

(b) In determining whether to exempt an organization from licensure and permitting requirements, the commission shall consider the following factors:

(1) Whether the organization requesting exemption has allowed any person who has ever pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state, within ten years of such conviction or plea, to act as a promoter for any match, contest, or exhibition that it has sanctioned, governed, licensed, or authorized or whether it has authorized, retained, employed, or otherwise allowed such a person to act or serve as its employee or representative in connection with any match that it has sanctioned, governed, licensed, or authorized. For purposes of this Code section, a conviction shall include but not be limited to adjudication under Article 3 of Chapter

8 of Title 42. Should the commission determine that a sanctioning organization has allowed, retained, employed, or otherwise authorized such a person to act in any of the aforementioned capacities, the organization shall not be exempted from the requirements of licensure;

(2) Whether the matches, contests, and exhibitions are conducted in the course of teaching wrestling or a martial art and are closely supervised by well-trained teachers;

(3) Whether an admission fee is charged for viewing the matches, contests, or exhibitions;

(4) Whether the matches, contests, or exhibitions offer a commercial advantage to the organization;

(5) Whether the matches, contests, or exhibitions are conducted in a manner to minimize the danger of injury;

(6) Whether the commission's information about previous matches, contests, or exhibitions conducted by the organization indicates that the matches, contests, or exhibitions are likely to result in injury; and

(7) Other factors deemed by the commission as indicia of danger to health or safety and set out in rules promulgated by the commission.

History.

Code 1981, § 43-4B-55, enacted by Ga. L. 2005, p. 984, § 12/SB 224.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, a semicolon was substituted for a period at the end of paragraph (b)(1).

CHAPTER 5

ATHLETIC TRAINERS

Sec.		Sec.	
43-5-1.	Definitions.	43-5-8.	Qualifications of applicants; reciprocity.
43-5-2.	Georgia Board of Athletic Trainers; composition; qualifications of members; terms of office; oath of members; vacancies.	43-5-9.	Application for, issuance of, and term of license.
43-5-3.	Election of officers; appointment of committees; meetings.	43-5-10.	Grounds for denial, suspension, or revocation of licenses.
43-5-4.	Record of proceedings.	43-5-11.	Hearing before board when license denied, revoked, or suspended; reissuance of license.
43-5-5.	Reimbursement of board members.	43-5-12.	Appeal from board's order.
43-5-6.	General powers and duties of board.	43-5-13.	Exceptions to operation of chapter.
43-5-7.	License requirement for persons engaged as athletic trainers.	43-5-14.	Penalty.
		43-5-15.	[Repealed] Termination.

Administrative rules and regulations.
Athletic trainer, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.
15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-5-1. Definitions.

As used in this chapter, the term:

(1) "Athletic injury" means any injury sustained by a person as a result of such person's participation in exercises, sports, games, or recreational activities, or any activities requiring physical strength,

agility, flexibility, range of motion, speed, or stamina without respect to where or how the injury occurs. Nothing in this paragraph shall be construed to expand the scope of practice of an athletic trainer beyond the determination of the advising and consenting physician as provided for in paragraph (2) of this Code section.

(2) "Athletic trainer" means a person with specific qualifications, as set forth in Code Sections 43-5-7 and 43-5-8 who, upon the advice and consent of a physician, carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries; and, in carrying out these functions, the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices related to prevention, recognition, evaluation, management, disposition, rehabilitation, and treatment. Nothing in this Code section shall be construed to require licensure of elementary or secondary school teachers, coaches, or authorized volunteers who do not hold themselves out to the public as athletic trainers.

(3) "Board" means the Georgia Board of Athletic Trainers.

History.

Ga. L. 1977, p. 1123, § 1; Ga. L. 1991, p. 750, § 1; Ga. L. 2005, p. 473, § 1/HB 217; Ga. L. 2008, p. 1112, § 12/HB 1055; Ga. L. 2017, p. 774, § 43/HB 323.

Administrative rules and regulations.

Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-2.

Law reviews.

For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

O.C.G.A. § 43-5-1 did not apply to make a physical therapy company liable in an action against the company for permitting a physical trainer in the company's employ to give advice regarding care of an ingrown toenail without advice and consent of a physician; a physical therapy group is not required to have a physician on staff and the physical trainer was acting as an athletic trainer for a high school at the time. Georgia Physical Therapy, Inc. v. McCullough, 219 Ga. App. 744, 466 S.E.2d 635, 1995 Ga. App. LEXIS 1137 (1995), cert. denied, No. S96C0704, 1996 Ga. LEXIS 597 (Ga. Apr. 12, 1996).

OPINIONS OF THE ATTORNEY GENERAL

Scope of practice. — Licensed athletic trainers may only perform their injury preventive and rehabilitative functions when specific statutory conditions have been met. 1984 Op. Att'y Gen. No. 84-72.

While treatments may be administered in the setting of a private clinic such as a physical therapy or sports medicine group, an athletic trainer may not administer treatments to persons other than athletes on the team that employs that athletic trainer, nor may the athletic trainer administer these treatments without the advice and consent of the team physician. 1984 Op. Att'y Gen. No. 84-72.

RESEARCH REFERENCES

ALR.
Medical malpractice liability of sports medicine care providers for injury to, or death, of athlete, 33 A.L.R.5th 619.

43-5-2. Georgia Board of Athletic Trainers; composition; qualifications of members; terms of office; oath of members; vacancies.

(a) The Georgia Board of Athletic Trainers, composed of four members who shall be appointed by the Governor and confirmed by the Senate, is created. To qualify as a member, a person must be a citizen of the United States and a resident of this state. Two members must be athletic trainers, one member must be a physician licensed by the state, and one member shall be appointed from the public at large and shall have no connection whatsoever with the practice or profession of athletic training.

(b) Members shall serve for a term of office of six years. All terms shall expire on January 31 of even-numbered years. In making the initial appointments, the Governor shall appoint one member for a term expiring in 1978, one member in 1980, and one member for a term expiring in 1982. The initial appointment for the member appointed from the public at large shall expire January 31, 1986.

(c) Each appointee to the board shall qualify by taking an oath of office within 15 days from the date of his appointment. On presentation of the oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments.

History.
Ga. L. 1977, p. 1123, § 2; Ga. L. 1980, p. 55, § 1; Ga. L. 1991, p. 750, § 2.

43-5-3. Election of officers; appointment of committees; meetings.

(a) The board shall elect a chairman and a vice-chairman from its members for a term of one year and may appoint such committees as it considers necessary to carry out its duties.

(b) The board shall meet at least twice each year. Additional meetings may be held on the call of the chairman or at the written request of any two members of the board.

History.
Ga. L. 1977, p. 1123, § 3; Ga. L. 1980, p. 55, § 1.

43-5-4. Record of proceedings.

The division director shall keep a record of the board's proceedings in a book maintained for that purpose.

History.
Ga. L. 1977, p. 1123, § 4; Ga. L. 2000, p. 1706, § 19.

43-5-5. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1977, p. 1123, § 6.

43-5-6. General powers and duties of board.

(a) The board is authorized to promulgate and adopt rules and regulations consistent with this chapter which are necessary for the performance of its duties.

(b) The board shall prescribe application forms for license applications.

(c) The board shall establish guidelines for athletic trainers in the state and prepare and conduct an examination for applicants for a license.

(d) The board shall adopt an official seal and the form of a license certificate of suitable design.

History.
Ga. L. 1977, p. 1123, § 5.
Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Athletic Trainers, Chapter 53-1 et seq.

43-5-7. License requirement for persons engaged as athletic trainers.

No person shall hold himself or herself out as an athletic trainer or perform the services of an athletic trainer, as defined in this chapter, without first obtaining a license under this chapter; provided, however, that nothing in this chapter shall be construed to prevent any person from serving as a student-trainer, assistant-trainer, or any similar position if such service is not primarily for compensation and is carried out under the supervision of a physician or a licensed athletic trainer.

History.
Ga. L. 1977, p. 1123, § 8; Ga. L. 2002, p. 1125, § 1; Ga. L. 2005, p. 473, § 2/HB 217.
Administrative rules and regulations.
Licensure by examination, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-3.

RESEARCH REFERENCES

ALR.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

43-5-8. Qualifications of applicants; reciprocity.

(a) An applicant for an athletic trainer's license must have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation.

(b) The board shall be authorized to grant a license, without examination, to any qualified athletic trainer holding a license in another state if such other state recognizes licensees of this state in the same manner.

(c) The board may grant a license without examination to any qualified applicant who holds a certification from the National Athletic Trainers Board of Certification.

(d) Any person who was issued a license prior to July 1, 2004, shall remain qualified for licensure, notwithstanding the requirement for proof of graduation in subsection (a) of this Code section, so long as the license remains current.

History.
Ga. L. 1977, p. 1123, § 9; Ga. L. 1985, p. 985, § 1; Ga. L. 1989, p. 454, § 1; Ga. L. 2002, p. 1125, § 2.
Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.
Administrative rules and regulations.
Licensure by reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-4.

43-5-9. Application for, issuance of, and term of license.

(a) An applicant for an athletic trainer's license must submit an application to the board on forms prescribed by the board and submit the examination fee required by this chapter.

(b) The applicant is entitled to an athletic trainer's license if he possesses the qualifications enumerated in Code Section 43-5-8, satisfactorily completes an examination approved by the board, pays the

required license fee, and has not committed an act which constitutes grounds for denial of a license under Code Section 43-5-10.

(c) Licenses issued by the board shall expire biennially. As a condition of license renewal, the board shall be authorized to require licensees to complete continuing education courses approved by the board.

History.
Ga. L. 1977, p. 1123, § 10; Ga. L. 1983, p. 444, § 1; Ga. L. 1985, p. 985, § 2; Ga. L. 1989, p. 454, § 2.

RESEARCH REFERENCES

ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-5-10. Grounds for denial, suspension, or revocation of licenses.

The board may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee if he has:

(1) Been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction;

(2) Secured the license by fraud or deceit; or

(3) Violated or conspired to violate this chapter or rules and regulations issued pursuant to this chapter.

History.
Ga. L. 1977, p. 1123, § 12.

43-5-11. Hearing before board when license denied, revoked, or suspended; reissuance of license.

(a) Any person whose application for a license is denied is entitled to a hearing before the board if he submits a written request to the board.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the board in writing and under oath. The charges may be made by any person or persons.

(c) The division director shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for hearing, to be served on the applicant requesting the hearing or licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail or statutory overnight delivery to the last known address of the licensee or applicant.

(d) At the hearing, the applicant or licensee has the right to appear either personally or by counsel, or both, to produce witnesses, to have subpoenas issued by the board, and to cross-examine the opposing or adverse witnesses.

(e) The board is not bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

(f) The board shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the board shall be mailed to the applicant or licensee at his last known address by certified mail or statutory overnight delivery.

(g) On application, the board may reissue a license to a person whose license has been canceled or revoked, but the application may not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final; and the application shall be made in the manner and form as the board may require.

History.
Ga. L. 1977, p. 1123, § 13; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19.
Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsections (c) and (f) are applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-5-12. Appeal from board's order.

(a) A person whose application for a license has been refused or whose license has been canceled, revoked, or suspended by the board may take an appeal, within 30 days after the order is entered, to any court of competent jurisdiction.

(b) A case reviewed under this Code section shall proceed in the superior court by trial de novo. Appeal from the judgment of the superior court lies as in other civil cases.

History.
Ga. L. 1977, p. 1123, § 14.
Administrative rules and regulations.
Procedural rules, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-9.

43-5-13. Exceptions to operation of chapter.

(a) Nothing in this chapter shall be construed to authorize the

practice of medicine by any person not licensed by the Georgia Composite Medical Board.

(b) This chapter does not apply to physicians licensed by the Georgia Composite Medical Board; to dentists, duly qualified and registered under the laws of this state who confine their practice strictly to dentistry; nor to licensed optometrists who confine their practice strictly to optometry as defined by law; nor to occupational therapists; nor to nurses who practice nursing only; nor to duly licensed chiropodists or podiatrists who confine their practice strictly to chiropody or podiatry as defined by law; nor to physical therapists who confine their practice to physical therapy; nor shall any provisions of this chapter be construed so as to limit or prevent any person duly licensed under the laws of this state to practice the profession for which he or she was licensed.

History.
Ga. L. 1977, p. 1123, § 17; Ga. L. 2009, p. 859, § 2/HB 509.

43-5-14. Penalty.

Any person who violates Code Section 43-5-7 shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Ga. L. 1977, p. 1123, § 15; Ga. L. 2003, p. 422, § 2.

43-5-15. [Repealed] Termination.

History.
Ga. L. 1982, p. 430, §§ 1, 2; Ga. L. 1983, p. 444, § 2; and Ga. L. 1989, p. 454, § 3; repealed by Ga. L. 1992, p. 3317, § 5, effective July 1, 1992.

CHAPTER 6

AUCTIONEERS

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43-6-25.1.	Local regulations and licensing.
43-6-26.	[Repealed] Termination.

Cross references.

Regulation of livestock auctions by Commissioner of Agriculture, § 4-6-42 et seq.

Judicial sales, § 9-13-140 et seq.

Auctions for sale of leaf tobacco, § 10-4-100 et seq.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Auctioneers Commission, Chapter 55-1.

Law reviews.

For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Auction sale by students of Georgia Tech, proceeds going to charity, is not forbidden by Georgia law. 1962 Ga. Op. Att'y Gen. 593 (decided prior to enactment of this chapter).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Regulations affecting auctions or auctioneers, 31 A.L.R. 299; 39 A.L.R. 773; 111 A.L.R. 473.

Effect on auction sale of by-bidding or puffing, 46 A.L.R. 122.

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 A.L.R.2d 1362.

Withdrawal of property from auction sale, 37 A.L.R.2d 1049.

Regulation and licensing of jewelry auctions, 53 A.L.R.2d 1433.

Auctioneer's action for commissions against seller, 38 A.L.R.4th 170.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

43-6-1. Definitions.

As used in this chapter, the term:

(1) "Absolute auction" shall mean that ownership and title of real or personal property offered at auction must be conveyed to the high bidder without reservation and without any competing bids of any type by the owner or an agent of the owner of the property.

(2) Reserved.

(3) "Auction business" or "business of auctioning" means the performing of any of the acts of an auctioneer, including bid calling for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by

process of an auction or sale at auction or offering, negotiating, or attempting to negotiate a listing contract for the sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale.

(4) "Auction with reserve" shall mean that the seller reserves the right to refuse any and all bids.

(5) "Auctioneer" means any person who, for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale and has been duly licensed, as provided in this chapter.

(6) "Commission" means the Georgia Auctioneers Commission.

(7) "Company" means an association, partnership, limited liability company, corporation, or sole proprietorship and shall also include the officers, directors, members, and employees of such entities.

(8) "Goods" means any chattel, goods, merchandise, real or personal property, or commodities of any form or type which lawfully may be kept or offered for sale.

(9) "Person or persons" means an individual.

(10) "Ringperson" means any person employed directly by an auctioneer or auction company responsible for a sale who assists the auctioneer in the conduct of an auction, provided that such person shall not be permitted to call or chant a bid or negotiate a listing contract.

History.

Code 1933, § 84-301A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1987, p. 596, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1989, p. 1409, § 1; Ga. L. 1990, p. 576, § 1; Ga. L. 1993, p. 123, § 21; Ga. L. 1993, p. 1030, § 1; Ga. L. 1996, p. 657, § 1; Ga. L. 2014, p. 294, § 1/HB 1042.

Cross references.

High-demand Career Initiatives Program, § 20-4-150 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

7 Am. Jur. 2d, Auctions and Auctioneers, § 1 et seq.

C.J.S.

7A C.J.S., Auctions and Auctioneers, § 1 et seq.

43-6-2. Georgia Auctioneers Commission; composition; terms of office; qualifications of members.

(a) The Georgia Auctioneers Commission is created under the Secretary of State and the division director.

(b) The commission shall be composed of six members, each of whom shall be appointed by the Governor, with the approval of the Secretary of State, and confirmed by the Senate. Appointments shall be for a term of five years, to end on the anniversary date of original appointments, except appointments to fill a vacancy which shall be for the unexpired term only.

(c) Five members of the commission shall be licensed auctioneers who shall have been residents of this state and actively engaged in the auctioneering business for at least five years. One member shall be a consumer advocate and a resident of this state and shall have no connection whatsoever with the practice or profession of auctioneering.

History.
Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 1; Ga. L. 1996, p. 657, § 2; Ga. L. 2000, p. 1706, § 19.

43-6-3. Selection of chairman; rules and regulations; meetings.

(a) The commission shall organize by selecting from its members a chairman and may do all things necessary and convenient to carry this chapter into effect and, from time to time, may promulgate necessary rules and regulations to carry out this chapter.

(b) The commission shall meet as necessary and shall remain in session as long as the chairman deems it necessary to give full consideration to the business before the commission.

History.
Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1990, p. 576, § 2; Ga. L. 1996, p. 657, § 3.

43-6-4. Reimbursement of commission members.

Each member of the commission shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-5. [Reserved] Commission reports to Governor and General Assembly.

History.
Ga. L. 1975, p. 53, § 1; repealed by Ga. L. 1990, p. 576, § 3, effective March 30, 1990.

Editor's notes.
Ga. L. 1990, p. 576, § 3 repealed and reserved this Code section, effective March 30, 1990.

43-6-6. Seal.

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Auctioneers Commission, State of Georgia" and such other devices as the commission may desire included thereon, by which it shall authenticate the acts of the commission.

History.
Code 1933, § 84-306A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2011, p. 99, § 65/HB 24.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
68 Am. Jur. 2d, Seals, § 1 et seq.

43-6-7. Adoption of rules and regulations.

The commission is authorized to adopt rules and regulations relating to the professional conduct of licensees, a code of ethics, and the administration of this chapter. Such rules and regulations shall not apply to and shall not set schedules of fees or commissions for the services of the licensees.

History.
Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 1030, § 2.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Auctioneers Commission, Chapter 55-1 et seq.

43-6-8. Authority to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees.

Except as provided in Code Section 43-1-4, the commission shall have the power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees for any violation of this chapter.

History.
Code 1933, § 85-308A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-9. License requirement for auctioneers; registration for companies conducting auctions; restrictions as to sales of real property.

(a) It shall be unlawful for any person, directly or indirectly, to engage in, conduct, advertise, hold himself or herself out as engaging in or conducting the business of, or act in the capacity of, an auctioneer within this state without first obtaining a license as an auctioneer, as provided in this chapter, unless he or she is exempted from obtaining a license under Code Section 43-6-24.

(b) It shall be unlawful for any licensed auctioneer to act in such capacity in the sale of real property unless such auctioneer shall also be licensed as a real estate broker, associate broker, or salesperson under Chapter 40 of this title; provided, however, that any auctioneer who was licensed as such by this state prior to July 1, 1978, and who, prior to December 31, 1984, submits proof to the commission that he or she has been auctioning real property for five years or more immediately prior to the date of application shall not be required to meet the provisions of this subsection but such person shall not thereby be construed to be a real estate broker, associate broker, or salesperson under Chapter 40 of this title.

(c) It shall be unlawful for any company, directly or indirectly, to engage in, conduct, advertise, hold itself out as engaging in or conducting the business of auctioning without first being registered by the commission, unless such company is exempted from obtaining a license pursuant to Code Section 43-6-24.

History.
Code 1933, § 84-302A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 2; Ga. L. 1987, p. 596, § 2; Ga. L. 2014, p. 294, § 2/HB 1042.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "this title" was substituted twice for "Title 43" in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Dealer may auction wrecked or reparable motor vehicles without being registered. — Licensed used motor vehicle parts dealer may auction wrecked or reparable motor vehicles without also being registered with the Georgia Auctioneers Commission as auctioning is incidental to the practice of a salvage pool dealer. However, a dealer may not auction items other than wrecked or reparable motor vehicles without an auction company license. 1989 Op. Att'y Gen. No. 89-58.

Licensed auctioneers who sell used motor vehicles on consignment must also be licensed as used car dealers unless such sales are made by a used car dealer or a financial institution. Auction compa-

nies which auction used motor vehicles on consignment must also be registered as used car dealers if such sales are made to independent motor vehicle dealers or to individual consumers. 1991 Op. Att'y Gen. No. 91-15.

RESEARCH REFERENCES

ALR.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-6-10. Application by person for license.

Any person desiring to act as an auctioneer must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business; if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted; and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the municipality, with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require.

History.

Code 1933, § 84-309A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 22; Ga. L. 2014, p. 294, § 3/HB 1042.

Administrative rules and regulations.

Application for licensure, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-3.

43-6-11. Qualifications of applicants.

(a) No auctioneer's license shall be issued to any person who has not attained the age of 18 years, nor to any person who is not a resident of this state unless he or she has fully complied with Code Section 43-6-12, nor to any person who is not a citizen or has not filed his or her intent to become a citizen of the United States.

(b) Each applicant for an auctioneer's license shall be required to pass an examination in a form prescribed by the commission.

(c) Each applicant for licensure as an auctioneer must prove to the commission that he or she is reputable, trustworthy, honest, and competent to transact the business of auctioning in such a manner as to safeguard the interest of the public.

(d) Each applicant for licensure as an auctioneer shall have successfully graduated from an accredited high school or obtained a state approved high school equivalency (HSE) and have graduated from an auctioneers school approved by the commission prior to making an application for an auctioneer's license.

History.
Code 1933, § 84-311A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1686, §§ 1, 2; Ga. L. 1989, p. 1409, § 2; Ga. L. 1991, p. 801, § 1; Ga. L. 1993, p. 1030, § 3; Ga. L. 1996, p. 657, § 4; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2014, p. 294, § 4/HB 1042; Ga. L. 2022, p. 168, § 10(1)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "GED" in subsection (d).

43-6-11.1. Application by company for registration; exemptions; trust accounts.

(a) No company shall be registered to engage in the business of auctioning unless such company furnishes to the commission:

(1) A completed application form as prescribed by the commission;

(2) Satisfactory evidence approved by the commission that the company employs or shall employ an auctioneer licensed under the provisions of this chapter to conduct any auctions in this state; and

(3) If such company is a foreign corporation, satisfactory evidence approved by the commission that such company is authorized to do business in this state and is registered in accordance with Chapter 3 of Title 14.

(b) A company owned by or employing one or more full-time auctioneers licensed by the commission may be exempt from subsection (a) of this Code section, provided that such company is directly supervised by a licensed auctioneer.

(c) A company licensed under Chapter 47 and Chapter 48 of this title which engages in the business of auctioning on behalf of insurance companies and financial institutions shall not be subject to the requirements of paragraph (3) of Code Section 43-6-18.

(d) An auction company must maintain at all times an active trust account and register such account with the Georgia Auctioneers Commission.

History.
Code 1981, § 43-6-11.1, enacted by Ga. L. 1987, p. 596, § 3; Ga. L. 1989, p. 1409, § 3; Ga. L. 1991, p. 801, § 2; Ga. L. 1996, p. 657, § 5.

Administrative rules and regulations.
Company registration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-7.

OPINIONS OF THE ATTORNEY GENERAL

Person or company possessing both a used motor vehicle parts dealer's license and an auction company's license must maintain separate bonds under each license. 1989 Op. Att'y Gen. No. 89-58.

43-6-11.2. Expiration of licenses; waiver of continuing education requirement; rules and regulations.

(a) Licenses for auctioneers shall expire biennially as provided in Code Section 43-1-4. The commission shall be authorized to require persons seeking renewal of an auctioneer's license under this chapter to complete commission approved continuing education of not more than eight hours biennially.

(b) The commission shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the commission deems appropriate.

(c) The commission shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each biennial renewal cycle which begins after the 1990-1991 renewal.

History.
Code 1981, § 43-6-11.2, enacted by Ga. L. 1991, p. 799, § 1.

43-6-12. Reciprocity; nonresident license requirement; designation of agents for service of process.

(a) Any resident of another state who holds a current license as an auctioneer under the laws of any other state having requirements similar to those in this chapter may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without written examination upon the payment of the fees as required by the commission.

(b) Any resident of another state which does not have a law regulating the licensing of auctioneers but who holds a current and valid license in a state which has a reciprocal licensing agreement with Georgia may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without examination upon the payment of a fee as required by the commission.

(c) Prior to the issuance of a license to a nonresident auctioneer, such nonresident shall file with the commission a designation in writing that appoints the commission or a deputy to be designated by it to act as the

licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the commission chairman, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of all such process or notices, the commission or the deputy as designated by it shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee.

History.
Code 1933, § 84-314A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 3; Ga. L. 1987, p. 596, § 4; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 799, § 2; Ga. L. 1993, p. 1030, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2014, p. 294, § 5/HB 1042.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (c) is applicable with respect to notices delivered on or after July 1, 2000.

43-6-12.1. Proof of residence.

In order for an applicant to obtain an auctioneer's license, such applicant must show proof of a residence.

History.
Code 1981, § 43-6-12.1, enacted by Ga. L. 1996, p. 657, § 6.

43-6-13. License fees; effect of nonpayment of checks submitted as fee.

(a) The division director, at the time an application for licensure is submitted, shall collect from an applicant a fee in an amount established by the commission. The commission may establish separate schedules of fees for such licenses depending on whether the applicant begins to do business prior to or after the issuance of any such license.

(b) After the issuance of the first license to an applicant, such license shall cover the remaining period of the biennium.

(c) The auctioneer's biennial license fee shall be an amount established by the commission and the apprentice auctioneer's biennial license fee shall be an amount established by the commission. This

Code section shall not obviate any other fees or conditions required to maintain such license in accordance with this chapter.

(d) Any check presented to the division director as a fee for either an original or renewal license which is returned unpaid shall be cause for revocation or denial of a license.

(e) Notwithstanding any other fee prescribed in this chapter, a company shall be required to pay registration and renewal fees in an amount established by the commission.

History.
Code 1933, § 84-312A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 596, § 5; Ga. L. 1991, p. 799, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 13/SB 195.

43-6-14. Contents and display of license.

Each license shall have placed thereon the seal of the commission. The license of each auctioneer shall be delivered or mailed to his or her place of business and shall be displayed conspicuously at all times in the office of the licensee. The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensed auctioneer, as the case may be, stating the period of time for which fees have been paid. If an auctioneer maintains more than one place of business within the state, a branch office license shall be issued to such auctioneer for each branch office so maintained by him or her upon the payment of a biennial fee in an amount established by the commission; and the branch office license shall be conspicuously displayed in each branch office.

History.
Code 1933, § 84-316A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2014, p. 294, § 6/HB 1042.

43-6-14.1. Carrying license identification card required.

All licensees must carry on their person, when participating in the auctioneering business in any capacity, their Georgia auctioneer's license identification card and must present such card upon demand by any official of the State of Georgia.

History.
Code 1981, § 43-6-14.1, enacted by Ga. L. 1996, p. 657, § 7.

43-6-15. [Reserved] Surety bond.

History.
Ga. L. 1975, p. 53, § 1; repealed by Ga. L. 1989, p. 1409, § 4, effective July 1, 1989.

Editor's notes.
Ga. L. 1989, p. 1409, § 4 repealed and reserved this Code section, effective July 1, 1989.

43-6-16. Grounds for refusal to issue license.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of auctioning in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission shall grant a license to a corporation, limited liability company, or partnership only if the stockholder, member, or partner having a controlling interest therein bears a good reputation for honesty, trustworthiness, and integrity.

(b) Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of any other crime in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction, in itself, may be a sufficient ground for refusal of a license.

(c) Where an applicant has made a false statement of material fact on his or her application, such false statement, in itself, may be sufficient ground for refusal of a license.

(d) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license.

History.
Code 1933, § 84-310A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 23; Ga. L. 2014, p. 294, § 7/HB 1042.

RESEARCH REFERENCES

ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-6-17. Procedure upon nonacceptance of applications.

If the commission, after an application in proper form has been filed and accompanied by the proper fee, shall refuse to accept the application, the commission shall provide for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50.

History.
Code 1933, § 84-315A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-18. Grounds for revocation or suspension of licenses and censure of licensees.

The commission may, upon its own motion, and shall, upon the signed complaint in writing of any person, investigate the actions of any auctioneer and shall have power to censure such licensee or to revoke or suspend any license issued under this chapter whenever such license has been obtained by false or fraudulent representation or the licensee has been found guilty of any unfair trade practices, including, but not limited to, the following:

(1) Making any substantial misrepresentation while describing any property, real or personal; using any false, deceptive, misleading, or untruthful advertising; or making any statements, either in person or through any form of advertising, which may create false or unjustified expectations of the services to be performed;

(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising an auction to be an absolute auction, but conducting it as an auction with reserve or otherwise;

(3) Failing to account for or remit, within 30 days unless otherwise provided by contract, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep such funds of others in an escrow or trustee account;

(4) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;

(5) Violation of any rule or regulation or code of ethics promulgated by the commission;

(6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;

(7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest dealings;

(8) Having had any license to practice a business or profession revoked, suspended, annulled, or sanctioned, or otherwise having had any disciplinary action taken by any other licensing authority in this or any other state; or

(9) Knowingly making any misleading, false, or deceptive statement on any application for a license under this chapter.

History. Code 1933, § 84-318A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1989, p. 1409, § 5; Ga. L. 1993, p. 1030, § 5; Ga. L. 1996,

p. 657, § 8; Ga. L. 2014, p. 294, § 8/HB 1042.

Cross references.

False or fraudulent advertising, § 10-1-420 et seq.

Liability of auctioneer for sale of stolen horse or mule, § 10-1-530.

RESEARCH REFERENCES

ALR.

Liability of auctioneer or clerk to buyer as to title, condition, or quality of property sold, 80 A.L.R.2d 1237.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-6-18.1. Inspector.

The commission shall have an inspector with full inspection rights and privileges for all auctions conducted in this state. This inspector shall have the right to inspect any activity or lack thereof which may be a violation of this chapter or any documents or records pertaining to auction activities and to report any and all such violations or any improper or unlicensed practice, including but not limited to trust account violations.

History.

Code 1981, § 43-6-18.1, enacted by Ga. L. 1993, p. 1030, § 6; Ga. L. 1996, p. 657, § 9; Ga. L. 2008, p. 1112, § 13/HB 1055.

Editor's notes.

Ga. L. 1993, p. 1030, § 6, effective July 1, 1993, redesignated former Code Section 43-6-18.1 as present Code Section 43-6-18.2.

43-6-18.2. Sanctions.

After notice and opportunity for hearing as provided in Code Section 43-6-19, the commission, in its discretion, may sanction, as provided in Code Section 43-1-19 and Code Section 43-6-18, a company registered or required to be registered in accordance with this chapter.

History.

Code 1981, § 43-6-18.1, enacted by Ga. L. 1987, p. 596, § 6; Code 1981, § 43-6-18.2, as redesignated by Ga. L. 1993, p. 1030, § 6.

43-6-19. Hearings regarding revocation or suspension of licenses or censure of licensees; appeals.

Before the commission shall censure a licensee or before revoking or suspending a license, it shall provide for a hearing for such holder of a license in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50.

History.
Code 1933, § 84-319A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-20. [Reserved] Effect of revocation of auctioneer's license on licenses of apprentice auctioneers.

History.
Ga. L. 1975, p. 53, § 1; repealed by Ga. L. 2014, p. 294, § 9/HB 1042, effective July 1, 2014.

Editor's notes.
Ga. L. 2014, p. 294, § 9/HB 1042 repealed and reserved this Code section, effective July 1, 2014.

43-6-21. Notification of change of business address.

Should the auctioneer change his or her place of business, he or she shall notify the commission in writing within ten days of such change, and thereupon a new pocket card shall be granted to the auctioneer.

History.
Code 1933, § 84-317A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2014, p. 294, § 10/HB 1042.

43-6-22. Prerequisite for bringing action for compensation; power of commission to sue for violation.

(a) No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that he or she was a duly licensed auctioneer at the time the alleged cause of action arose.

(b) The commission may bring an action for any violation of this chapter.

History.
Code 1933, § 84-304A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2014, p. 294, § 11/HB 1042.

43-6-22.1. Auctioneers education, research, and recovery fund.

(a) The commission is authorized and directed to establish and maintain an auctioneers education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of $100,000.00 in the auctioneers education, research, and recovery fund from which any person, except bonding companies when they are not principals in an auction transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant to this chapter, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or

conduct, provided that nothing shall be construed to obligate the fund for more than $10,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate or lots of personal property involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of $20,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in an auction transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than $10,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the auctioneers education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the auctioneers education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the auctioneers education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee under this chapter for any act, representation, transaction, or conduct which is in violation of this chapter or of the regulations promulgated pursuant to this chapter, or which is in violation of Chapter 47 of this title or of the regulations promulgated pursuant to Chapter 47 of this title, which act occurred on or after January 1, 1992, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the commission, may apply to the court for an order directing payment out of the auctioneers education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section.

(3) The court shall proceed upon such application in a summary

manner and, upon the hearing thereof, the aggrieved person shall be required to show:

(A) That he is not a spouse of the judgment debtor or the personal representative of such spouse;

(B) That he has complied with all the requirements of this Code section;

(C) That he has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the application; and that, in such action, he had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) That he has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) That he has caused the judgment debtor to make discovery under oath concerning his property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) That he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) That by such search he has discovered no personal or real property or other assets liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) That the following items, if any, as recovered by him have been applied to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the auctioneers education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the auctioneers education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. If such license is that of a corporation, limited liability company, or partnership, the license of the supervising auctioneer of the corporation, limited liability company, or partnership shall automatically be revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the rate of 6 percent per annum, the amount paid from the auctioneers education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the auctioneers education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the auctioneers education, research, and recovery fund, satisfy such unpaid claims or portions

thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent per annum.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "auctioneers education, research, and recovery fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the auctioneers education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the auctioneers education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and any such filing shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf of and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the auctioneers education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited in the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission's attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the

provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds, in excess of the amount of $100,000.00 required by subsection (b) of this Code section, regardless of whether such funds are from the auctioneers education, research, and recovery fund or from accrued interest thereon for the purpose of helping to underwrite the cost of education and research programs for the benefit of licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the auctioneers education, research, and recovery fund to be reduced to an amount less than $100,000.00.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a minimum balance of $100,000.00 is maintained in the auctioneers education, research, and recovery fund, may assess each licensee, only upon renewal of his license, an amount not to exceed $150.00 per year.

History.
Code 1981, § 43-6-22.1, enacted by Ga. L. 1991, p. 801, § 3; Ga. L. 1992, p. 2450, § 1; Ga. L. 1993, p. 123, § 24; Ga. L. 1999, p. 592, § 17; Ga. L. 2000, p. 1589, § 3.

Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (d)(1) is applicable with respect to notices delivered on or after July 1, 2000.

Administrative rules and regulations.
Schools, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-8.

Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-9.

43-6-23. Injunctions.

Whenever, in the judgment of the commission, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may bring an action in the name of the state in the superior court of the county in which venue is proper, to abate and temporarily and permanently to enjoin such acts and practices and to enforce compliance with this chapter. The plaintiff shall not be required to give any bond.

History.
Code 1933, § 84-307A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43.

RESEARCH REFERENCES

Am. Jur. 2d.
7 Am. Jur. 2d, Attorney General, §§ 1, 17 et seq.

C.J.S.
7A C.J.S., Attorney General, § 6 et seq.

43-6-24. Exceptions to operation of chapter.

Except as otherwise provided in this chapter, this chapter shall not apply to any person acting as a receiver, trustee in bankruptcy, administrator, executor, or any such person acting under order of any court. This chapter shall not apply to any nonprofit organization conducting an auction where the funds are to be used in a way as to benefit persons with physical or mental disabilities or disorders or for research related to cures or prevention of such disabilities or disorders, nor shall this chapter apply to any auction conducted by a nonprofit organization where the funds are to be used for the preservation of wildlife or its habitats whether conducted by a licensed auctioneer or nonlicensed auctioneer so long as the nonprofit organization obtains a letter of exemption from the commission. This chapter shall not apply to any person acting as an auctioneer in the auction of livestock, forest products, or farm products in an auction facility which is licensed and bonded under the provisions of Article 3 of Chapter 6 of Title 4 or in an auction facility which is licensed under Code Section 10-4-101 or to any youth livestock auction, sponsored by a 4-H Club or the Future Farmers of America; provided, however, that such organization or agency must first obtain from the commission a letter of exemption. This chapter shall not apply to students of approved auctioneering schools during the term of their course of study. This chapter shall not apply to any person conducting a public sale of personal property pursuant to the provisions of Code Section 10-4-213. This chapter shall not apply to ringpersons as defined in Code Section 43-6-1.

History.
Code 1933, § 84-303A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 1; Ga. L. 1987, p. 596, § 7; Ga. L. 1989, p. 1409, § 6; Ga. L. 1990, p. 576, § 4; Ga. L. 1993, p. 1030, § 7; Ga. L. 1994, p. 1391, § 1; Ga. L. 1996, p. 657, § 10.

43-6-24.1. Liabilities of licensed auctioneer not relieved.

Nothing in this chapter shall relieve an auctioneer licensed in this state of all his or her liabilities under this chapter.

History.
Code 1981, § 43-6-24.1, enacted by Ga. L. 1993, p. 1030, § 8.

43-6-25. Penalty.

Any person or corporation acting as an auctioneer within the mean-

ing of this chapter without a license and any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $1,000.00, by imprisonment for a term not to exceed 90 days, or both.

History.
Code 1933, § 84-322A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2014, p. 294, § 12/HB 1042.

RESEARCH REFERENCES

ALR.
Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 A.L.R. 915.

43-6-25.1. Local regulations and licensing.

Nothing in this chapter shall prohibit any lawful regulation or licensing of auctioneers by any municipality, county, or other political subdivision of this state; provided, however, that no such political subdivision shall license any auctioneer required to be licensed by this chapter unless such auctioneer has been approved for licensure by the commission as required in this chapter.

History.
Code 1981, § 43-6-25.1, enacted by Ga. L. 1987, p. 596, § 8.

43-6-26. [Repealed] Termination.

History.
This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8); Ga. L. 1984, p. 438, § 1; Ga. L. 1990, p. 576, § 5; repealed by Ga. L. 1992, p. 3137, § 6, effective July 1, 1992.

CHAPTER 7

BARBERS

Sec.
43-7-1 through 43-7-27. [Reserved].

Administrative rules and regulations. Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Barbers, Chapter 70-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 88-401, 88-410, 88-411 as they read prior to revision of the chapter by Ga. L. 1973, p. 1450 are included in the annotations for this chapter.

Barber training as beautician may practice barbering outside class. — Qualified barber is not prohibited from practicing that profession while training as a beautician in a beauty school; provided, however, that the practice is not conducted during hours of study. 1945-57 Ga. Op. Att'y Gen. 479 (decided under former Code 1933, §§ 84-401, 84-410, 84-411 as they read prior to revision of chapter by Ga. L. 1973, p. 1450).

43-7-1 through 43-7-27. [Reserved]

History.
Ga. L. 1914, p. 75, §§ 3, 4, 6, 8, 13; Ga. L. 1914, p. 85, §§ 1, 5, 10, 12, 14; Ga. L. 1916, p. 75, § 3; Ga. L. 1931, p. 157, §§ 2, 4, 7, 9-12; Code 1933, § 84-401—84-405, 84-407, 84-408, 84-409, 84-410.1, 84-411, 84-412, 84- 412.2, 84-418, 84-9904; Ga. L. 1937, p. 564, §§ 1, 2, 7; Ga. L. 1956, p. 316, §§ 1, 3, 4, 6, 7; Ga. L. 1963, p. 56, §§ 1, 3-5, 9, 11, 12, 15; Ga. L. 1965, p. 603, §§ 1-3, 7, 10-12, 17; Ga. L. 1966, p. 312, § 1; Ga. L. 1967, p. 474, § 1; Ga. L. 1968, p. 421, § 1; Ga. L. 1970, p. 453, § 1; Ga. L. 1971, p. 870, §§ 1-4, 6-9, 11-15, 17-19, 21, 23-25, 27-30; Ga. L. 1973, p. 1450, §§ 1-3, 5-9, 11-15, 17-19, 21, 23-25, 27-30; Ga. L. 1977, p. 223, § 2; Ga. L. 1980, p. 59, § 1; Ga. L. 1980, p. 530, §§ 1, 1.1, 4, 5, 6; Ga. L. 1982, p. 1597, §§ 2, 4-7; Ga. L. 1985, p. 1133, § 1; Ga. L. 1985, p. 1419, §§ 1-5; Ga. L. 1986, p. 766, §§ 1-6; Ga. L. 1988, p. 13, § 43; Ga. L. 1992, p. 2765, §§ 1, 2, 4; Ga. L. 1996, p. 1239, §§ 1-3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2010, p. 266, §§ 14-16/SB 195; Ga. L. 2011, p. 705, § 6-4/HB 214; Ga. L. 2014, p. 391, § 1/SB 337; repealed by Ga. L. 2015, p. 1287, § 1/HB 314, effective July 1, 2015.

Editor's notes.
Former Code Section 43-7-15 (Ga. L. 1971, p. 870, § 20; Ga. L. 1973, p. 1450, § 20; Ga. L. 1982, p. 1597, § 3), relating to requirements for student license, was repealed by Ga. L. 1992, p. 2765, § 3, effective May 4, 1992.

Former Code Section 43-7-22 (Ga. L. 1971, p. 870, § 22, and Ga. L. 1973, p. 1450, § 22), relating to temporary licenses, was repealed by Ga. L. 1986, p. 766, § 7, effective April 3, 1986.

Former Code Section 43-7-27 (Ga. L. 1982, p. 1597, §§ 1, 8; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 766, § 8; and Ga. L. 1992, p. 2765, § 5), relating to termination, was repealed by Ga. L. 1992, p. 3137, § 7, effective July 1, 1992.

This chapter was reserved by Ga. L. 2015, p. 1287, § 1/HB 314, effective July 1, 2015.

CHAPTER 7A

PROFESSIONAL COUNSELORS, SOCIAL WORKERS, AND MARRIAGE AND FAMILY THERAPISTS

Sec.
43-7A-1 through 43-7A-24.

43-7A-1 through 43-7A-24.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, this chapter was redesignated as present Chapter 10A.

CHAPTER 7A

[EFFECTIVE JULY 1, 2023] PRACTICE OF APPLIED BEHAVIOR ANALYSIS

Sec.	
43-7A-1.	[Effective July 1, 2023] Legislative findings.
43-7A-2.	[Effective July 1, 2023] Definitions.
43-7A-3.	[Effective July 1, 2023] Georgia Behavior Analyst Licensing Board; membership; terms; vacancy; expenses; meetings.
43-7A-4.	[Effective July 1, 2023] Authority of board.
43-7A-5.	[Effective July 1, 2023] Application and fees for licensure; renewal.
43-7A-6.	[Effective July 1, 2023] Unlicensed practice prohibited; penalty. [Effective July 1, 2023]
43-7A-7.	[Effective July 1, 2023] Other practices not prohibited.
43-7A-8.	[Effective July 1, 2023] Temporary licenses.
43-7A-9.	[Effective July 1, 2023] Reciprocity.
43-7A-10.	[Effective July 1, 2023] Term of licensure and renewal.
43-7A-11.	[Effective July 1, 2023] Required internet postings.

Effective date.
This chapter becomes effective July 1, 2023.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, this former chapter was redesignated as present Chapter 10A.

43-7A-1. [Effective July 1, 2023] Legislative findings.

The General Assembly finds that the practice of applied behavior analysis in Georgia is hereby declared to affect the public health, safety, and welfare of citizens of Georgia and should be subject to regulation to protect the public from: (i) the practice of applied behavior analysis by unqualified persons; and (ii) unprofessional, unethical, and harmful conduct by behavior analysis practitioners.

History.
Code 1981, § 43-7A-1, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-2. [Effective July 1, 2023] Definitions.

As used in this chapter, the term:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications by a behavior analyst, to produce socially significant improvements in behavior.

(2) "Behavior technician" means a paraprofessional who practices under the extended authority, close and ongoing supervision, and responsibility of a licensed behavior analyst or licensed assistant behavior analyst and delivers services as assigned by such licensee but does not design assessment or intervention plans or procedures.

(3) "Board" means the Georgia Behavior Analyst Licensing Board created pursuant to this chapter.

(4) "Board certified" means a certification issued by a certifying entity to a practitioner of applied behavior analysis demonstrating that such practitioner meets specific requirements.

(5) "Certifying entity" means the Behavior Analyst Certification Board, Inc., or its successor, or another entity that conducts programs to certify professional practitioners of behavior analysis that are accredited by the National Commission on Certifying Agencies or the American National Standards Institute as identified by the board.

(6) "Licensed assistant behavior analyst" means an individual who is licensed pursuant to this chapter to practice as an assistant behavior analyst.

(7) "Licensed behavior analyst" means an individual who is licensed pursuant to this chapter to practice as a behavior analyst.

(8) "Practice of applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. Such term includes the empirical identification of func-

tional relations between behavior and environmental factors, known as functional assessment and analysis; interventions based on scientific research and direct and indirect observation and measurement of behavior and the environment; and the utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. Such term expressly excludes psychological testing, diagnosis of a mental or physical disorder, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

History.
Code 1981, § 43-7A-2, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-3. [Effective July 1, 2023] Georgia Behavior Analyst Licensing Board; membership; terms; vacancy; expenses; meetings.

(a) The Georgia Behavior Analyst Licensing Board is hereby established. The board shall be composed of five members appointed by the Governor.

(b)(1) The initial board members shall include:

(A) Three members each of whom are either a board certified behavior analyst or a board certified behavior analyst-doctoral and who are eligible for licensure under this chapter. Such members shall apply for licensure as soon as feasible after appointment;

(B) One member who is a board certified assistant behavior analyst who is eligible for licensure under this chapter. Such member shall apply for licensure as soon as feasible after appointment; and

(C) One public member who:

(i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the spouse of such person;

(ii) Has never been in the practice of applied behavior analysis or the spouse of such person; and

(iii) Does not have and has never had a material interest in the practice of applied behavior analysis.

(2) Subsequent board members shall include:

(A) Three licensed behavior analysts;

(B) One licensed assistant behavior analyst; and

(C) One public member who:

(i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the spouse of such person;

(ii) Has never been in the practice of applied behavior analysis or the spouse of such person; and

(iii) Does not have and has never had a material interest in the practice of applied behavior analysis.

(c) Members shall serve three-year terms and until their successors are duly appointed and qualified; provided, however, that initial terms shall be staggered so that one member serves an initial term of one year, two members serve initial terms of two years, and two members serve initial terms of three years, as designated by the Governor. No member shall be appointed to more than two consecutive three-year terms.

(d) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor.

(e) Members of the board shall receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within this state for attendance at board meetings.

(f) The board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, as necessary to transact its business. Such meetings may be conducted in-person, by telephone, by virtual means, or any combination thereof.

(g) Three members of the board shall constitute a quorum.

(h) The board shall annually elect a chairperson from among its membership and such other officers as deemed necessary.

History.
Code 1981, § 43-7A-3, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-4. [Effective July 1, 2023] Authority of board.

The board shall be authorized to:

(1) Adopt, amend, and repeal such rules and regulations as shall be reasonably necessary for the administration, enforcement, and implementation of the provisions and purposes of this chapter;

(2) Issue, renew, and reinstate the licenses of duly qualified applicants for licensure;

(3) Deny, suspend, revoke, or otherwise sanction licensees;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Conduct national background checks by the submission of fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information Center;

(7) Adopt a seal;

(8) Establish rules and regulations relating to ethical conduct of persons licensed and regulated pursuant to this chapter; and

(9) Do all other things necessary to administer and enforce this chapter and all rules and regulations adopted by the board pursuant to this chapter.

History.
Code 1981, § 43-7A-4, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-5. [Effective July 1, 2023] Application and fees for licensure; renewal.

(a) Each person desiring to obtain a license pursuant to this chapter shall submit an application and applicable fees to the board. An application shall furnish satisfactory evidence demonstrating that the applicant:

(1) Is of good moral character;

(2) Conducts his or her professional activities in accordance with accepted professional and ethical standards and guidelines for responsible conduct for behavior analysts established by a certifying entity; and

(3) Has received satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for the issuance of a license under this chapter shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable

sets of fingerprints. Such applicant shall be responsible for all fees associated with the performance of such background check.

(b) An applicant to be a licensed behavior analyst shall furnish satisfactory evidence demonstrating that the applicant:

(1) Has successfully passed a behavior analyst examination conducted by a certifying entity;

(2) Holds a master's degree based on applied behavior analysis coursework in an approved sequence; and

(3) Maintains active status as a board certified behavior analyst.

(c) An applicant to be a licensed assistant behavior analyst shall furnish satisfactory evidence demonstrating that the applicant:

(1) Has successfully passed an assistant behavior analyst examination conducted by a certifying entity;

(2) Holds a bachelor's degree based on applied behavior analysis coursework in an approved sequence;

(3) Maintains active status as a board certified assistant behavior analyst; and

(4) Will have ongoing supervision by a licensed behavior analyst in a manner consistent with the certifying entity's requirements for supervision of board certified assistant behavior analysts.

(d) The board shall issue and renew licenses to qualified applicants no later than 90 days after receipt of a complete application or renewal application.

History.
Code 1981, § 43-7A-5, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-6. [Effective July 1, 2023] Unlicensed practice prohibited; penalty.

(a) The unlicensed practice of applied behavior analysis is prohibited in this state, except as otherwise provided in Code Section 43-7A-7.

(b) No person shall hold himself or herself out to be a licensed behavior analyst or licensed assistant behavior analyst unless he or she is licensed pursuant to this chapter.

(c) Any person in violation of subsection (a) or (b) of this Code section shall be subject to a fine of $1,000.00 for each violation.

History.
Code 1981, § 43-7A-6, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-7. [Effective July 1, 2023] Other practices not prohibited.

The provisions of this chapter shall not be construed to prohibit or restrict the practice of any of the following:

(1) An individual licensed to practice psychology in this state, so long as the applied behavior analysis services provided by the licensed psychologist are within his or her education, training, and experience or an individual acting under the extended authority and direction of a licensed psychologist;

(2) A behavior technician who delivers applied behavior analysis services under the extended authority, close and ongoing supervision, and responsibility of a licensed behavior analyst or a licensed assistant behavior analyst. Such individuals shall not represent themselves as professional behavior analysts and shall use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor";

(3) A caregiver of a recipient of applied behavior analysis services who delivers such services to the recipient under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst. Such individuals shall not represent themselves as professional behavior analysts;

(4) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including, but not limited to, applied animal behaviorists and practitioners of organizational behavior management. Such individuals may use the title "behavior analyst" but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(5) A licensed professional authorized to practice in this state who is not a behavior analyst, so long as the licensed professional does not represent that he or she is a licensed behavior analyst or licensed assistant behavior analyst and so long as any applied behavior analysis services performed are within the scope of practice of his or her profession and are commensurate with the licensed professional's education, training, and experience;

(6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum, provided that such program of study, practicum, or intensive practicum is directly supervised by a licensed behavior analyst or an instructor in a course sequence

approved by a certifying entity. Such individuals shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter and shall only use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee";

(7) Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of a certifying entity, provided that such experience is supervised in accordance with the requirements of a certifying entity and that such experience is supervised by a licensed behavior analyst;

(8) Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such individuals may use the title "behavior analyst" but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(9) Individuals who teach behavior analysis or conduct behavior analysis research, provided that such teaching or research does not involve the direct delivery of applied behavior analysis services. Such individuals may use the title "behavior analyst" but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(10) Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently and who work in Georgia no more than a total of 30 days within a calendar year and have received a temporary behavior analyst license pursuant to this chapter;

(11) An individual employed by a local board of education performing the duties of their positions; provided, however, that such individuals shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts or offer or provide applied behavior analysis services to any persons or entities other than their employing local board of education or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their employing local board of education unless he or she is licensed pursuant to this chapter;

(12) Individuals providing behavior support services covered under the Medicaid Comprehensive Supports Waiver Program (COMP) or New Options Waiver (NOW) program; or

(13) A licensed physician who is practicing medicine.

History.
Code 1981, § 43-7A-7, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-8. [Effective July 1, 2023] Temporary licenses.

A board certified behavior analyst or a board certified assistant behavior analyst residing and practicing in another state who temporarily provides applied behavior analysis services in this state to a resident of this state may apply for a temporary license to practice behavior analysis in this state. A temporary behavior analysis license may be issued only if the behavior analysis services are to be delivered during a limited and defined period of not more than a total of 30 days within a calendar year or shorter term otherwise approved by the board.

History.
Code 1981, § 43-7A-8, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-9. [Effective July 1, 2023] Reciprocity.

The board shall issue a license to a person who is actively licensed as a behavior analyst in good standing in another state if such state imposes comparable licensure requirements as those imposed pursuant to this chapter and such state offers reciprocity to individuals licensed in this state. Applicants for reciprocity shall submit proof of current licensure, current certification by a certifying entity, compliance with ethical standards, and satisfactory results on a criminal background check.

History.
Code 1981, § 43-7A-9, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-10. [Effective July 1, 2023] Term of licensure and renewal.

A license shall be granted for a period of two years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, including proof of continued certification by a certifying entity and payment of the renewal fee imposed by the board.

History.
Code 1981, § 43-7A-10, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

43-7A-11. [Effective July 1, 2023] Required internet postings.

The board shall post a link on its main webpage to the website of the certifying entity or entities.

History.
Code 1981, § 43-7A-11, enacted by Ga. L. 2022, p. 510, § 1/HB 412.

CHAPTER 8

OPERATORS OF BILLIARD ROOMS

Sec.		Sec.	
43-8-1.	Definitions.	43-8-3.	Applicability of chapter to billiard rooms operated by religious orders, charitable institutions, and clubs.
43-8-2.	Local governing authority to license and regulate billiard rooms.		

Editor's notes.

Ga. L. 1990, p. 1916, § 1, effective July 1, 1990, repealed the Code sections formerly codified as this chapter and enacted the current chapter. The former chapter consisted of Code sections 43-8-1 through 43-8-18. Former Chapter 8 was based on Ga. L. 1925, p. 286, §§ 1-17; Code 1933, §§ 84-1601 — 84-1617 and 84-9924 — 84-9926; Ga. L. 1953, Jan.-Feb. Sess., p. 66, § 1; Ga. L. 1956, p. 610, § 1; Ga. L. 1978, p. 1488, §§ 1-3; Ga. L. 1978, p. 1753, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1985, p. 657, § 1; Ga. L. 1988, p. 1405, §§ 1-5.

JUDICIAL DECISIONS

Operation of billiard room falls within police power of state. — Operation of a pool or billiard room for public entertainment is a business which, from its very nature, comes within the police power of the state. Such power may be exercised directly by the state or indirectly through medium of subordinate public corporations of the state. Shaver v. Martin, 166 Ga. 424, 143 S.E. 402, 1928 Ga. LEXIS 319 (1928).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-58, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Licensing and regulation of pool and billiard rooms and bowling alleys, 20 A.L.R. 1482; 29 A.L.R. 41; 53 A.L.R. 149; 72 A.L.R. 1339.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Liability for injury to patron of billiard or pool room, 15 A.L.R.3d 1420.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

43-8-1. Definitions.

As used in this chapter, the term:

(1) "Area of operation" means the unincorporated area of the county in the case of counties and the territory located within the corporate limits of the municipality in the case of municipalities.

(2) "Billiard room" means any public place where a person is permitted to play the game of billiards and for which a charge is made for use of equipment.

(3) "Billiards" means any of the several games played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue and shall include all forms of the game known as "carom billiards," "pocket billiards," and "English billiards."

(4) "Governing authority" means the official or group or body of officials of a county or municipality authorized to exercise the legislative powers of the county or municipality.

(5) "Local government" means any county or municipality of this state.

History.
Code 1981, § 43-8-1, enacted by Ga. L. 1990, p. 1916, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Gambling, § 38.

ALR.
Licensing and regulation of pool and billiard rooms and bowling alleys, 20 A.L.R. 1482; 29 A.L.R. 41; 53 A.L.R. 149; 72 A.L.R. 1339.

43-8-2. Local governing authority to license and regulate billiard rooms.

(a) Subject to the authorizations and limitations of this Code section, the governing authority of each local government in this state shall have the power by ordinance or resolution to license, regulate, and tax billiard rooms within its respective area of operation.

(b) If ordinances or resolutions of local governments regulating billiard rooms are adopted, such ordinances or resolutions shall be subject to the following conditions:

(1) A license fee shall be consistent with the cost of regulation of billiard rooms and business taxes assessed upon billiard rooms shall be established on the same basis as such taxes are imposed for similar types of businesses, provided that a license fee may be

imposed on a billiard room which is operated as part of another business or activity licensed by a local government;

(2) An ordinance or resolution which prohibits the operation of billiard rooms during specified hours shall not apply to a business which includes a billiard room if the billiard room is not operated during the prohibited hours; provided, however, no ordinance or resolution controlling the hours of operation of billiard rooms shall prohibit their operation from 6:00 A.M. until 12:00 Midnight;

(3) Any ordinance or resolution which prohibits alcoholic beverages from being sold, served, or allowed to be used in or on the premises of billiard rooms or any place operated in connection therewith shall not apply if such premises or establishment is an establishment which is authorized to sell alcoholic beverages and derives at least 50 percent of its total annual gross revenues from the sale of products or services other than alcoholic beverages; provided, however, that if alcoholic beverages are sold by the drink for consumption on the premises of a billiard room, the governing authority of a local government may prohibit the sale, serving, or use of alcoholic beverages therein unless the establishment derives at least 75 percent of its revenue from the sale of products or services other than alcoholic beverages; and

(4) No local government may prohibit billiard rooms or the playing of billiards in any business which neither sells alcoholic beverages for consumption on the premises nor engages in package sales of such beverages nor allows alcoholic beverages to be consumed on the premises.

(c) Notwithstanding anything in this chapter to the contrary, municipal corporations and counties may impose reasonable regulations, suspension and revocation of licenses under the same standards that are applicable to other businesses licensed by the municipality or county.

History.

Code 1981, § 43-8-2, enacted by Ga. L. 1990, p. 1916, § 1; Ga. L. 1994, p. 97, § 43.

Editor's notes.

Ga. L. 1990, p. 1916, § 2, not codified by the General Assembly, provides: "Unless specifically prohibited by the provisions of Chapter 8 of Title 43 as revised, reenacted, and set forth in Section 1 of this Act, existing regulations imposed upon billiard rooms by local ordinances or resolutions in existence on the effective date of this Act shall remain in effect." This Act became effective July 1, 1990.

RESEARCH REFERENCES

Am. Jur. 2d.

27A Am. Jur. 2d, Entertainment and Sports Law, §§ 4 et seq., 27. 38 Am. Jur. 2d, Gambling, § 9.

30A C.J.S., Entertainment and Amusement

Sports, §§ 11 et seq., 27.

ALR.

Licensing and regulation of pool and billiard rooms and bowling alleys, 20 A.L.R. 1482; 29 A.L.R. 41; 53 A.L.R. 149; 72 A.L.R. 1339.

43-8-3. Applicability of chapter to billiard rooms operated by religious orders, charitable institutions, and clubs.

This chapter shall not apply to billiard tables or billiard rooms operated by private industrial concerns, Young Men's Christian Associations, religious orders, charitable institutions, state, county, or city institutions, fraternal orders, or bona fide clubs using such tables for members or employees only.

History.

Code 1981, § 43-8-3, enacted by Ga. L. 1990, p. 1916, § 1.

Editor's notes.

Ga. L. 1990, p. 1916, § 2, not codified by the General Assembly, provides: "Unless specifically prohibited by the provisions of Chapter 8 of Title 43 as revised, reenacted, and set forth in Section 1 of this Act, existing regulations imposed upon billiard rooms by local ordinances or resolutions in existence on the effective date of this Act shall remain in effect." This Act became effective July 1, 1990.

RESEARCH REFERENCES

Am. Jur. 2d.

27A Am. Jur. 2d, Entertainment and Sports Law, § 4.

CHAPTER 8A

PROFESSIONAL BOXING

Sec.
43-8A-1 through 43-8A-100. [Repealed]

43-8A-1 through 43-8A-100. [Repealed]

History.
Ga. L. 1998, p. 1052, § 2; Ga. L. 1999, p. 891, §§ 1 — 8; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1706, § 19. For present comparable provisions, see Code Sections 43-4B-1 et seq; repealed by Ga. L. 2001, p. 752, § 2, effective July 1, 2001.

CHAPTER 8B

CEMETERIANS

Sec.		Sec.	
43-8B-1.	Short title.	43-8B-6.	Election of president of board; meetings; reimbursement; inspectors.
43-8B-2.	Definitions.		
43-8B-3.	Declaration of purpose.	43-8B-7.	Powers and duties; rules and regulations; seal.
43-8B-4.	Establishment of State Board of Cemeterians.	43-8B-8.	Investigation and review of complaints.
43-8B-5.	Number and terms of members; appointments; vacancies; removal.		

RESEARCH REFERENCES

Am. Jur. 2d.
14 Am. Jur. 2d, Cemeteries, § 1 et seq.

C.J.S.
14 C.J.S., Cemeteries, § 1 et seq.

43-8B-1. Short title.

This chapter shall be known and may be cited as the "Georgia Cemeterians Board Act."

History.
Code 1981, § 43-8B-1, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Cemeterians established by this chapter.

(2) "Cemeterian" means a person registered as a cemetery owner pursuant to Chapter 14 of Title 10 or a cemetery manager.

(3) "Cemetery" means a cemetery as defined in Chapter 14 of Title 10.

History.
Code 1981, § 43-8B-2, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-3. Declaration of purpose.

The practice of the profession of a cemeterian, as defined in this chapter, is declared to be a business or profession affecting the public interest and involving the health and safety of the public.

History.
Code 1981, § 43-8B-3, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-4. Establishment of State Board of Cemeterians.

There shall be established in the Office of the Secretary of State the State Board of Cemeterians to be constituted as provided in this chapter with the powers, duties, and authority vested in such board by this chapter.

History.
Code 1981, § 43-8B-4, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-5. Number and terms of members; appointments; vacancies; removal.

(a) The board shall consist of six members who shall be practicing cemeterians with a minimum of five years of experience and one member who shall have no connection whatsoever with the cemetery profession but who shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) The members of the board shall be appointed by the Governor for terms of office of six years and all vacancies occurring on the board shall be filled by the Governor. When an appointment is made to fill a vacancy caused by death or resignation of a member, such appointment shall be for the remainder of the unexpired term of the member whose death or resignation caused the vacancy so filled.

(c) A majority of the members of the board may remove any member who misses three or more consecutive regular meetings of the board without a medical reason and may declare that position on the board to be vacant. A member so removed shall not be eligible for reappointment until the expiration of the term of office for which such person was serving. The Governor shall have the power to remove from office any member of the board for willful neglect of duty or for conviction of a crime involving moral turpitude.

History.
Code 1981, § 43-8B-5, enacted by Ga. L. 2006, p. 1087, § 8/HB 910; Ga. L. 2007, p. 398, § 2/HB 391.

43-8B-6. Election of president of board; meetings; reimbursement; inspectors.

(a) The board shall each year elect from its members a president whose term shall be one year and who shall serve during the period for which elected and until a successor shall be elected.

(b) The board shall meet at least yearly and more often as the proper and efficient discharge of its duties may require.

(c) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) No inspector shall own, operate, or be employed by any cemetery or perform any services on behalf thereof.

History.
Code 1981, § 43-8B-6, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-7. Powers and duties; rules and regulations; seal.

For the purpose of better protection of life and health the board is authorized:

(1) To fix and prescribe minimum standards of general appearance of cemeteries;

(2) To undertake such other duties and to exercise such other powers as may from time to time be prescribed by law;

(3) To adopt a common seal; and

(4) To make and promulgate rules and regulations not inconsistent with the laws of this state for the regulation of such board and pursuant to the provisions of Chapter 14 of Title 10. All rules and regulations of the Secretary of State promulgated pursuant to the authority of Chapter 14 of Title 10 and existing immediately prior to July 1, 2006, which are not inconsistent with this chapter shall continue in effect until repealed, amended, or otherwise changed by the board.

History.
Code 1981, § 43-8B-7, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.

43-8B-8. Investigation and review of complaints.

Any complaints received by the board shall be investigated within 30 days of receipt. If such investigation shows that there may be a violation of Code Section 10-14-17 or 10-14-18 or any felony violation of state or federal criminal law, there shall be an affirmative obligation on behalf of the board to provide notice of such potential illegalities within seven days to the Attorney General's office and to the sheriff's office in the county in which any of the illegalities are believed to have occurred in whole or in part. Upon receiving such notification, the Attorney General shall within a reasonable time period not to exceed 60 days conduct a review of such complaint and provide the appropriate prosecuting attorney within any jurisdiction in which any illegalities

are believed to have occurred, in whole or in part, with relevant information uncovered during the course of the investigation that the prosecuting attorney requests.

History.

Code 1981, § 43-8B-8, enacted by Ga. L. 2021, p. 382, § 2/HB 354.

Effective date.

This Code section became effective May 4, 2021.

CHAPTER 9

CHIROPRACTORS

Sec.		Sec.	
43-9-1.	Definitions.	43-9-11.	Biennial renewal of licenses; continuing education requirement.
43-9-2.	Georgia Board of Chiropractic Examiners; members; qualifications; residence requirements; terms.	43-9-12.	Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.
43-9-3.	Terms of office of board members; vacancies.	43-9-12.1.	Reasonable care and skill; referrals.
43-9-4.	Meetings; seal; rules and regulations; election of officers; oath of office; certificate of appointment.	43-9-13.	Hearing before board when license refused or revoked.
43-9-5.	Reimbursement of board members.	43-9-14.	[Reserved] Record of license revocation.
43-9-6.	Removal of board members.	43-9-15.	Reissuance of licenses.
43-9-6.1.	Authority of board.	43-9-16.	Scope of practice.
43-9-7.	Qualifications of applicants for license to practice chiropractic.	43-9-17.	Applicability of chapter upon scope of practice of chiropractic students.
43-9-7.1.	Temporary licenses.	43-9-18.	Provision of chiropractic services limited to doctors of chiropractic; construction of chapter.
43-9-7.2.	Persons excepted from application of chapter.	43-9-19.	Penalty.
43-9-8.	Examination.	43-9-20.	[Repealed] Termination.
43-9-9.	Reciprocity.		
43-9-10.	[Reserved] Recordation of licenses.		
43-9-10.1.	Display of license; notification of address change.		

Cross references.

Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-1.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Trials.

Chiropractic Malpractice Litigation, 78 Am. Jur. Trials 1.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and

Environment, §§ 4 et seq., 41, 47, 61 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50et seq. 73A C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 37 A.L.R. 680; 42 A.L.R. 1342; 54 A.L.R. 600.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Physicians' and surgeons' liens, 39 A.L.R.5th 787.

43-9-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Georgia Board of Chiropractic Examiners.

(2) "Chiropractic" means the adjustment of the articulations of the human body, including ilium, sacrum, and coccyx, and the use of X-ray, provided that the X-ray shall not be used for therapeutical purposes. The term shall also mean that separate and distinct branch of the healing arts whose science and art utilize the inherent recuperative powers of the body and the relationship between the musculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health. Chiropractic is a learned profession which teaches that the relationship between structure and function in the human body is a significant health factor and that such relationships between the spinal column and the nervous system are most significant, since the normal transmission and expression of nerve energy are essential to the restoration and maintenance of health. However, the term shall not include the use of drugs or surgery. The adjustment referred to in this paragraph and subsection (b) of Code Section 43-9-16 may only be administered by a doctor of chiropractic authorized to do so by the provisions of this chapter; provided, however, that the provisions of this Code section shall not prevent any other health care provider from administering techniques authorized within their scope of practice.

(3) "Practice of chiropractic" shall also include peer review which is defined as the procedure by which chiropractors licensed in this state evaluate the quality and efficiency of services ordered or performed by other chiropractors, including but not limited to practice analysis, audit, claims review, underwriting assistance, utilization review, and compliance with applicable laws, rules, and regulations.

(4) "Subluxation" means a complex of functional or pathological articular changes that compromise neural integrity and general

health. A subluxation is evaluated, diagnosed, and managed through the use of chiropractic procedures based on the best available rational and empirical evidence.

History.

Ga. L. 1921, p. 166, § 1; Code 1933, § 84-501; Ga. L. 1977, p. 232, § 1; Ga. L. 1997, p. 1533, § 1; Ga. L. 2007, p. 494, § 1/SB 102; Ga. L. 2011, p. 752, § 43/HB 142.

Law reviews.

For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

JUDICIAL DECISIONS

Constitutionality. — Although common merchants are allowed to sell nutritional substances to customers without a prescription, in that the substances do not require medical supervision for use and are not habit-forming, the Georgia Chiropractic Practices Act (O.C.G.A. § 43-9-1 et seq.) does not violate the equal protection clause because the statute prohibits chiropractors from prescribing or recommending such substances in the treatment of patients. Foster v. Georgia Bd. of Chiropractic Exmrs., 257 Ga. 409, 359 S.E.2d 877, 1987 Ga. LEXIS 1037 (1987) (decided prior to the 1988 amendment of O.C.G.A. § 43-9-16, which added subsection (i)).

Prescribing or recommending nutritional substances. — Since O.C.G.A. Ch. 9, T. 43 does not authorize chiropractors to prescribe or dispense vitamins, minerals, or nutritional substances, the prescription of such items for treatment of a patient's ailments constitutes the unauthorized practice of medicine in this state. Foster v. Georgia Bd. of Chiropractic Exmrs., 257 Ga. 409, 359 S.E.2d 877, 1987 Ga. LEXIS 1037 (1987) (decided prior to the 1988 amendment of O.C.G.A. § 43-9-16, which added subsection (i)).

Chiropractors subject to malpractice provisions. — Chiropractic profession must be treated equally with the professions of law and medicine for malpractice purposes. Phillips v. Cheek, 162 Ga. App. 728, 293 S.E.2d 22, 1982 Ga. App. LEXIS 2314 (1982).

Massage is not authorized treatment. — Because massage is not an authorized treatment modality under O.C.G.A. Ch. 9, T. 43, a contract for massage services was void and a chiropractor was not authorized to recover payment for rendering such services. Siegrist v. Iwuagwa, 229 Ga. App. 508, 494 S.E.2d 180, 1997 Ga. App. LEXIS 1214 (1997), cert. denied, No. S98C0491, 1998 Ga. LEXIS 499 (Ga. May 1, 1998), cert. denied, 525 U.S. 933, 119 S. Ct. 344, 142 L. Ed. 2d 284, 1998 U.S. LEXIS 6534 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "chiropractic" is not broad enough to bring it within definition of "practice of medicine." 1972 Op. Att'y Gen. No. U72-17.

Chiropractor may not give injection, draw blood, or perform surgery. — Since there is no specific exemption found in this definition, practitioners of chiropractic would be practicing medicine if the chiropractors gave injections, withdrew blood, pierced the skin, or performed a surgical procedure. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor may not administer medications. — Nowhere in this definition is there any express or implied provision that practice of chiropractic permits administration of medications, injections, withdrawal of blood, or any surgical procedure; in fact, by the express terms of the definition, a licensed practitioner of chiropractic is not permitted to use drugs or surgery. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor is not authorized to prescribe, dispense, or administer vitamins or minerals in the treatment of patients.

1984 Op. Att'y Gen. No. 84-53 (decided prior to 1988 amendment to O.C.G.A. § 43-9-16, which added subsection (i)).

Chiropractor may not pierce the skin. — Procedures utilized for analytical, therapeutic, and diagnostic purposes which puncture the skin such as venipuncture, capillary puncture, and acupuncture are not authorized for use by chiropractors licensed in the State of Georgia since none of these procedures is utilized to make an adjustment of the articulation of the human body. 1984 Op. Att'y Gen. No. 84-53.

Chiropractor may not use colonic irrigations, electrical treatments, or vitamins. — Licensed chiropractor in Georgia is not authorized to use colonic irrigations, electrical treatments (except X-ray), and vitamins in treatment of patients. 1945-47 Ga. Op. Att'y Gen. 488 (decided prior to 1986 and 1988 amendments to O.C.G.A. § 43-9-16, which added subsections (b) and (i), respectively; see also 1984 Op. Att'y Gen. 84-53).

Procedures for analytical, therapeutic, or diagnostic purposes such as colon lavage, barium enema, and colonic irrigation are not authorized for use by a chiropractor licensed in the State of Georgia since none of these procedures are utilized to make an adjustment of the articulation of the human body. 1984 Op. Att'y Gen. No. 84-53.

Limited use of electrical current. — Procedures in which the equipment utilizes electrical current but the electrical current or its immediate by-product is not introduced into the body, such as intermittent traction, intersegmental traction, and vibrators, are authorized to the extent that the traction is used according to specific chiropractic methods. 1984 Op. Att'y Gen. No. 84-53.

RESEARCH REFERENCES

Am. Jur. 2d.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 5, 13 et seq., 26 et seq., 44, 74 et seq., 121 et seq., 131 et seq.

C.J.S.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 4 et seq., 52 et seq., 71 et seq.

43-9-2. Georgia Board of Chiropractic Examiners; members; qualifications; residence requirements; terms.

(a) There is created and established a board to be known as the Georgia Board of Chiropractic Examiners. The board shall be composed of five practicing chiropractors who shall be appointed by the Governor with the approval of the Secretary of State and confirmation by the Senate. Such members shall be of good moral character, residents of the state, and graduates of chartered chiropractic schools or colleges requiring actual attendance in same and shall have practiced chiropractic continuously and resided in the state for a period of at least five years.

(b) The board shall, in addition to the five members provided for in subsection (a) of this Code section, consist of a sixth member who shall be appointed by the Governor from the public at large and who shall not be in any way connected to practicing chiropractic. The initial term for such member shall expire June 30, 1983; successors appointed on or after July 1, 1995, shall be appointed for a term of five years.

(c) On or after July 1, 1995, not more than one member of the board shall be appointed who resides in any one congressional district, with

the exception of the member appointed from the public at large. Board members appointed on or after July 1, 1995, shall be appointed for terms of five years and may be appointed to serve for no more than two consecutive five-year terms in addition to any unexpired term of office that member may have filled.

History.
Ga. L. 1921, p. 166, § 2; Code 1933, § 84-502; Code 1933, § 84-503.1, enacted by Ga. L. 1980, p. 67, § 1; Ga. L. 1995, p. 983, § 1.

43-9-3. Terms of office of board members; vacancies.

(a) The members of the board provided for in subsection (a) of Code Section 43-9-2 shall be so classified by the Governor that the terms of office of two shall expire in one year, two in two years, and one in three years from the date of appointment. Annually the Governor shall appoint, to fill vacancies in the five professional positions on the board, licensed practitioners who possess the qualifications specified in subsection (a) of Code Section 43-9-2 to serve for a period of five years.

(b) The Governor shall fill vacancies in the board caused by death or otherwise as soon as practicable. Such appointees shall serve for the unexpired term of the member whose vacancy is being filled. Before appointing the members of the board, the Governor shall satisfy himself that the appointees are of high character and standing and possess the other qualifications prescribed in this chapter.

History.
Ga. L. 1921, p. 166, § 3; Code 1933, § 84-503; Ga. L. 1995, p. 983, § 1.

Law reviews.
For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to composite State Board of Medical Examiners (now Georgia Composite Medical Board) be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

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Qualifications required of board members. — All appointments by Governor, after original board, are controlled by qualifications contained in former Code 1933, § 84-502 (see now O.C.G.A. § 43-9-2), i.e., of good moral character, residents of state, and graduates of chartered chiropractic schools or colleges requiring actual attendance, and shall have practiced chiropractic continuously and resided in this state for a period of at least two years. 1950-51 Ga. Op. Att'y Gen. 346.

43-9-4. Meetings; seal; rules and regulations; election of officers; oath of office; certificate of appointment.

The board shall meet at such times as the board determines necessary for the performance of its duties. Called meetings shall be authorized at the discretion of the president. The board shall adopt a

seal, which shall be affixed to all licenses issued and shall from time to time adopt such rules and regulations as it deems proper and necessary for the performance of its duties. The board shall elect annually a president and a vice president. Immediately before entering upon the duties of office, the members of the board shall take the constitutional oath of office and shall file the same in the office of the Governor, who, upon receiving the oath of office, shall issue a certificate of appointment to each member.

History.
Ga. L. 1921, p. 166, § 4; Code 1933, § 84-504; Ga. L. 1982, p. 2333, § 3; Ga. L. 1995, p. 983, § 1.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Chiropractic Examiners, Chapter 100-1 et seq.

43-9-5. Reimbursement of board members.

The division director shall keep a true and accurate account of all funds received and all vouchers issued. The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1921, p. 166, § 12; Code 1933, § 84-505; Ga. L. 1975, p. 714, § 1; Ga. L. 2000, p. 1706, § 19.

43-9-6. Removal of board members.

Upon sufficient proof to the Governor of the incompetency, inability, unprofessional conduct, misconduct, or such conduct as in the discretion of the Governor is unbecoming a member of the board, such member shall be dismissed by the Governor.

History.
Ga. L. 1921, p. 166, § 4; Code 1933, § 84-506.

43-9-6.1. Authority of board.

The board is authorized to:

(1) Adopt, amend, and repeal such rules and regulations not inconsistent with this chapter necessary for the proper administration and enforcement of said chapter;

(2) Examine, issue, renew, and reinstate the licenses of duly qualified applicants for licensure to practice chiropractic in this state;

(3) Deny, suspend, revoke, or otherwise sanction licenses to practice chiropractic in this state;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Issue to chiropractors, licensed under this chapter, certificates under the seal of the board evidencing such licensure and signed, either by hand or facsimile signature, by the president of the board and the division director; and

(7) Expunge or delete from the disciplinary record of any licensee advertising violations not defined in the rules of the board as immoral and unprofessional conduct or relating to reasonable care and skill in the treatment of a patient.

History. Code 1981, § 43-9-6.1, enacted by Ga. L. 1984, p. 913, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 475, § 1/HB 266.

43-9-7. Qualifications of applicants for license to practice chiropractic.

(a) Any person wishing to practice chiropractic in this state shall make application to the board through the division director in such form as may be adopted and directed by the board.

(b) The application shall recite the history of the applicant's educational qualifications, how long he or she has studied chiropractic, what collateral branches, if any, he or she has studied, and the length of time he or she has engaged in clinical practice, with proof thereof in the form of diplomas, certificates, and other information, and shall accompany the application with satisfactory evidence of good character and reputation.

(c) Each applicant shall provide with his or her application an application fee in an amount established by the board.

(d) Each applicant shall be of good moral character and shall be a graduate of a chiropractic school or college accredited by the Council on Chiropractic Education or a board approved successor or a chiropractic school or college which is actively seeking accreditation from the Council on Chiropractic Education or a board approved successor, which requires a four-year standard college course and is approved by the board.

(e) In addition to the requirements heretofore provided in this Code section, each applicant for examination shall have successfully concluded two years' general college training in schools or colleges approved by the Southern Association of Accredited Colleges and Universities or schools or colleges approved by virtue of reciprocity through such association. The board is authorized to promulgate rules and regulations regarding such requirements with respect to schools or

colleges in foreign countries not approved by the Southern Association of Accredited Colleges and Universities.

(f) A student enrolled in the last academic year of a chiropractic school or college meeting the requirements of this chapter as set forth in subsection (d) of this Code section may, at the discretion of the board, take the examination as required in Code Section 43-9-8; provided, however, that such student has successfully completed all other requirements for application for licensure as established either by this chapter or by board rule. Such a student who successfully passes the examination shall not be eligible for licensure until all of the requirements of application for licensure established by this chapter or board rule are met.

History.

Ga. L. 1921, p. 166, § 5; Code 1933, § 84-507; Ga. L. 1939, p. 252, § 1; Ga. L. 1958, p. 6, § 1; Ga. L. 1975, p. 714, § 2; Ga. L. 1976, p. 1054, § 1; Ga. L. 1978, p. 2050, § 1; Ga. L. 1984, p. 913, § 2; Ga. L. 1986, p. 831, § 1; Ga. L. 1995, p. 983, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 17/SB 195.

Administrative rules and regulations.

License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-2.

Approved chiropractic schools or colleges, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-12.

JUDICIAL DECISIONS

Standard college course means four nine-month terms. — Words, "four-year standard college course," as those words were used in subsection (d) of this section, meant four-year college course of nine months each. Moore v. Robinson, 206 Ga. 27, 55 S.E.2d 711, 1949 Ga. LEXIS 417 (1949).

Legislature presumed to have known definition of standard college course. — Standard college course in chiropractic education means a course, given by a college teaching that science, for a regular scholastic year for nine months; and it is not unreasonable to presume that the legislature had these facts before the legislature when this language of subsection (d) of this section was enacted. Moore v. Robinson, 206 Ga. 27, 55 S.E.2d 711, 1949 Ga. LEXIS 417 (1949).

Board cannot admit comity candidate failing to meet educational requirements. — Board is properly enjoined from admitting by comity applicants for a license to practice chiropractic in this state who do not possess required educational qualifications of being a graduate of a chartered chiropractic school or college which requires a four-year standard college course of nine months each. Rose v. Grow, 210 Ga. 664, 82 S.E.2d 222, 1954 Ga. LEXIS 405 (1954) (decided prior to 1984 amendment).

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Applicant must have studied four nine-month terms at chiropractic college. — Applicant for examination and license to practice chiropractic must be a graduate of a chartered chiropractic school or college which requires a four-year course of nine months each. 1945-47 Ga. Op. Att'y Gen. 487; 1948-49 Ga. Op. Att'y Gen. 318; 1954-56 Ga. Op. Att'y Gen. 539 (decided prior to 1984 amendment).

Whether school or college awards credits for performance on college level examination program is irrelevant to the board's determination that the applicant has satisfied the requirement of successful completion of two years of general college training in an approved school. 1980 Op. Att'y Gen. No. 80-81.

Board may not waive requirements of statute. — Before any person can become an applicant for chiropractic examinations, it is necessary that the person comply with this statute and the board is without authority to give examination to such person before the applicant complied with the statute. 1950-51 Ga. Op. Att'y Gen. 140.

Board determines if course content acceptable. — Since there is no such thing as a standard course of four years, nine months each year, to be found in field of chiropractic education, it follows that the criteria for any particular course in chiropractic must be adjudged by the board of examiners. 1948-49 Ga. Op. Att'y Gen. 318.

RESEARCH REFERENCES

ALR.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-9-7.1. Temporary licenses.

The board may, at its discretion, issue a temporary license without examination to an applicant who is a holder of a valid license in good standing in another state which was obtained by examination. Such a temporary license shall be issued under the following provisions:

(1) The temporary license shall be valid for a maximum of 12 months from the date of issuance but shall automatically expire within the 12 month period when the temporary license holder:

(A) Is granted a regular license; or

(B) Does not take and pass the next available examination following the grant of such temporary license, in which event the license expires upon the notification of the results of that examination; and

(2) The practice of chiropractic pursuant to the temporary license shall only be performed under the supervision and direction of a board approved licensed doctor of chiropractic. The holder of a temporary license shall be subject to all of the laws and rules of this state pertaining to the practice of chiropractic. The granting of a temporary license shall not be prima-facie evidence that the holder meets minimum basic requirements for examination by the board or for the issuance of a regular license.

History.
Code 1981, § 43-9-7.1, enacted by Ga. L. 1995, p. 983, § 3.

43-9-7.2. Persons excepted from application of chapter.

Nothing in this chapter shall be construed as preventing or prohibiting the practice, services, or activities of:

(1) Any person pursuing a course of study leading to a doctor of chiropractic degree, postgraduate training, or training as a chiropractic assistant, which is approved by the board as provided for in this chapter, if such person is designated by a title indicating student status, is fulfilling clinical training requirements for the attainment of a degree or certificate, and is under the supervision of a chiropractor licensed under this chapter and approved by the board;

(2) Any person licensed to practice chiropractic in this or another state who is employed as a professor or instructor by a chiropractic school or college located in this state or who is enrolled in or teaching a course of study designed to develop chiropractic clinical skills when chiropractic activities are required as part of an educational program sponsored by a chiropractic school or college, as provided for in Code Section 43-9-7, or other educational program as may be approved by the board. Such practice shall be conducted under the supervision of a licensed chiropractor approved by the board. No such person shall be authorized to provide chiropractic services outside of the scope of the educational program and setting, nor shall such a person perform, or supervise the performance of, any chiropractic service provided on a fee-for-service basis without having first obtained a license in accordance with this chapter. The board shall have the authority to promulgate rules relative to such practice;

(3) A chiropractor licensed in good standing in any other state, territory, or other jurisdiction of the United States or of any other nation or foreign jurisdiction if that person is employed or designated in their professional capacity by a sports or performing arts entity visiting the state for a specific sports or performing arts event subject to the following restrictions:

(A) A chiropractor's practice under this paragraph is limited to the members, coaches, and staff of the team or event for which that chiropractor is employed or designated, and such practice shall only occur at the designated venue of the event; and

(B) Any chiropractor practicing under the authority of this paragraph may utilize only those practices and procedures authorized by this chapter and approved by board rule; and

(4) Nothing in this chapter shall prohibit any person from assisting a duly licensed chiropractor in the practices and procedures so

authorized by this chapter, excluding the adjustment of the articulations of the human body, provided such person is under the direct order and supervision of a duly licensed doctor of chiropractic who is physically present in the facility or office.

History.
Code 1981, § 43-9-7.2, enacted by Ga. L. 1995, p. 983, § 3.
Administrative rules and regulations.
Travel to treat; visiting practice, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-13.

43-9-8. Examination.

All applicants for licenses shall take an examination approved by the board.

History.
Ga. L. 1921, p. 166, § 6; Code 1933, § 84-508; Ga. L. 1939, p. 252, § 2; Ga. L. 1971, p. 455, § 1; Ga. L. 1976, p. 1054, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 913, § 3.
Administrative rules and regulations.
Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-3.
Law reviews.
For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

RESEARCH REFERENCES

ALR.
Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

43-9-9. Reciprocity.

Persons licensed to practice chiropractic under the laws of any other state having requirements equal to those of this chapter may, in the discretion of the board, be issued a license to practice chiropractic in this state without written examination upon the payment of a fee in an amount established by the board.

History.
Ga. L. 1921, p. 166, § 14; Code 1933, § 84-510; Ga. L. 1975, p. 714, § 3; Ga. L. 1984, p. 913, § 4.
Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

JUDICIAL DECISIONS

Board may admit practitioners from other states with equal requirements. — State board may, in the board's discretion, admit by comity any person licensed to practice chiropractic under laws of another state having requirements equal to those required in this state. Moore v. Robinson, 206 Ga. 27, 55 S.E.2d 711, 1949 Ga. LEXIS 417 (1949).

Admission by comity discretionary. — Board may, in the board's discretion, admit by comity nonresident applicants

who qualify under chiropractic provisions, and the board's discretion will be controlled only when abused. Moore v. Robinson, 206 Ga. 27, 55 S.E.2d 711, 1949 Ga. LEXIS 417 (1949).

Board cannot admit by comity applicant failing to meet educational requirements. — Board was properly enjoined from admitting by comity applicants for a license to practice chiropractic in this state who did not possess the required educational qualifications of being a graduate of a chartered chiropractic school or college which requires a four-year standard college course of nine months each. Rose v. Grow, 210 Ga. 664, 82 S.E.2d 222, 1954 Ga. LEXIS 405 (1954) (decided prior to 1984 amendment of O.C.G.A. § 43-9-7).

OPINIONS OF THE ATTORNEY GENERAL

Applicant's qualifications, rather than requirements of licensing state of origin, must equal those of this state before such persons may be issued a license to practice chiropractic in this state without taking an examination. 1969 Op. Att'y Gen. No. 69-192.

Criteria is sister state law in force at time of application for reciprocity license. — General Assembly intended by equality of laws provision to use as criteria those laws in sister states existing and in force at time of submission of application to Georgia board for reciprocity licensing. It was not intended to require each person seeking reciprocity licensing to have received a license under a law equal to the Georgia law, but rather that requirement of equality would be satisfied if present equal law in sister state recognizes and accepts such licenses previously issued under other, unequal laws in foreign state. 1948-49 Ga. Op. Att'y Gen. 321.

Board's discretion limited only as to equality of laws. — General Assembly intended to limit the board acting within the board's discretionary authority as to comity only to extent that necessary element of equality of laws be present. 1948-49 Ga. Op. Att'y Gen. 321.

Authority permissive rather than mandatory. — Statute authorized the board, under rules of comity or general reciprocity, to issue licenses without examination to those persons licensed to practice chiropractic in other states having requirements equal to those of the Georgia laws; this statutory authority does not make it mandatory upon board to admit any person from any state under rules of comity and reciprocity. 1948-49 Ga. Op. Att'y Gen. 321.

RESEARCH REFERENCES

ALR.

Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 A.L.R. 742.

43-9-10. [Reserved] Recordation of licenses.

History.

Ga. L. 1921, p. 166, § 11; Code 1933, § 84-511; repealed by Ga. L. 1984, p. 913, § 5, effective July 1, 1984.

Editor's notes.

Ga. L. 1984, p. 913, § 5 repealed and reserved this Code section, effective July 1, 1984.

43-9-10.1. Display of license; notification of address change.

Every person licensed under this chapter shall:

(1) Display such license in a conspicuous place in such person's principal place of business; and

(2) Notify the board of any change of business or residence address.

History.
Code 1981, § 43-9-10.1, enacted by Ga. L. 1982, p. 2333, § 4; Ga. L. 1984, p. 913, § 6.

43-9-11. Biennial renewal of licenses; continuing education requirement.

Every person who receives or has received a license to practice chiropractic from the board shall pay the board on or before the renewal date a fee in an amount established by the board, payment of which shall renew his or her license to practice chiropractic for the ensuing two years, provided that the board has satisfactory evidence that the applicant for renewal has completed a minimum of 20 hours of continuing education per year as approved by the board. All chiropractic colleges teaching an approved course of instruction shall be classified as approved.

History.
Ga. L. 1939, p. 252, § 3; Ga. L. 1971, p. 260, § 1; Ga. L. 1975, p. 714, § 5; Ga. L. 1984, p. 913, § 7; Ga. L. 1998, p. 1204, § 1.

Administrative rules and regulations.
Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-5.

43-9-12. Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.

(a) The board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or the rules or regulations promulgated under this chapter; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the

licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his license to practice chiropractic revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings, or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice chiropractic, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of chiropractic but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of chiropractic;

(7) Knowingly performed any act which in any way aids, assists,

procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice chiropractic or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of chiropractic when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice chiropractic with reasonable skill and safety to the public or has become unable to practice chiropractic with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material; or

(11)(A) Become unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application for a license to practice chiropractic in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the

board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing chiropractic under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of chiropractic with reasonable skill and safety to patients.

(C) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application to practice chiropractic in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(D) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (B) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (C) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, the board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or pursuant to any other provision of this chapter, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or

(7) Impose a fine not to exceed $500.00 for each violation of a law, rule, or regulation relating to the practice of chiropractic.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to chiropractic.

(h) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he so requests.

(i) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. The board may restore and reissue a license to practice chiropractic and, as a condition thereof, may impose any disciplinary sanction provided by this chapter.

(j) The board, the division director, or the appropriate prosecuting attorney may bring an action to enjoin the unlicensed practice of chiropractic by any person. The action to restrain and enjoin such unlicensed practice shall be brought in the superior court of the county where the unlicensed person resides. It shall not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section.

(k) Notwithstanding the provisions of paragraph (2) of subsection (h) of Code Section 43-1-19, if a chiropractor is the subject of a board investigation initiated as the result of a complaint or report to the board, a copy of a summary of the complaint or report shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. If a chiropractor is the subject of an investigation initiated by the board on its own initiative, a written statement of the acts or omissions being investigated shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. The board may delay providing the chiropractor with a copy of the summary or statement if the board determines that the nature of the investigation requires that its existence not be disclosed to the chiropractor but in no event shall such summary or statement be provided later than the delivery of a subpoena for the production of documents to the chiropractor. Nothing in this Code section shall be construed to limit the authority of the board to pursue violations of the board's laws and rules and regulations discovered during the course of an investigation.

History.

Ga. L. 1921, p. 166, § 9; Code 1933, § 84-512; Ga. L. 1981, p. 690, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 913, § 8; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 556, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 475, § 2/HB 266; Ga. L. 2011, p. 99, § 66/HB 24.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, a period was substituted for a semicolon at the end of subsection (h).

Pursuant to Code Section 28-9-5, in 2000, in the last sentence of subsection (k), "section" was substituted for "Section", "board" was substituted for "Board", and "board's" was substituted for "Board's".

Pursuant to Code Section 28-9-5, in 2005, former paragraph (a)(11) was redesignated as present subparagraph (a)(11)(A), former subparagraphs (a)(11)(A) through (a)(11)(C) were redesignated as present subparagraphs (a)(11)(B) through (a)(11)(D), respectively; in subparagraph (a)(11)(A), a period was substituted for a colon at the end; in subparagraph (a)(11)(B), a period was substituted for a semicolon at the end; in subparagraph (a)(11)(C), a period was substituted for "; and" at the end; and, in subparagraph (a)(11)(D), "subparagraph (B)" was substituted for "subparagraph (A)" and "subparagraph (C)" was substituted for "subparagraph (B)".

Editor's notes.

Ga. L. 2000, p. 556, § 2, not codified by the General Assembly, provides that subsection (k) is applicable to all investigations initiated on or after July 1, 2000.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, pro-

vides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.

For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

JUDICIAL DECISIONS

Employing display type advertising to advertise free x-rays not ground for revocation of license. Georgia Bd. of Chiropractic Exmrs. v. Ball, 224 Ga. 85, 160 S.E.2d 340, 1968 Ga. LEXIS 674 (1968).

Holder of valid license may enjoin revocation without notice and hearing. — Holder of valid license which has been properly issued may enjoin its revocation and interference with the holder's lawful business thereunder in absence of notice and hearing. Rose v. Grow, 210 Ga. 664, 82 S.E.2d 222, 1954 Ga. LEXIS 405 (1954).

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Pretrial discovery in disciplinary proceedings against physician, 28 A.L.R.3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 A.L.R.3d 549.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

43-9-12.1. Reasonable care and skill; referrals.

The doctor of chiropractic must bring to the exercise of that person's profession a reasonable degree of care and skill, which shall include the determination of the need for chiropractic care, as defined in paragraph (2) of Code Section 43-9-1, and shall render treatment, referral to the appropriate health care provider, or both treatment and referral commensurate with that chiropractor's findings. Any failure to refer to the appropriate health care provider may subject the doctor of chiropractic to the provisions of Code Section 43-9-12. Nothing in this Code section shall be deemed to expand or limit the chiropractic scope of practice.

History.

Code 1981, § 43-9-12.1, enacted by Ga. L. 1997, p. 910, § 1.

JUDICIAL DECISIONS

Referral to a medical group was outside the scope of chiropractic practice. — Chiropractor's referral of a patient to a medical group technician for procedures outside the scope of chiropractic practice, without prior approval by or consultation with a medical doctor, constituted a medical decision outside the scope of chiropractic practice. Colvard v. Mosley, 270 Ga. App. 106, 605 S.E.2d 838, 2004 Ga. App. LEXIS 1355 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Referral of patients for X-rays authorized. — Chiropractor can refer a patient for X-rays or magnetic resonance imaging if the referral is needed to determine appropriate chiropractic care or for treatment for or evaluation of conditions which are outside the scope of practice of the chiropractor; this opinion supersedes 1993 Op. Att'y Gen. No. 93-11. 2006 Op. Att'y Gen. No. U2006-1.

43-9-13. Hearing before board when license refused or revoked.

Upon written presentation to the board of any of the grounds enumerated in Code Section 43-9-12 for revoking or refusing a license, the board shall conduct a hearing in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Ga. L. 1921, p. 166, § 9; Code 1933, § 84-513.

JUDICIAL DECISIONS

Holder of valid license may enjoin revocation without notice and hearing. — Holder of valid license which has been properly issued may enjoin the license's revocation and interference with the holder's lawful business thereunder in absence of a notice and hearing. Rose v. Grow, 210 Ga. 664, 82 S.E.2d 222, 1954 Ga. LEXIS 405 (1954).

43-9-14. [Reserved] Record of license revocation.

History.
Ga. L. 1921, p. 166, § 9; Code 1933, § 84-518; Ga. L. 2000, p. 1706, § 19; repealed by Ga. L. 2010, p. 266, § 18/SB 195, effective May 20, 2010.

Editor's notes.
Ga. L. 2010, p. 266, § 18/SB 195 repealed and reserved this Code section, effective May 20, 2010.

43-9-15. Reissuance of licenses.

The board may, within such period as is established by the division director following the refusal or revocation or cancellation of registration under this chapter, by a majority vote, issue a new license or grant a license to the person affected, restoring him to or conferring upon him all the rights and privileges of and pertaining to the practice of chiropractic, as defined and regulated by this chapter, upon the appli-

cant or licensee showing good moral character and possessing the qualifications required under the terms of this chapter. Any person to whom such registration may have been restored shall pay to the division director an amount established by the board upon the issuance of a new license.

History. Ga. L. 1921, p. 166, § 10; Code 1933, § 84-519; Ga. L. 1975, p. 714, § 4; Ga. L. 2000, p. 1706, § 19.

43-9-16. Scope of practice.

(a) Chiropractors who have complied with this chapter shall have the right to practice chiropractic as defined in paragraph (2) of Code Section 43-9-1 and to evaluate, diagnose, and adjust patients according to specific chiropractic methods in order to correct spinal subluxations or to adjust the articulations of the human body. Chiropractors shall observe all applicable public health regulations.

(b) The chiropractic adjustment of the spine or articulations of the human body may include manual adjustments and adjustments by means of electrical and mechanical devices which produce traction or vibration. Chiropractors who have complied with this chapter may also use modalities. Modalities include any physical agent applied to produce therapeutic change to biologic tissues including thermal, acoustic, noninvasive light, mechanical, or electric energy, hot or cold packs, ultrasound, galvanism, microwave, diathermy, and electrical stimulation. Chiropractors who have complied with this chapter may utilize and recommend therapeutic procedures effecting change through the application of clinical skills and services that attempt to improve function, including therapeutic exercise, therapeutic activities, manual therapy techniques, massage, and structural supports as they relate to the articulations of the human body; provided, however, that the same shall not be construed to allow chiropractors to treat patients outside the scope of practice of chiropractic as set forth in this chapter.

(c) Chiropractors who have complied with this chapter may utilize those modalities and procedures described in subsection (b) of this Code section, provided the chiropractor shall have completed a course of study containing a minimum of 120 hours of instruction in the proper utilization of those procedures in accordance with the guidelines set forth by the Council on Chiropractic Education or its successor and is qualified and so certified in that proper utilization.

(d) Chiropractors who have complied with this chapter shall have the right to sign health certificates, reporting to the proper health officers the same as other practitioners.

(e) Chiropractors shall not prescribe or administer medicine to patients, perform surgery, or practice obstetrics or osteopathy.

(f) Chiropractors shall not use venipuncture, capillary puncture, acupuncture, or any other technique which is invasive of the human body either by penetrating the skin or through any of the orifices of the body or through the use of colonics. Nothing in this subsection shall be construed to prohibit a chiropractor who is licensed to perform acupuncture under Article 3 of Chapter 34 of this title from engaging in the practice of acupuncture.

(g) A person professing to practice chiropractic for compensation must bring to the exercise of that person's profession a reasonable degree of care and skill. Any injury resulting from a want of such care and skill shall be a tort for which a recovery may be had. If a chiropractor performs upon a patient any act authorized to be so performed under this chapter but which act also constitutes a standard procedure of the practice of medicine, including but not limited to the use of modalities such as those described in subsection (b) of this Code section and X-rays, under similar circumstances the chiropractor shall be held to the same standard of care as would licensed doctors of medicine who are qualified to and who actually perform those acts under similar conditions and like circumstances.

(h) A licensed practitioner of chiropractic may use only the title "chiropractor," or "doctor of chiropractic," or "D.C."

(i) Chiropractors who have complied with this chapter may recommend the use of nutritional and dietary supplements. Any such recommendation of nutritional and dietary supplements shall not be construed to allow chiropractors to treat patients outside the scope of the practice of chiropractic as set forth in this chapter nor shall this subsection be construed to allow chiropractors to sell at a profit any such nutritional and dietary supplements without providing their generic name. Nothing in this subsection shall preclude compliance with Chapter 8 of Title 48, relating to the collection of sales and use taxes.

History.

Ga. L. 1921, p. 166, § 7; Code 1933, § 84-509; Ga. L. 1977, p. 232, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1986, p. 1534, § 1; Ga. L. 1988, p. 485, § 1; Ga. L. 1989, p. 460, § 1; Ga. L. 1993, p. 1719, § 1; Ga. L. 2000, p. 538, § 1.1; Ga. L. 2007, p. 494, § 1/SB 102; Ga. L. 2008, p. 324, § 43/SB 455.

Cross references.

Recovery for medical malpractice generally, § 51-1-27.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "subsection (b) of this Code section" was substituted for "43-9-16(b)" in subsection (c).

Law reviews.

For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

JUDICIAL DECISIONS

Effect of 1993 amendment. — O.C.G.A. § 43-9-16, as amended in 1993, applied to make an insurer responsible for paying the costs of devices prescribed by a chiropractor because, even though the amendment was not in effect at the time the insurer denied the claim, application thereof did not impair any vested rights of the insurer. Haezebrouck v. State Farm Mut. Auto. Ins. Co., 216 Ga. App. 809, 455 S.E.2d 842, 1995 Ga. App. LEXIS 295 (1995), cert. denied, No. S95C1113, 1995 Ga. LEXIS 755 (Ga. May 25, 1995).

Prescribing nutritional substances. — Since O.C.G.A. Ch. 9, T. 43 does not authorize chiropractors to prescribe or dispense vitamins, minerals, or nutritional substances, the prescription of such items for the treatment of a patient's ailments constitutes the unauthorized practice of medicine in this state. Foster v. Georgia Bd. of Chiropractic Exmrs., 257 Ga. 409, 359 S.E.2d 877, 1987 Ga. LEXIS 1037 (1987) (decided prior to 1988 amendment, which added subsection (i)).

Medical tests conducted from chiropractor's referral not within the scope of practice. — Diagnostic tests and procedures performed on a patient, consisting of diagnostic ultrasound spinal sonograph, dermatomal somatosensory evoked potential — upper extremity, upper dermatomal somatosensory evoked potential and motor/sensory nerve conduction studies with F-wave and H-reflex studies, were not within the scope of chiropractic practice as defined in O.C.G.A. § 43-9-1(2) and as set forth in O.C.G.A. § 43-9-16; the patient could not show these medical expenses accrued from a chiropractor's referral and were necessary for the treatment of the patient's injuries. Colvard v. Mosley, 270 Ga. App. 106, 605 S.E.2d 838, 2004 Ga. App. LEXIS 1355 (2004).

Massage is not authorized treatment. — Because massage is not an authorized treatment modality under O.C.G.A. Ch. 9, T. 43, a contract for massage services was void and a chiropractor was not authorized to recover payment for rendering such services. Siegrist v. Iwuagwa, 229 Ga. App. 508, 494 S.E.2d 180, 1997 Ga. App. LEXIS 1214 (1997), cert. denied, No. S98C0491, 1998 Ga. LEXIS 499 (Ga. May 1, 1998), cert. denied, 525 U.S. 933, 119 S. Ct. 344, 142 L. Ed. 2d 284, 1998 U.S. LEXIS 6534 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Chiropractic not within "practice of medicine". — Definition of "chiropractic" is not broad enough to bring chiropractic within definition of "practice of medicine." 1972 Op. Att'y Gen. No. U72-17.

Scope of practice. — Using, recommending, and offering for sale hot and cold packs, and nonprescription over-the-counter structural supports commonly available through retail pharmacies is within the scope of practice of chiropractors. 1995 Op. Att'y Gen. No. 95-8.

Practitioners of chiropractic cannot give injections, withdraw blood, or pierce the skin for any diagnostic or operative procedure, or perform surgical procedures. 1979 Op. Att'y Gen. No. 79-45.

Practice of chiropractic does not permit administration of medications. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor cannot use colonic irrigations, electrical treatments (except X-ray), and vitamins in treatment of patients. 1945-47 Op. Att'y Gen. p. 488 (decided prior to 1986 and 1988 amendments, which added subsections (b) and (i), respectively; see also 1984 Op. Att'y Gen. 84-53).

Chiropractor may not sign death certificates. — Portion of former Code 1933, § 84-509 which purported to authorize signing of death certificates by chiropractors has been repealed by implication. 1971 Op. Att'y Gen. No. 71-94; 1971 Op. Att'y Gen. No. U71-60.

RESEARCH REFERENCES

ALR.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes, 43 A.L.R.5th 87.

43-9-17. Applicability of chapter upon scope of practice of chiropractic students.

Nothing in this chapter shall be construed to prohibit the performance of any chiropractic task by a student enrolled in an approved chiropractic college when such student has successfully completed at least one academic year of schooling therein and when such task is performed under the supervision and direction of an authorized instructor duly licensed to practice chiropractic in this state.

History.

Ga. L. 1976, p. 1054, § 3.

Law reviews.

For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 43-9-17 is plain and unambiguous; to read into the statutory language an additional limitation that qualified students may only perform chiropractic tasks on the premises of the chiropractic college would violate the principal of statutory construction that an unambiguous statute must be construed according to the statute's terms. 1981 Op. Att'y Gen. No. 81-26.

O.C.G.A. § 43-9-17 does not prohibit qualified students from performing chiropractic tasks under the supervision of an authorized instructor at a location other than the premises of the chiropractic college in which the student is enrolled. 1981 Op. Att'y Gen. No. 81-26.

RESEARCH REFERENCES

ALR.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

43-9-18. Provision of chiropractic services limited to doctors of chiropractic; construction of chapter.

(a) No person other than a doctor of chiropractic may render chiropractic services or chiropractic adjustments.

(b) Notwithstanding subsection (a) of this Code section, nothing in this chapter shall be construed to:

(1) Prohibit any other licensed health care professional from practicing within the scope of that person's license; or

(2) Permit any person not licensed or authorized under this chapter to engage in the practice of chiropractic.

History.
Ga. L. 1921, p. 166, § 15; Code 1933, § 84-520; Ga. L. 1995, p. 983, § 4; Ga. L. 2011, p. 561, § 1/SB 135.

43-9-19. Penalty.

It shall be unlawful for any person to practice chiropractic unless that person shall have first obtained a license as provided in this chapter and possesses all the qualifications prescribed by the terms of this chapter. Any person who practices or attempts to practice chiropractic without a license, or who buys or fraudulently obtains a license to practice chiropractic, or who violates any of the terms of this chapter, or who uses the title "doctor of chiropractic," "chiropractor," "chiropractic," "D.C.," or any word or title to induce the belief that such a person is engaged in the practice of chiropractic, without first complying with this chapter, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $5,000.00, or by imprisonment for not less than two nor more than five years, or both, at the discretion of the court. All subsequent offenses shall be separate and distinct offenses, and punishable in like manner.

History.
Ga. L. 1921, p. 166, § 15; Code 1933, § 84-9905; Ga. L. 1995, p. 983, § 5; Ga. L. 2007, p. 494, § 1/SB 102.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR.
Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

43-9-20. [Repealed] Termination.

History.
Ga. L. 1982, p. 2333, §§ 1, 5 and Ga. L. 1988, p. 530, § 2; repealed by Ga. L. 1992, p. 3137, § 8, effective July 1, 1992.

CHAPTER 10

BARBERS AND COSMETOLOGISTS

Sec.		Sec.	
43-10-1.	Definitions.	43-10-14.	Study by individuals 16 years of age and older; registration of apprentices; registration certificate; waiver of education requirements.
43-10-2.	State Board of Cosmetology and Barbers; members, meetings, officers, and powers.	43-10-15.	Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.
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43-10-8.	Certificate of registration required.	43-10-18.3.	Serving physically disabled or infirm persons in residence, assisted living facility, nursing home, hospital, or similar facility.
43-10-9.	Application for certificate of registration.	43-10-19.	Penalty.
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43-10-11.	Registration of shops, salons, and schools.		
43-10-12.	Regulation and licenses for schools; teachers and instructors; registration of apprentices; certification as teacher by Department of Education.		
43-10-13.	Right to set course of study for students; application for examination; apprenticeship.		

Administrative rules and regulations. General information: organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-1.

OPINIONS OF THE ATTORNEY GENERAL

Public schools not subject to registration requirements of cosmetology provisions. — State Board of Cosmetology does not have authority to require a tuition-free technical and vocational school operated as part of the state's pub-

lic school system under either the State Board of Education or a local board of education to register and otherwise perform under cosmetology provisions. 1963-65 Ga. Op. Att'y Gen. 289.

To permit a regulatory board, such as that created by Ga. L. 1963, p. 45, §§ 4 and 8, to administer a course of study in the public school system, to impose a registration fee upon a public school and a license fee upon teachers therein, and to require a registration fee from students taking a course of study in such public schools would be in violation of former Code 1933, § 32-403 (see now O.C.G.A. §§ 20-2-11, 20-2-130 et seq. and 20-2-671); therefore, public schools offering courses in cosmetology are not required to pay a school registration fee or a teachers' license fee, and students in such schools taking cosmetology courses are not required to pay a students' registration fee required by the cosmetology provisions. 1963-65 Ga. Op. Att'y Gen. 250.

Graduates of approved public school program may take licensure examination. — If cosmetology courses offered in public school systems are taught by qualified teachers, cover courses of instruction and number of hours required by the State Board of Cosmetology and the cosmetology provisions, and meet sanitary and other standards required of private schools or colleges, the graduates of such courses in the public school system are qualified to take the examination for certificate of registration upon payment of the required fee and meeting the other qualifications. 1963-65 Ga. Op. Att'y Gen. 250.

Public schools not necessarily accredited within meaning of the cosmetology provisions. — Course of instruction in cosmetology taught in a tuition-free technical and vocational school as a part of the state's public school system under either the State Board of Education or a local board of education is not necessarily "an accredited school" within the meaning of the cosmetology provisions. 1963-65 Ga. Op. Att'y Gen. 250.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 4 et seq., 41, 47, 61 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 125 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Validity, construction, and effect of statute or ordinance regulating beauty shops, or beauty culture schools, 56 A.L.R.2d 879.

Coverage and exceptions in beauty shop liability policy, 77 A.L.R.2d 1258.

Applicability of res ipsa loquitur doctrine in action for injury to patron of beauty salon, 93 A.L.R.3d 897.

Liability of cosmetology school for injury to patron, 81 A.L.R.4th 444.

43-10-1. Definitions.

As used in this chapter, the term:

(1) "Barber apprentice" means an individual who practices barbering under the constant and direct supervision of a licensed master barber.

(2) "Barber II" means an individual who performs any one or more of the following services for compensation:

(A) Shaving or trimming the beard;

(B) Cutting or dressing the hair;

(C) Giving facial or scalp massages; or

(D) Giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances.

(3) "Barbering" means the occupation of shaving or trimming the beard, cutting or dressing the hair, giving facial or scalp massages, giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances, singeing and shampooing the hair, coloring or dyeing the hair, or permanently waving, relaxing, or straightening the hair of an individual for compensation.

(4) "Beautician" means "cosmetologist" as such term is defined in this Code section.

(5) "Beauty shop" or "beauty salon" or "barber shop" means any premises where one or more individuals engage in barbering or in the occupation of a cosmetologist.

(6) "Board" means the State Board of Cosmetology and Barbers.

(7) "Cosmetologist" means any individual who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair;

(B) Gives facial or scalp massages or facial and scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances;

(C) Singes and shampoos the hair, colors or dyes the hair, or does permanent waving, relaxing, or straightening of the hair;

(D) Performs the services of a nail technician as defined in paragraph (12) of this Code section; or

(E) Performs the services of an esthetician as defined in paragraph (8) of this Code section.

Such individual shall be considered as practicing the occupation of a cosmetologist within the meaning of this Code section; provided,

however, that such term shall not mean an individual who only braids the hair by hairweaving; interlocking; twisting; plaiting; wrapping by hand, chemical, or mechanical devices; or using any natural or synthetic fiber for extensions to the hair, and no such individual shall be subject to the provisions of this chapter. Such term shall not apply to an individual whose activities are limited to the application of cosmetics which are marketed to individuals and are readily commercially available to consumers.

(8) "Esthetician" or "esthetics operator" means an individual who, for compensation, engages in any one or a combination of the following practices, esthetics, or cosmetic skin care:

(A) Massaging the face, neck, décolletage, or arms of an individual;

(B) Trimming, tweezing, shaping, or threading eyebrows;

(C) Dyeing eyelashes or eyebrows or applying eyelash extensions; or

(D) Waxing, threading, stimulating, cleansing, or beautifying the face, neck, arms, torso, or legs of an individual by any method with the aid of the hands or any mechanical or electrical apparatus or by the use of a cosmetic preparation.

Such practices of esthetics shall not include the diagnosis, treatment, or therapy of any dermatological condition or medical aesthetics or the use of lasers. Such term shall not apply to an individual whose activities are limited to the application of cosmetics during the production of film, television, or musical entertainment or to the application of cosmetics in a retail environment in which cosmetics are marketed to individuals and are readily commercially available to consumers.

(9) "Hair designer" means an individual who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair; or

(B) Singes and shampoos the hair, applies a permanent relaxer or straightener to the hair, or colors or dyes the hair.

(9.1) "License" means a certificate of registration or other document issued by the board or by the division director on behalf of the board pursuant to the provisions of this chapter permitting an individual to practice in an occupation or operate a school.

(10) "Master barber" means an individual who performs any one or more of the following services for compensation:

(A) Shaving or trimming the beard;

(B) Cutting or dressing the hair;

(C) Giving facial or scalp massages;

(D) Giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances; or

(E) Singeing and shampooing the hair, coloring or dyeing the hair, or permanently waving, relaxing, or straightening the hair.

(11) "Master cosmetologist" means a cosmetologist who is possessed of the requisite skill and knowledge to perform properly all the services set forth in paragraph (7) of this Code section for compensation.

(12) "Nail technician" means an individual who, for compensation, performs manicures or pedicures or who trims, files, shapes, decorates, applies sculptured or otherwise artificial nail extensions, or in any way cares for the nails of another individual.

(13) "Person" means any individual, proprietorship, partnership, corporation, association, or other legal entity.

(14) "School of barbering" means any establishment that receives compensation for training more than one individual in barbering. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of barbering" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(15) "School of cosmetology" means any establishment that receives compensation for training more than one individual in the occupation of a cosmetologist. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of cosmetology" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(16) "School of esthetics" means any establishment that receives compensation for training more than one individual in the occupation of an esthetician. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of esthetics" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(17) "School of hair design" means any establishment that receives compensation for training more than one individual in the occupation of a hair designer. Technical colleges whose programs have been

approved by the Technical College System of Georgia or the Department of Education are not "schools of hair design" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(18) "School of nail care" means any establishment that receives compensation for training more than one individual in the occupation of a nail technician. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of nail care" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

History.

Ga. L. 1963, p. 45, §§ 1, 2; Ga. L. 1966, p. 195, § 1; Ga. L. 1983, p. 1219, § 1; Ga. L. 1985, p. 1057, § 1; Ga. L. 1986, p. 843, § 1; Ga. L. 1996, p. 1239, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, p. 1077, § 1; Ga. L. 2006, p. 904, § 1/SB 145; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2018, p. 996, § 3/SB 461.

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 04.20.20.01, 04.23.20.02, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.30.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, and 03.12.21.01.

Law reviews.

For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

JUDICIAL DECISIONS

No gender restrictions. — Operations of both barbershops and beauty salons involve cutting, dressing, singeing, shampooing, dyeing, or permanently waving the hair of a client. The statutes do not restrict the use of barbershops or beauty salons to one specific gender. Acord v. Maynard, 198 Ga. App. 296, 401 S.E.2d 315, 1991 Ga. App. LEXIS 5 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Cosmetologists may work with wigs. — By deleting the word "human" from the definition of cosmetologist, the legislature intended to clear up ambiguity and thus confer joint jurisdiction over wigs as well as human hair upon both barbers and cosmetologists. 1965-66 Op. Att'y Gen. No. 66-180.

Jurisdiction conferred upon cosmetologists to work on hair of deceased persons is shared with funeral directors. — Effect of the 1966 amendment to the Barbers' and Cosmetologists' Acts was to confer as between barbers and cosmetologists extra jurisdiction upon cosmetologists in regard to services performed upon hair of deceased persons; the extra jurisdiction conferred upon cosmetologists, however, is not absolute, but must be considered as being shared with that of funeral directors. 1965-66 Op. Att'y Gen. No. 66-180.

Cosmetologists may not shave or trim beards. — Person who is licensed as a cosmetologist may cut and dress hair, give facials or scalp massages, singe and shampoo hair, or dye the hair of a male; these are all services which may also be performed by a barber; a cosmetologist who is performing cosmetology services upon a male would not be licensed to shave or trim the beard of a male patron. 1971 Op. Att'y Gen. No. 71-54.

Transcutaneous electrical nerve

stimulation used as a form of facial or a scalp treatment by a cosmetologist is not authorized by O.C.G.A. Ch. 10, T. 43. 1982 Op. Att'y Gen. No. 82-102 (decided prior to 1983 amendment).

Tuition-free technical and vocational public school not within definition contained in Ga. L. 1963, p. 45, §§ 1 and 2. — Tuition-free technical and vocational school operated as a part of the state's public school system under either the State Board of Education or a local board of education that offers a course in cosmetology is not a "beauty school, beauty college, or school of cosmetology" within the definition of this statute. 1963-65 Ga. Op. Att'y Gen. 259; 1963-65 Ga. Op. Att'y Gen. 289.

Requirements for private beauty colleges not applicable to public schools. — Cosmetology provisions apply to beauty schools, beauty colleges, and schools of cosmetology as defined in this statute; the provisions do not apply to technical and vocational schools operated as a part of the public school system. 1963-65 Ga. Op. Att'y Gen. 289.

Requirements do not apply even if public school charges public for services. — Practical training is a necessary element in a course in cosmetology; the fact that students practice on members of the public and that a fee is charged for students' service does not bring a tuition-free technical or vocational school which is a part of the public school system under provisions of this statute. 1963-65 Ga. Op. Att'y Gen. 289.

Requirements do not apply if students must pay fee to public school. — If a tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of education requires a student to pay an incidental fee before such student is admitted to study a course in cosmetology, such charges does not bring the school under provisions of this statute. 1963-65 Ga. Op. Att'y Gen. 289.

RESEARCH REFERENCES

Am. Jur. 2d.

11 Am. Jur. 2d, Barbers and Cosmetologists, § 4 et seq.

C.J.S.

39A C.J.S., Health and Environment, §§ 1, 3.

ALR.

Places and persons within purview of statute or ordinance regulating barbers, 31 A.L.R. 433; 59 A.L.R. 543.

Applicability of res ipsa loquitur doctrine in action for injury to patron of beauty salon, 93 A.L.R.3d 897.

Malpractice in treatment of skin disease, disorder, blemish, or scar, 19 A.L.R.5th 563.

43-10-2. State Board of Cosmetology and Barbers; members, meetings, officers, and powers.

(a) There is created the State Board of Cosmetology and Barbers. The board shall consist of nine members who shall be residents of this state. The board shall have the duty of carrying out and enforcing this chapter.

(b) Members of the board shall be at least 25 years of age and have obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. Two of such members must have had at least five years of practical experience as a cosmetologist at the master level, a portion of which must have been as a beauty shop or beauty salon owner or manager. One member of the board must have had at least five years of practical experience as a cosmetologist at the esthetician level. One member of

the board must have had at least five years of practical experience as a nail technician. Two members of the board must have had at least five years of practical experience as a master barber. One member must be an instructor at a school of barbering. One member must be an instructor at school of cosmetology. One member shall not have any connection with barbering or the practice of a cosmetologist or any business related thereto whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(c) The board shall meet as necessary each year for the purpose of adopting rules and regulations and handling other matters pertaining to duties of the board. Board members may attend and observe all written and practical examinations held for certificates of registration pursuant to this chapter.

(d) Beginning on July 1, 2015, the Georgia State Board of Cosmetology and Barbers shall regulate barbering and the practice of cosmetologists in this state. The board shall operate under the rules and regulations of the Georgia State Board of Barbers and Georgia State Board of Cosmetology as they existed on June 30, 2015, until the board shall promulgate one set of rules and regulations governing both barbering and the practice of cosmetologists; such rules and regulations shall be adopted on or before July 1, 2016.

(e) Any person who holds a certificate of registration issued under this chapter or Chapter 7 of this title as they existed on June 30, 2015, shall not be required to undergo recertification under this chapter but shall otherwise be subject to all applicable provisions of this chapter. Such certificates of registration issued on or before June 30, 2015, shall be considered certificates of registration issued under and subject to this chapter for all purposes.

(f) Board members shall be appointed by the Governor for a term of three years and until their successors are appointed and qualified. Vacancies shall be filled by the Governor for the unexpired portion of the term. The board may do all things necessary for carrying this chapter into effect and may, from time to time, promulgate necessary rules and regulations compatible with this chapter. The Governor may remove any board member for cause as provided in Code Section 43-1-17.

(g) Each year the members shall elect a chairman from among themselves. In the event the members cannot agree as to who shall be chairman, the Governor shall appoint one of such members as chairman. The members of the board shall be considered public officers and shall take the oath required thereof.

(h) The board shall adopt a seal to be used to authenticate all its official papers and acts and shall have power to subpoena witnesses,

administer oaths, and hear and take testimony in any matter over which it may have jurisdiction.

(i) All investigative and disciplinary authority of the Georgia State Board of Cosmetology and Georgia State Board of Barbers as such boards existed on June 30, 2015, shall carry over to the board. This authority shall include, but shall not be limited to, the ability to:

(1) Enforce all fines issued by these boards or representatives thereof;

(2) Enforce all orders entered by these boards; and

(3) Access and keep all complaints, investigative records, and records of disciplinary deliberations of these boards.

History.
Ga. L. 1963, p. 45, §§ 4, 8; Ga. L. 1966, p. 195, § 2; Ga. L. 1979, p. 1327, § 2; Ga. L. 1980, p. 1420, § 1; Ga. L. 1983, p. 1219, § 2; Ga. L. 1985, p. 1057, § 2; Ga. L. 1986, p. 843, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, Ex. Sess., p. 321, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2004, p. 617, § 2; Ga. L. 2006, p. 904, § 2/SB 145; Ga. L. 2006, p. 917, § 1/HB 1170; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2022, p. 168, § 10(2)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educational development (GED)" in the first sentence in subsection (b).

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Cosmetology, Chapter 130-1 et seq.

43-10-3. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1963, p. 45, § 6; Ga. L. 1966, p. 195, § 3; Ga. L. 1979, p. 1327, § 4; Ga. L. 1980, p. 1420, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.

43-10-4. [Reserved] Annual financial report of board.

History.
Ga. L. 1963, p. 45, § 7, and Ga. L. 1980, p. 1420, § 5; repealed by Ga. L. 1985, p. 1057, § 3, effective July 1, 1985.

Editor's notes.
Ga. L. 1985, p. 1057, § 3 repealed and reserved this Code section, effective July 1, 1985.

43-10-5. Records of board generally.

The division director shall keep a record of all proceedings of the board. Such records shall be prima-facie evidence of all matters required to be kept therein, and certified copies of the same or parts thereof shall be primary evidence of their contents. All such copies, other documents, or certificates lawfully issued upon the authority of the board shall, when authenticated under the seal of the board, be

admitted in any investigation in any court or elsewhere without further proof.

History.
Ga. L. 1963, p. 45, § 14; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2015, p. 1287, § 2/HB 314.

RESEARCH REFERENCES

Am. Jur. 2d.
29A Am. Jur. 2d, Evidence, §§ 1062, 1066, 1095, 1096. 66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.

C.J.S.
32A C.J.S., Evidence, § 1144. 76 C.J.S., Records, § 1 et seq.

43-10-6. Rules and regulations as to sanitary requirements; instruction on HIV and AIDS; inspections; unsanitary condition as nuisance.

(a) The board is authorized to adopt reasonable rules and regulations prescribing the sanitary requirements of beauty shops, beauty salons, barber shops, schools of cosmetology, schools of esthetics, schools of hair design, schools of nail care, and schools of barbering and to cause the rules and regulations or any subsequent revisions to be in suitable form; provided, however, that nothing in this chapter shall prevent a county or municipal corporation from adopting ordinances, rules, or regulations governing a business or occupational tax license or certificate; health or facility regulations; zoning; local licensing; or the operation of such shops, salons, or schools in addition to any requirements that may be imposed on such shops, salons, or schools under this chapter or by the board. The board shall make its rules and regulations available to the proprietor of each beauty shop, beauty salon, barber shop, school of cosmetology, school of esthetics, school of hair design, school of nail care, and school of barbering. It shall be the duty of every proprietor or person operating a beauty shop, beauty salon, barber shop, school of cosmetology, school of esthetics, school of hair design, school of nail care, and school of barbering in this state to keep a copy of such rules and regulations posted in a conspicuous place in such business, so as to be easily read by customers thereof. Posting such rules and regulations by electronic means shall be allowed.

(b) The board is authorized to adopt reasonable rules and regulations requiring that individuals issued licenses under this chapter undergo instruction on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS).

(c) Any investigator or inspector employed by the Secretary of State shall have the power to enter and make reasonable examination of any beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering in the state during business hours; during hours advertised by a shop,

salon, or school as being open; and during hours a shop, salon, or school is open as indicated by the presence of patrons for the purpose of enforcing the rules and regulations of the board and for the purpose of ascertaining the sanitary conditions thereof.

(d) Any beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, and school of barbering in which tools, appliances, and furnishings used therein are kept in an unclean and unsanitary condition so as to endanger health is declared to be a public nuisance.

History.

Ga. L. 1963, p. 45, § 5; Ga. L. 1967, p. 727, § 1; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 3/SB 145; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 266, § 19/SB 195; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2018, p. 996, § 4/SB 461; Ga. L. 2022, p. 352, § 43/HB 1428.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)" for "Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome" in subsection (b).

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Administrative rules and regulations.

Sanitation and health, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-5.

OPINIONS OF THE ATTORNEY GENERAL

Inspectors do not have right to inspect tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of education for purpose of reporting to the board any violation of such rules and regulations concerning sanitary conditions. 1963-65 Ga. Op. Att'y Gen. 289.

Board may not set minimum standards of sanitation and courses of study in technical and vocational schools. — Board, not having jurisdiction over the public school system of the State of Georgia, is without authority to set minimum standards of sanitation and courses of study in tuition-free technical and vocational schools operated as part of the public school system under either the State Board of Education or a local board of education. 1963-65 Ga. Op. Att'y Gen. 289.

Board may require that applicant for master cosmetology examination complete prescribed course of study. 1971 Op. Att'y Gen. No. 71-14.

43-10-7. Issuance of certificates of registration.

It shall be the duty of the board to issue through the division director those certificates of registration for which provision is made in this chapter.

History.

Ga. L. 1963, p. 45, § 8; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2015, p. 1287, § 2/HB 314.

43-10-8. Certificate of registration required.

(a) It shall be unlawful for any individual to pursue barbering or the occupation of cosmetology in this state unless he or she has first completed the required hours for and obtained the appropriate certificate of registration as provided in this chapter.

(b) It shall be unlawful for any individual to hold himself or herself out as a master cosmetologist without having first obtained a certificate of registration as a master cosmetologist which certifies that the holder thereof shall be authorized to perform all the services mentioned in paragraph (11) of Code Section 43-10-1. Nothing in this chapter shall prohibit any individual who held a valid master cosmetologist license in this state on March 29, 1983, from practicing as a master cosmetologist.

(c) It shall be unlawful for any individual to hold himself or herself out as a master barber, barber II, barber instructor, or barber apprentice without having first obtained the certificate of registration for such.

(d) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely hair design services shall be allowed to obtain a certificate of registration as a hair designer upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (9) of Code Section 43-10-1.

(e) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely cosmetic skin care services shall be allowed to obtain a certificate of registration as an esthetician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (8) of Code Section 43-10-1.

(f) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely cosmetic nail care services shall be allowed to obtain a certificate of registration as a nail technician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (12) of Code Section 43-10-1.

(g)(1) Notwithstanding any other provisions of this chapter, any current or discharged member of the military may apply to the board for the immediate issuance of a certificate of registration issued pursuant to this chapter, provided that such individual holds a license or certification from another state for which the training, experience, and testing substantially meet or exceed the requirements in this state to obtain the certificate of registration for which such individual is applying.

(2) As used in this subsection, the term:

(A) "Discharge" means an honorable discharge or a general discharge from active military service. The term "discharge" shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(B) "Military" means any regular or reserve component of the United States armed forces, the Georgia Army National Guard, or the Georgia Air National Guard.

(h) It shall also be unlawful for any person or persons to operate a beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering without first having obtained a certificate of registration for such shop, salon, or school as provided in this chapter. Any beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall register with the division director of the professional licensing boards prior to opening.

(i) This chapter shall have uniform application throughout the state so that no master cosmetologist, cosmetologist, hair designer, nail technician, esthetician, master barber, barber II, beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall be exempt from regulation.

History.

Ga. L. 1963, p. 45, § 3; Ga. L. 1979, p. 1327, § 1; Ga. L. 1983, p. 1219, § 3; Ga. L. 1985, p. 1057, §§ 5, 6; Ga. L. 1986, p. 10, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 4/SB 145; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2020, p. 909, § 3/HB 914.

The 2020 amendment, effective January 1, 2021, deleted "or any spouse of a current or discharged member of the military" preceding "may apply" in the beginning of paragraph (g)(1) and substituted "used in this subsection" for "used in this paragraph" in paragraph (g)(2).

Administrative rules and regulations.

License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-2.

OPINIONS OF THE ATTORNEY GENERAL

Board may not require public school to register. — State Board of Cosmetology does not have the authority to require a tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of education to register and otherwise perform under the cosmetology provisions. 1963-65 Ga. Op. Att'y Gen. 289.

Penalty for owning and operating unregistered beauty shop. — If a holder of a certificate of registration to practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see now O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop, the holder's certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see now O.C.G.A. § 43-10-15). 1980 Op. Att'y Gen. No. 80-23.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

Applicability of res ipsa loquitur doctrine in action for injury to patron of beauty salon, 93 A.L.R.3d 897.

43-10-9. Application for certificate of registration.

(a)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a cosmetologist shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; has completed a 1,500 credit hour study course with at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 3,000 credit hours; has practiced or studied the occupation of a cosmetologist; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (7) of Code Section 43-10-1, and in all the duties and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice as a master cosmetologist.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a cosmetologist or an instructor or teacher of the occupation of a cosmetologist at that level in another state or territory of the United States. The board may establish requirements for endorsement by rules and regulations.

(b)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a hair designer shall make application through the division director and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; has completed a 1,325 credit

hour study course with at least seven months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 2,650 credit hours; has practiced or studied the occupation of a hair designer; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (9) of Code Section 43-10-1, and in all the duties and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice the occupation of a hair designer.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a hair designer or an instructor or teacher of the occupation of a hair designer in another state or territory of the United States. The board may establish requirements for endorsement by rules or regulations.

(c)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of an esthetician shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; has completed a 1,000 credit hour study course of at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 2,000 credit hours; has practiced or studied cosmetic skin care as defined in paragraph (8) of Code Section 43-10-1; is possessed of the requisite skill to perform properly these services; and has passed a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of an esthetician.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as an esthetician or an instructor or teacher of the occupation of an esthetician in another state or territory of the United States. The board may establish requirements for endorsement by rules or regulations.

(d)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a nail technician

shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; has completed a 525 credit hour study course of at least four months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 1,050 credit hours; has practiced or studied nail care as defined in paragraph (12) of Code Section 43-10-1; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of nail technician.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a nail technician or an instructor or teacher of the occupation of a nail technician in another state or territory of the United States. The board may pass requirements for endorsement by rule.

(e)(1) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a master barber shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 16 years of age; has met the minimum educational requirements; has completed a 1,500 credit hour study course of at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 3,000 credit hours; has practiced or studied barbering; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice barbering as a master barber.

(2) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a barber II shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a state approved high school equivalency (HSE) diploma, or a postsecondary education or college degree. If, after review of the application,

it is determined that the applicant is at least 16 years of age; has met the minimum educational requirements; has completed a 1,140 credit hour study course of at least seven months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 2,280 credit hours; has practiced or studied barbering; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of barbering at the barber II level.

(3) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a master barber or barber II or an instructor or teacher of barbering in another state or territory of the United States. The board may establish requirements for endorsement by rules and regulations.

(f) Nothing in this Code section shall be construed as preventing an individual from obtaining a certificate of registration for the occupation of a cosmetologist at the master level, the hair design level, the esthetician level, or the nail technician level or a certificate of registration for barbering at the master level or barber II level, if such person obtains his or her credit hour study at a State Board of Education approved school or a technical college under the jurisdiction of the Technical College System of Georgia or the Department of Education rather than at a board approved school.

(g)(1) An individual issued a certificate of registration as a master cosmetologist in this state shall be eligible to take the master barber examination provided for in this Code section if that person completes a board approved 300 hour prescribed course in an approved cosmetology school, submits a completed application, and pays the proper fees established by the board.

(2) An individual issued a certificate of registration as a master barber in this state shall be eligible to take the master cosmetologist examination provided for in this Code section if that person completes a board approved 300 hour prescribed course in an approved cosmetology school, submits a completed application, and pays the proper fees established by the board.

(h)(1) On and after July 1, 2015, but prior to July 1, 2018, any individual applying for a certificate of registration pursuant to this Code section shall pass both a board approved written and practical examination within a 24 month period after having obtained the required credit hours or shall be required to repeat all of such

required credit hours before retaking the examinations. Should an applicant fail to pass either the written or practical examination, the board or the board's designee shall furnish the applicant a statement in writing, stating in what manner the applicant was deficient.

(2) On and after July 1, 2018, any individual applying for a certificate of registration pursuant to this Code section shall pass both a board approved written and practical examination within a 48 month period after having obtained the required credit hours or shall be required to repeat all of such required credit hours before retaking the examinations. Should an applicant fail to pass either the written or practical examination, the board or the board's designee shall furnish the applicant a statement in writing, stating in what manner the applicant was deficient. Board members may attend and observe all written and practical examinations held for licenses or certificates of registration pursuant to this Code section.

(i) On and after July 1, 2015, any applicant applying for a certificate of registration pursuant to this Code section who has graduated from an educational program which prepares cosmetologists in another country shall submit to the board a credentials evaluation from a board approved credentials evaluation provider along with his or her application. Upon the board's acceptance of the credentials evaluation, application, and appropriate fee, the applicant shall be approved to sit for the board approved examination, and upon passing the examination, he or she may be approved for a certificate of registration.

History.

Ga. L. 1963, p. 45, § 10; Ga. L. 1966, p. 195, § 5; Ga. L. 1977, p. 803, § 1; Ga. L. 1979, p. 1327, § 5; Ga. L. 1980, p. 1420, § 7; Ga. L. 1983, p. 1219, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 1985, p. 1057, § 7; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 843, §§ 3, 4; Ga. L. 1996, p. 1239, § 5; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 4, § 43; Ga. L. 2001, p. 1077, § 2; Ga. L. 2001, p. 1185, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 5/SB 145; Ga. L. 2006, p. 917, § 2/HB 1170; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2016, p. 846, § 43/HB 737; Ga. L. 2018, p. 996, § 5/SB 461; Ga. L. 2019, p. 462, § 3-1/SB 214; Ga. L. 2020, p. 493, § 43/SB 429; Ga. L. 2022, p. 168, § 10(3)/SB 397.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "barber shop" for "barbershop" in the middle of the second sentence of paragraphs (e)(1) and (e)(2).

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educational development (GED)" throughout this Code section.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2018, "to" was inserted following "but prior" near the beginning of paragraph (h)(1).

Administrative rules and regulations.

Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-6.

Reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-8.

OPINIONS OF THE ATTORNEY GENERAL

Graduates of approved public schools may take exam. — If cosmetology courses offered in public school systems are taught by qualified teachers, cover courses of instruction and number of hours required by the State Board of Cosmetology and the statutory cosmetology provisions, and meet sanitary and other standards required of private schools or colleges, graduates of such courses in the public school system are qualified to take the examination for certificate of registration upon payment of the required fee and meeting the other qualifications. 1963-65 Ga. Op. Att'y Gen. 250.

Public schools not necessarily accredited. — Course of instruction in cosmetology taught in a tuition-free technical and vocational school as part of the state's public school system under either the State Board of Education or a local board of education is not necessarily "an accredited school" within the meaning of the cosmetology provisions. 1963-65 Ga. Op. Att'y Gen. 250 (decided prior to 1983 amendment).

Board may refuse examination to graduates of unaccredited schools. — Board has the right and power to refuse to give an examination or license to a person unless that person has completed a 1,500 hour study course at an accredited school, as defined by the cosmetology provisions, or has served as an apprentice in a beauty salon for a period of at least 3,000 hours. 1963-65 Ga. Op. Att'y Gen. 289 (decided prior to 1983 amendment).

43-10-10. Display of certificate of registration; renewal; reinstatement; continuing education requirements; exemptions.

(a) The holder of any certificate of registration issued under Code Section 43-10-9 shall display the same in a conspicuous place in his or her beauty shop, beauty salon, or barber shop. Certificates of registration issued under Code Section 43-10-9 shall be renewable for a period of up to four years as approved by the division director. The holder shall pay to the division director a renewal fee in such amount as shall be set by the board by regulation. Upon failure to renew such certificate of registration, it shall stand automatically revoked. The holder shall be disqualified from practicing any occupation under this chapter until all fees to date of application for reinstatement shall be paid, an application for reinstatement shall be submitted along with a reinstatement fee in such amount as shall be set by the board by regulation, and documentation shall be submitted of completion of all required continuing education hours since the date the registration was automatically revoked. If the board is satisfied that the applicant for reinstatement meets all the qualifications set forth in this Code section and Code Section 43-10-9, the applicant shall be issued a new certificate of registration.

(b) Notwithstanding subsection (a) of this Code section, at the time of renewal of any cosmetologist, master cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II certificate of registration, the holder of such certificate shall maintain proof, in a form approved by the board, of completion of five hours of continuing

education biennially to be determined by the board. A licensee shall provide proof of completion of continuing education if audited by the board. A holder who is renewing a certificate of registration for the first time shall not be required to meet the continuing education requirement until the time of the second renewal. Further, the requirement for continuing education for a master barber and barber II will become effective beginning January 1, 2018.

(c) The board may require by rules or regulations that either three or four hours of continuing education shall be satisfied by a health and safety course or a review course of the board rules or regulations and applicable laws using a curriculum developed by the board or by a board approved provider. Such curriculum or course may be revised by the board or by a board approved provider as necessary to incorporate new developments. The board shall make the curriculum or course available to board approved providers of continuing education. The board may charge a fee to providers for registration as a board approved provider.

(d) The board may require by rules and regulations that the remaining one to two hours of continuing education may be satisfied by:

(1) Attendance at an industry or trade show registered with the board; or

(2) A course or courses of study registered with the board in one or more of the following subjects: health and safety, industry trends, computer skills, business management, or the holder's area of practice.

(e) To request registration of an industry or trade show for continuing education credit, a person or entity shall submit to the board the date and location of the industry or trade show. To request registration of a course of study for continuing education credit, the person or entity offering the course of study shall submit to the board an outline of the subject matter, a list of the persons teaching the course with a summary of their qualifications, the number of hours for each course, and the date and location where the course of study will be presented or has been presented, if applicable. Any certificate holder may request board approval of an unregistered industry or trade show or an unregistered course of study. A person or entity conducting an industry or trade show or a course of study shall provide written proof of attendance at the industry or trade show or completion of a course of study to all participants.

(f) The board shall register and allow credit as continuing education for courses conducted via the Internet or other electronic means or home study courses.

(g) Courses in cosmetology, hair design, nail technology, esthetics, computers, business, or health and safety issues offered by schools

under the jurisdiction of the Board of Regents of the University System of Georgia, the Technical College System of Georgia, the Department of Education, or any accredited postsecondary institution shall satisfy the continuing education requirement without a request to the board for approval or registration.

(h) In no event shall the testing of knowledge or skills be required as proof of the successful completion of a continuing education course.

(i) The continuing education requirement shall not apply to certificate holders who:

(1) Have held a certificate for 25 or more years; or

(2) Demonstrate a hardship based on a disability, age, illness, or such other circumstance as the board may identify by rule and determine on a case-by-case basis.

Certificate holders who claim an exemption from the continuing education requirement on the basis of paragraph (2) of this subsection shall provide a sworn statement setting out the facts supporting such exemption.

History.
Ga. L. 1963, p. 45, § 13; Ga. L. 1979, p. 1327, § 9; Ga. L. 1985, p. 1057, § 8; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, Ex. Sess., p. 321, § 2; Ga. L. 2006, p. 904, § 6/SB 145; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314.

43-10-11. Registration of shops, salons, and schools.

All beauty shops, beauty salons, barber shops, schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering shall be registered with the division director by the owner or manager. Such registration shall be made by the filing of an application on forms furnished by the division director; shall include the name and location of the shop, salon, or school, the name and address of the owner, and the names and addresses of all instructors of the shop, salon, or school at the time of registration; and shall be accompanied by a registration fee in such amount as shall be set by the board by regulation. The board may require salon, shop, or school owners to complete a board approved course covering health, sanitation, and safety, or rules and regulations of the board and applicable laws, or a combination thereof prior to issuing a registration to the owner. The board is authorized and directed to issue a certificate of registration to each shop, salon, or school so registering and paying such fee, which certificate shall be displayed in a conspicuous place in the registered shop, salon, or school.

History.
Ga. L. 1963, p. 45, § 15; Ga. L. 1979, p. 1327, § 11; Ga. L. 1985, p. 1057, § 9; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706,

§ 19; Ga. L. 2006, p. 904, § 7/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 04.20.20.01, 04.23.20.02, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.02, 02.15.21.01, 02.26.21.02, and 03.12.21.01.

Administrative rules and regulations.

School equipment — curriculum, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-3.

OPINIONS OF THE ATTORNEY GENERAL

Board may not require public school to register and pay fees. — Board is without authority to require a tuition-free technical or vocational school which is operated as part of the public school system to obtain a certificate of registration and pay fees prescribed in this statute. 1963-65 Ga. Op. Att'y Gen. 289.

Penalty for owning and operating unregistered beauty shop. — If a holder of a certificate of registration to practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see now O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop, the holder's certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see now O.C.G.A. § 43-10-15). 1980 Op. Att'y Gen. No. 80-23.

43-10-12. Regulation and licenses for schools; teachers and instructors; registration of apprentices; certification as teacher by Department of Education.

(a)(1) All schools of barbering, schools of cosmetology, schools of esthetics, schools of hair design, and schools of nail care shall:

(A) Cause to be registered in writing with the board, at the time of opening, 15 bona fide students; provided, however, that any such school may petition to the board to add additional courses of study with a minimum of five students per course if such school has an active license in good standing;

(B) Have not less than one instructor for every 20 students or a fraction thereof;

(C) Keep permanently displayed a sign reading "School of Cosmetology," "School of Hair Design," "School of Esthetics," "School of Nail Care," or "School of Barbering" as applicable; and all such signs shall also display the words "Service by Students Only." Where service is rendered by a student, no commissions or premiums shall be paid to such student for work done in the schools; nor shall any individual be employed by the schools to render professional service to the public; and

(D) Provide transcripts to students upon graduation or with-

drawal from the school, provided that all tuition and fees due to the school have been satisfied. Student records shall be maintained by the schools for a minimum of five years. If a school closes its business, the owner is required to provide copies of all student records, including, but not limited to, transcripts, to the board within 30 days of the school closure.

(2) All schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering shall keep in a conspicuous place as determined by the board through rules and regulations in such schools a copy of the rules and regulations adopted by the board.

(3) All master cosmetologists, hair designers, estheticians, nail care technicians, master barbers, and barbers II who take an apprentice pursuant to Code Section 43-10-14 shall file immediately with the board through the division director the name and age of such apprentice; and the board shall cause such information to be entered on a register kept by the division director for that purpose.

(b) Any person desiring to operate or conduct a school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering prior to opening shall first secure from the board a license to do so and shall keep the license prominently displayed in the school in a location determined by the board through rules and regulations.

(c) The board shall have the authority to pass upon the qualifications, appointments, courses of study, and hours of study in the school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering, provided that:

(1) All schools of cosmetology shall be required to teach the following courses: theory, permanent and cold hair waving, hair coloring, hair bleaching, hair relaxing, hair straightening, hair and scalp treatments, massaging the face, neck, and scalp, hair and scalp conditioning, hair cutting and shaping, hairdressing, shampooing, styling, comb out, waxing, threading, tweezing, reception, desk work, facials, makeup and arching, skin care, nail care, state law, board rules and regulations, and any other subjects related to cosmetology and sanitation;

(1.1) All schools of hair design shall be required to teach the following courses: theory, permanent and cold hair waving, hair coloring, hair bleaching, hair relaxing, hair straightening, hair and scalp treatments, massaging the scalp, hair and scalp conditioning, hair cutting and shaping, hairdressing, shampooing, styling, comb out, reception, desk work, state law, board rules and regulations, and any other subjects related to hair design and sanitation;

(2) All schools of esthetics shall be required to teach the following

courses: theory, skin care, facials, makeup and arching, eyelash extensions, reception, desk work, massaging the face, neck, décolletage, or arms, trimming, tweezing, or threading eyebrows and other facial hair, dyeing, waxing, stimulating, cleansing, or beautifying, state law, board rules and regulations, and any other subjects related to esthetics and sanitation;

(3) All schools of nail care shall be required to teach the following courses: theory, trimming, filing, shaping, decorating, sculpturing and artificial nails, nail care, pedicuring, reception, desk work, state law, board rules and regulations, and any other subjects related to nail care and sanitation; and

(4) All schools of barbering shall be required to teach the following courses: theory, hair and scalp treatments, massaging the face, neck, and scalp, shampooing and conditioning, shaving, coloring of hair, hair cutting and styling, facial hair design, facial hair waxing, permanent and cold hair waving, hair relaxing, hair straightening, chemical application, reception, desk work, state law, board rules and regulations, and any other subjects related to barbering and sanitation.

(d)(1) The board shall have the right to suspend or revoke the certificate, permit, or license of or to reprimand any such school of cosmetology, school of esthetics, school of hair design, school of nail care, school of barbering or instructor or teacher therein, for the violation of this chapter.

(2) The board shall have the same power and authority as to sanitary conditions over schools as it has over beauty shops, beauty salons, and barber shops.

(e)(1) All teachers or instructors shall devote their entire time to instruction of students. Any individual desiring to teach or instruct in any school of cosmetology, school of esthetics, school of hair design, school of nail care, or school of barbering shall first file his or her application with the division director for a license, shall pay a fee in such amount as shall be set by the board by rules and regulations, and shall successfully pass both a written and a practical examination to become an instructor.

(2)(A) An individual desiring to teach at the master level shall satisfy the board that he or she:

(i) Holds a current master cosmetologist certificate of registration and is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of instructor training in cosmetology at a board approved school; and

(iii) Has one year of work experience as a master cosmetologist.

(B) An individual holding a current master cosmetologist certificate of registration at the master level who is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the master level.

(3)(A) An individual desiring to teach at the esthetician level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as an esthetician or master cosmetologist and is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree;

(ii) Has 500 hours of board approved instructor training in esthetics of at least nine months;

(iii) Has one year of work experience as an esthetician or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in esthetics.

(B) An individual holding a current cosmetology certificate of registration as an esthetician or master cosmetologist who is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the esthetician level.

(4)(A) An individual desiring to teach at the nail technician level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a nail technician or master cosmetologist and is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree;

(ii) Has 250 hours of board approved instructor training in nail care of at least four months;

(iii) Has one year of work experience as a nail technician or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in nail care.

(B) An individual holding a current certificate of registration as a nail technician or master cosmetologist who is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the nail technician level.

(5)(A) An individual desiring to teach barbering shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a master barber and is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of board approved instructor training in barbering; and

(iii) Has passed both a written and a practical examination to become an instructor in barbering.

(B) An individual holding a current certificate of registration as a master barber who is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examinations to become an instructor for barbering.

(6)(A) An individual desiring to teach at the hair designer level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a hair designer or master cosmetologist and is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of board approved instructor training in hair design of at least four months;

(iii) Has one year of work experience as a hair designer or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in hair design.

(B) An individual holding a current certificate of registration as a hair designer or master cosmetologist who is a high school graduate, has a state approved high school equivalency (HSE) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examinations to become an instructor at the hair designer level.

(7) Any teacher or instructor shall renew his or her certificate of registration to teach in accordance with the rules and regulations of the division director governing expiration dates of certificates of registration by remitting with his or her application a renewal fee in such amount as shall be set by the board by regulation; provided, however, that any teacher or instructor who fails to renew his or her certificate of registration to practice as a cosmetologist, esthetician, or nail technician on or before the date established by the board by regulation shall automatically have his or her certificate of registration to teach or instruct suspended. A person failing to renew his or her certificate of registration of a teacher or instructor at the end of the late renewal period following the expiration date shall be required to pay a reinstatement fee.

(8) Nothing in this Code section shall be construed as preventing an individual from obtaining a certificate of registration as teacher or instructor who is certified by the Department of Education to teach cosmetology in the state public schools. The certification shall be limited to those individuals who hold a current certificate of registration as a master cosmetologist and also hold a diploma or certificate of 1,500 credit hours from a board approved school and have completed the three-year teachers training program required by the Department of Education. Such persons shall also pass both a written and a practical examination satisfactory to the board and, upon passage thereof, shall receive a certificate of registration to teach cosmetology.

(f) All teachers or instructors of cosmetology at all levels seeking renewal of certificates of registration are required to submit to the board proof of completion of 15 hours of continuing education in the cosmetology profession approved by the board at least half of which consists of instruction in teaching methods.

History. Ga. L. 1963, p. 45, § 12; Ga. L. 1966, p. 195, § 6; Ga. L. 1977, p. 803, § 4; Ga. L. 1979, p. 1327, § 8; Ga. L. 1980, p. 1420,

§§ 9, 10; Ga. L. 1983, p. 1219, § 5; Ga. L. 1985, p. 1057, § 10; Ga. L. 1986, p. 10, § 43; Ga. L. 1992, p. 2490, § 1; Ga. L. 1996, p. 1239, § 6; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 3; Ga. L. 2001, p. 1185, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 8/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2018, p. 996, § 6/SB 461; Ga. L. 2019, p. 1056, § 43/SB 52; Ga. L. 2022, p. 168, § 10(4)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educational development (GED)" throughout subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, a colon was added at the end of the introductory language of subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Inapplicable to technical and vocational public schools. — Statute applies to beauty schools, beauty colleges, and schools of cosmetology; the statute does not apply to technical and vocational schools operated as part of the public school system. 1963-65 Ga. Op. Att'y Gen. 289.

Applicant to open new school of cosmetology must have 20 (now 15) bona fide students registered with board prior to receiving license or certificate of registration. 1969 Op. Att'y Gen. No. 69-157.

43-10-13. Right to set course of study for students; application for examination; apprenticeship.

(a) The board shall have the right to set a course of study for all students of the schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering within this state.

(b) Before a student shall be eligible to take the examination provided for in Code Section 43-10-9, he or she shall first file with his or her application for examination a transcript showing the number of hours and courses completed from the school or shop attended by the student.

(c) A barber apprentice and any other individual serving as an apprentice in a beauty shop, beauty salon, or barber shop shall take the theory portion of the examination provided for in Code Section 43-10-9 within the first 12 months of his or her apprenticeship.

History.

Ga. L. 1963, p. 45, § 5; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 11; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 9/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2019, p. 462, § 3-2/SB 214.

OPINIONS OF THE ATTORNEY GENERAL

Board may require that applicants for master cosmetology examination complete prescribed course of study. 1971 Op. Att'y Gen. No. 71-14.

Board may refuse to give exam to one lacking required amount of study or apprenticeship. — Under Ga. L. 1963, p. 45, § 10 (see now O.C.G.A. § 43-

10-9) the board has the right and power to refuse to give an examination or license to a person unless that person has completed a 1,500 hour study course at an accredited school, as defined by the cosmetology provisions, or has served as an apprentice in a beauty salon for a period of at least 3,000 hours. 1963-65 Ga. Op. Att'y Gen. 289.

Board may not require courses or sanitary standards for public schools. — Board, not having jurisdiction over the public school system of the state, is without authority to set minimum standards of sanitation and courses of study in tuition-free technical and vocational schools operated as a part of the public school system under either the State Board of Education or a local board of education. 1963-65 Ga. Op. Att'y Gen. 289.

43-10-14. Study by individuals 16 years of age and older; registration of apprentices; registration certificate; waiver of education requirements.

(a) Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a cosmetologist under a master cosmetologist, provided that such cosmetologist has had at least 36 months' experience and has held a certificate of registration as a master cosmetologist for at least 36 months. In addition, nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a cosmetologist under an instructor in a school of cosmetology who has been a cosmetologist for a period of at least one year and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of hair designer under a cosmetologist holding a master cosmetologist certificate of registration or a certificate of registration as a hair designer, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of hair design who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach such practices and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of esthetics under a cosmetologist holding a master cosmetologist certificate of registration or a certificate of registration as an esthetician, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of esthetics who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach said practices and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a nail technician under a cosmetologist holding a master cosmetologist certificate of registration or a nail technician certificate of registration, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of nail care who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach such practices and has registered under this chapter.

Nothing in this chapter shall prohibit any individual at least 16 years of age from learning barbering under a barber holding a master barber certificate of registration, provided that such master barber has had at least 18 months' experience or under an instructor in a school of barbering who has held a certificate of registration as a master barber for a period for at least one year, is qualified to teach said practices, and has registered under this chapter.

(b) Every beauty shop, beauty salon, and barber shop owner shall have the responsibility for registering apprentices with the division director. The shop of salon owner shall file a statement in writing, showing the apprentice's name and the address of the shop. The board shall have the authority to require the shop or salon owner or master cosmetologist, hair designer, esthetician, nail technician, or master barber who is supervising the apprentice to furnish to the board the number of hours completed by the apprentice. The shop or salon owner shall remit to the division director a fee in such amount as shall be set by the board by regulation for the registration of the apprentice. The apprentice shall receive a certificate of registration showing the capacity in which he or she is permitted to practice barbering or the occupation of a cosmetologist. The certificate of registration shall be effective for a period of four years. A certificate of registration authorizing a person to learn barbering or the occupation of a cosmetologist under a cosmetologist, master cosmetologist, hair designer, esthetician, nail technician, or master barber shall not be renewed; and, upon the expiration of certificate of registration issued, such person shall not be permitted to practice in any capacity.

(c) Notwithstanding any other provisions of this Code section, the board shall be authorized to waive any education requirements under this Code section in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course.

History.

Ga. L. 1963, p. 45, § 11; Ga. L. 1967, p. 727, § 2; Ga. L. 1977, p. 803, § 2; Ga. L. 1979, p. 1327, § 6; Ga. L. 1980, p. 1420, § 7.1; Ga. L. 1983, p. 1219, § 6; Ga. L. 1984, p. 581, § 1; Ga. L. 1985, p. 1057, § 12; Ga. L. 1997, p. 675, § 1; Ga. L. 1998, p. 128, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 4; Ga. L. 2001, p. 1185, § 3; Ga. L. 2001, Ex. Sess., p. 321, § 3; Ga. L. 2006, p. 904, § 10/SB 145; Ga. L. 2014, p. 388, § 1/SB 336; Ga. L. 2015, p. 1287, § 2/HB 314.

Cross references.

High-demand Career Initiatives Program, § 20-4-150 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, in subsection (a), "36 months' experience or," was substituted for "36 months' experience, or" in three places.

Editor's notes.

Ga. L. 2014, p. 388, § 2/SB 336, not codified by the General Assembly, provides, in part, that this Act shall apply to all violations occurring on or after April 21, 2014.

Law reviews.
For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

JUDICIAL DECISIONS

Liability of salon for negligence of apprentice. — In an action by a patron against a hair salon for injuries allegedly caused by the negligence of an apprentice facial esthetician, because of the relationship between the salon and the apprentice imposed by O.C.G.A. § 43-10-14 and the evidence of the degree of control actually asserted by the salon, summary judgment that the salon was not liable under respondeat superior for any negligent acts of the apprentice and/or employee was not authorized. Brown v. Who's Three, Inc., 217 Ga. App. 131, 457 S.E.2d 186, 1995 Ga. App. LEXIS 368 (1995), cert. denied, No. S95C1157, 1995 Ga. LEXIS 816 (Ga. June 8, 1995).

43-10-15. Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.

(a) The board, acting upon its own knowledge or written or verified complaint filed by any person, shall have the power to reprimand or power to suspend, revoke, or cancel the certificate of registration of or refuse to grant, renew, or restore a certificate of registration to a holder of any certificate of registration issued pursuant to this chapter upon proof of any one of the following grounds:

(1) Willfully committing any false, fraudulent, or deceitful act or using any forged, false, or fraudulent document in connection with any requirement of this chapter or the rules and regulations of the board;

(2) Willfully failing at any time to comply with the requirements for a certificate of registration under this chapter;

(3) Practicing barbering or the occupation of a cosmetologist under a false or assumed name;

(4) Willfully permitting an unlicensed person to practice, learn, or teach barbering or the occupation of a cosmetologist;

(5) Knowingly performing an act which in any way assists an unlicensed person to practice, learn, or teach barbering or the occupation of a cosmetologist; or

(6) Violating, directly or indirectly, or assisting in the violation of this chapter or any rule or regulation of the board.

(b) The board may impose a fine not to exceed $500.00 for each violation of any provision of subsection (a) of this Code section; provided, however, that the board shall not, for any violation of paragraph (6) of subsection (a) of this Code section on grounds not set

forth in paragraphs (1) through (5) of such subsection, impose a fine for the first violation in an amount that exceeds $25.00, impose a fine for a second violation in an amount that exceeds $75.00, or impose a fine for each subsequent violation in an amount that exceeds $300.00. Such fines shall be listed in a schedule contained in the rules and regulations of the board. The licensee shall pay the fine within 30 days after receiving a citation from either the board or a representative of the board unless the licensee requests in writing a hearing. Such request for a hearing must be received by the board within 30 days after receipt of the citation from the board or a representative of the board. Such hearings may be held by the board or a committee of the board. Decisions of a committee of the board entered pursuant to this subsection shall be final decisions of the board. Failure either to pay the fine or request a hearing may result in immediate suspension of the license pending a hearing to determine whether revocation or other disciplinary action should be imposed on the licensee.

(c) The board, for good cause shown and under such conditions as it may prescribe, may restore a certificate of registration to any person, beauty shop, beauty salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering whose certificate of registration has been suspended, revoked, or canceled.

(d) Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall apply to any proceeding under this Code section.

History.

Ga. L. 1979, p. 1327, § 10; Ga. L. 1992, p. 2490, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2014, p. 388, § 1A/SB 336; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2016, p. 846, § 43/HB 737.

Editor's notes.

Ga. L. 2014, p. 388, § 2/SB 336, not codified by the General Assembly, provides, in part, that this Act shall apply to all violations occurring on or after April 21, 2014.

OPINIONS OF THE ATTORNEY GENERAL

Penalty for owning and operating unregistered beauty shop. — If a holder of a certificate of registration to practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see now O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop, the holder's certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see now O.C.G.A. § 43-10-15). 1980 Op. Att'y Gen. No. 80-23.

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-10-16. Injunction against unlicensed or unregistered practice.

The board may bring an action to enjoin any person from engaging in barbering or the practice or the occupation of a cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II if such person without being licensed to do so by the board engages in or practices barbering or the practice or occupation of a cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II. The action shall be brought in the county in which such individual resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal office; and, unless it appears that such person so engaging or practicing in barbering or the practice or occupation of a cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II is licensed, the injunction shall be issued, and such person shall be perpetually enjoined from engaging or practicing in such activities throughout the state. It shall not be necessary in order to obtain the equitable relief provided in this Code section for the board to allege and prove that there is no adequate remedy at law. It is declared that the unlicensed activities referred to in this Code section are a menace and a nuisance dangerous to the public health, safety, and welfare.

History.
Ga. L. 1967, p. 727, § 3; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2018, p. 996, § 7/SB 461.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Injunctions, § 145.
C.J.S.
43A C.J.S., Injunctions, § 266. 66 C.J.S., Nuisances, § 154 et seq.

43-10-17. Employment of persons to wash, shampoo, comb, and brush hair in beauty shops, beauty salons, and barber shops.

Notwithstanding any other provision of this chapter, a beauty shop, beauty salon, and barber shop shall be authorized to employ persons to wash, shampoo, comb, and brush hair, and such persons shall not be required to be registered by the board.

History.
Ga. L. 1977, p. 803, § 3; Ga. L. 1979, p. 1327, § 7; Ga. L. 1980, p. 1420, § 8; Ga. L. 1985, p. 1057, § 13; Ga. L. 1997, p. 675, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 11/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.

43-10-18. Home beauty shops, beauty salons, or barber shops.

(a) Nothing contained in this chapter nor any rule or regulation adopted in implementation hereof shall be construed to prohibit any person from operating a beauty shop, beauty salon, or barber shop within his or her home or residence, provided that such shop meets and complies with all of the provisions of this chapter and the rules and regulations promulgated by the board.

(b) It shall not be necessary for any person operating a beauty shop, beauty salon, or barber shop in a private home to post a sign denoting same to be a beauty shop, beauty salon, or barber shop unless the person elects to do so.

History.
Ga. L. 1963, p. 45, §§ 5, 20; Ga. L. 1966, p. 195, § 7; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, § 3; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2016, p. 846, § 43/HB 737.
Editor's notes.
For application of this statute in 2020 and 2021, see Executive Orders 04.20.20.01, 04.23.20.02, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, and 03.12.21.01.

43-10-18.1. [Reserved] Authorization to employ licensed barber; exemption from barbering licensure provisions.

History.
Ga. L. 1985, p. 1057, § 14; Ga. L. 2000, p. 814, § 1; repealed by Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015.
Editor's notes.
Ga. L. 2015, p. 1287, § 2/HB 314 repealed and reserved this Code section, effective July 1, 2015.

43-10-18.2. Exemption from licensing requirement for nursing home facility.

Notwithstanding any other provision of this chapter, premises made available for a beauty shop, beauty salon, or barber shop within a facility licensed as a nursing home pursuant to Article 1 of Chapter 7 of Title 31 shall not be required to be licensed or registered as a beauty shop, beauty salon, or barber shop under this chapter, or otherwise be subject to any provisions of this chapter except for inspections, investigations, or both, for alleged violations of this chapter by any person licensed under this chapter, if barbering or cosmetologist services in such premises are rendered only to residents of the nursing home.

History.
Code 1981, § 43-10-18.2, enacted by Ga. L. 1985, p. 1133, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.
Code Commission notes.
Ga. L. 1985, p. 1057, § 14 and Ga. L. 1985, p. 1133, § 2 both enacted Code sections designated as Code Section 43-10-18.1. The Code section enacted by the latter Act was redesignated as this Code section pursuant to Code Section 28-9-5.

43-10-18.3. Serving physically disabled or infirm persons in residence, assisted living facility, nursing home, hospital, or similar facility.

(a) Notwithstanding any other provision of this chapter, barbering or cosmetologist services may be performed by a registered cosmetologist, master barber, or barber II in a client's residence, a nursing home, an assisted living community a personal care home, a hospital, or similar facilities when the client for reasons of ill health, infirmity, or other physical disability is unable to go to the licensed beauty shop, salon, or barber shop for regular barbering or cosmetologist services.

(b) The board is authorized to adopt reasonable rules and regulations prescribing requirements and conditions for the performance of the services authorized in subsection (a) of this Code section.

History. Code 1981, § 43-10-18.3, enacted by Ga. L. 1987, p. 1089, § 1; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.

43-10-19. Penalty.

(a) If any individual not lawfully entitled to a license under this chapter shall practice the occupation of a cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II; or if any such individual shall endeavor to learn the trade of a cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II by practicing the same under the instructions of a cosmetologist, hair designer, esthetician, nail technician, master barber, barber II, or other individual, other than as provided in this chapter; or if any such person shall instruct or attempt to instruct any individual in such trade; or if any proprietor of or person in control of or operating any beauty shop, beauty salon, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall knowingly employ for the purpose of practicing such occupation any cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II not licensed under this chapter; or if any person, beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall engage in any of the acts covered in this chapter though not licensed under the provisions of this chapter; or if any individual shall falsely or fraudulently pretend to be qualified under this chapter to practice or learn such trade or occupation; or if any person shall violate any provision of this chapter for which a penalty is not specifically provided, such person shall be guilty of a misdemeanor.

(b) Any person who operates or manages a beauty shop, salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering that employs an individual

who does not possess a license as provided in this chapter shall be guilty of a misdemeanor.

History.
Ga. L. 1963, p. 45, §§ 16-18; Ga. L. 1985, p. 1057, § 15; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 12/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314; Ga. L. 2018, p. 996, § 8/SB 461.

43-10-20. Teaching of barbering or the practice of a cosmetologist in prisons; certification of registration.

(a) For the purposes of this chapter, the teachers and instructors of and courses of instruction or training in barbering or the practice of a cosmetologist operated by the Department of Corrections shall be considered to be subject to the same standards and to be part of the cosmetologist programs that are approved by the Technical College System of Georgia or the Department of Education as provided for by paragraphs (14) through (18) of Code Section 43-10-1 and paragraph (8) of subsection (e) of Code Section 43-10-12.

(b) The board shall be required to test an inmate who is an applicant for a certificate or registration under this chapter who has completed successfully a barber or cosmetologist training program operated by the Department of Corrections and who meets the requirements stated in Code Section 43-10-9. If such inmate passes the applicable written and practical examinations, the board may issue the appropriate certificate of registration to such inmate after consideration of all requirements under Code Sections 43-10-9 and 43-1-19; provided, however, that the board shall not apply the provisions of paragraph (4) of subsection (a) of Code Section 43-1-19 to such inmate based solely upon such person's status as an inmate and shall apply such provisions in the same manner as would otherwise be applicable to an applicant who is not an inmate.

History.
Code 1981, § 43-10-20, enacted by Ga. L. 2004, 617, § 1; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1287, § 2/HB 314.

Cross references.
Vocational training of inmates, § 42-10-4.

Editor's notes.
Former O.C.G.A. § 43-10-20 was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8) and was amended by Ga. L. 1986, p. 843, § 5 and Ga. L. 1992, p. 2490, § 3.

Ga. L. 2000, p. 814, § 1, effective July 1, 2000, purportedly repealed this Code section which had been previously repealed by Ga. L. 1992, p. 3137, § 9, effective July 1, 1992.

CHAPTER 10A

PROFESSIONAL COUNSELORS, SOCIAL WORKERS, AND MARRIAGE AND FAMILY THERAPISTS

Article 1

Licensing Provisions

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43-10A-20. Penalty.
43-10A-21. Restrictions on use of terms in corporate, partnership, association, or business names.
43-10A-22. Restrictions on scope of article.
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Article 2

Professional Counselors Licensure Compact

43-10A-50. Short title.
43-10A-51. Text of compact.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, former Chapter 7A was redesignated as present Chapter 10A.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-1.

Code of Ethics, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-7.

Law reviews.

For comment, "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," see 34 Emory L.J. 777 (1985).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Trials.

Social Worker Malpractice for Failure to Protect Foster Children, 41 Am. Jur. Trials 1.

Clergy Malpractice for Negligent Counseling, 47 Am. Jur. Trials 271.

Trial Report: Third Party Suit Against Therapists for Implanting False Memory of Childhood Molestation, 57 Am. Jur. Trials 313.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Defamation of psychiatrist, psychologist, or counselor, 38 A.L.R.4th 874.

ARTICLE 1

LICENSING PROVISIONS

Editor's notes.

Ga. L. 2021, p. 729, § 3/HB 395 designated the existing provisions of this chapter as Article 1, effective July 1, 2021.

43-10A-1. Short title.

This article shall be known and may be cited as the "Professional Counselors, Social Workers, and Marriage and Family Therapists Licensing Law."

History.

Code 1981, § 43-7A-1, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2021, p. 729, § 3/HB 395; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "This article" for "This chapter" near the beginning.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-2. Declaration of purpose.

It is declared to be the purpose of the General Assembly that the activities of certain persons who utilize certain titles relating to or who practice professional counseling, social work, and marriage and family therapy be regulated to ensure the protection of the health, safety, and welfare of the people of this state.

History.
Code 1981, § 43-7A-2, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1993, p. 330, § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.
Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-3. Definitions.

As used in this article, the term:

(1) "Advertise" means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or on radio or television.

(2) "Allied profession" means the practice of medicine, psychiatric nursing, psychology, or pastoral counseling.

(3) "Board" means the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists established by this article.

(4) "Commission on Accreditation for Marriage and Family Therapy Education" means the national accrediting agency for marriage and family therapy education as recognized by the Council for Higher Education Accreditation.

(5) "Commission on Rehabilitation Counselor Certification" means the national certifying agency for rehabilitation counselors as recognized by the National Commission for Certifying Agencies.

(6) "Council on Social Work Education" means the national accrediting agency for social work education as recognized by the United States Department of Education and the Council on Postsecondary Accreditation.

(7) "Counseling" means those techniques used to help persons learn how to solve problems and make decisions related to personal growth, vocation, family, social, and other interpersonal concerns.

(8) "Diagnose" means the use, administration, or application of any criteria contained within standard classification or diagnostic systems for mental disorders and that are related to the scope of practice as provided pursuant to this article. Such term shall not mean the diagnosis of any neuropsychological functioning or conditions.

(9) "Direction" means the ongoing administrative overseeing by an employer or superior of a specialty practitioner's work by a person:

(A) Responsible for assuring the quality of the services rendered by that practitioner;

(B) Responsible for ensuring that qualified supervision or inter-

vention occurs in situations which require expertise beyond that of the practitioner; and

(C) Who is acceptable to the standards committee for that specialty in which the practitioner is working.

(10) "Division director" means the director of the professional licensing boards division. The division director shall serve as secretary to the board.

(11) "Fee" means money or anything of value, including but not limited to a salary, offered or received as compensation in return for rendering services in any specialty.

(12) "Marriage and family therapy" means that specialty which:

(A) Evaluates, diagnoses, and treats emotional and mental problems and conditions, whether cognitive, affective, or behavioral; resolves intrapersonal and interpersonal conflicts; and changes perception, attitudes, and behavior; all within the context of marital and family systems;

(B) Includes, without being limited to, individual, group, couple, sexual, family, and divorce therapy; and

(C) Involves an applied understanding of the dynamics of marital and family systems, including individual psychodynamics; the use of assessment instruments that evaluate marital and family functioning; designing and recommending a course of treatment; and the use of psychotherapy and counseling.

(13) "Practice a specialty" or "practice" means to offer to render for a fee or to render for a fee any service involving the application of principles, methods, or procedures of professional counseling, social work, or marriage and family therapy.

(14) "Professional counseling" means that specialty which utilizes counseling techniques based on principles, methods, and procedures of counseling that assist people in identifying and resolving personal, social, vocational, intrapersonal, and interpersonal concerns; utilizes counseling and psychotherapy to evaluate, diagnose, treat, and recommend a course of treatment for emotional and mental problems and conditions, whether cognitive, behavioral, or affective, provided that the counselor shall have training and experience working with people with mental illness, developmental disability, or substance abuse; administers and interprets educational and vocational assessment instruments and other tests which the professional counselor is qualified to employ by virtue of education, training, and experience; utilizes information, community resources, and goal setting for personal, social, or vocational development; utilizes individual and

group techniques for facilitating problem solving, decision making, and behavior change; utilizes functional assessment and vocational planning and guidance for persons requesting assistance in adjustment to a disability or disabling condition; utilizes referral for persons who request counseling services; performs service planning; and utilizes and interprets counseling research.

(15) "Psychotherapeutic techniques" means those specific techniques involving the in-depth exploration and treatment of interpersonal and intrapersonal dynamics but shall not include the performance of those activities exclusively reserved to any other business or profession by any other chapter of this title.

(16) "Recognized educational institution" means any educational institution which grants a bachelor's, master's, specialist, or doctoral degree and which is recognized by an accrediting body acceptable to the board.

(17) "Social work" means that specialty which helps individuals, marriages, families, couples, groups, or communities to enhance or restore their capacity for functioning: by assisting in the obtaining or improving of tangible social and health services; by providing psychosocial evaluations, in-depth analyses and diagnoses of the nature and status of emotional, cognitive, mental, behavioral, and interpersonal problems or conditions; and by counseling and psychotherapeutic techniques, casework, social work advocacy, psychotherapy, and treatment in a variety of settings which include but are not limited to mental and physical health facilities, child and family service agencies, or private practice.

(18) "Specialty" means social work, marriage and family therapy, or professional counseling, or any combination thereof.

(19) "Supervision" means the direct clinical review, for the purpose of training or teaching, by a supervisor of a specialty practitioner's interaction with a client. It may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation in order to promote the development of the practitioner's clinical skills.

(20) "Supervisor" means a person who meets the requirements established by the standards committee for that specialty which is being supervised and who is either licensed under this article or is a psychiatrist or a psychologist.

History.

Code 1981, § 43-7A-3, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1990, p. 1484, § 1; Ga. L. 1993, p. 330, § 2; Ga. L. 1994, p. 450, § 1; Ga. L. 1995, p. 1302, § 17; Ga. L. 1997, p. 452, § 1; Ga. L. 2000, p. 1706, § 9; Ga. L. 2002, p. 1479, § 1; Ga. L. 2012, p. 347, § 1/HB 434; Ga. L. 2014, p. 352, § 1/SB 128; Ga. L. 2015, p. 385, § 4-18/HB 252; Ga. L.

2016, p. 257, § 2/SB 319; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the introductory paragraph and in paragraphs (3), (4.1), and (16).

The 2022 amendment, effective July 1, 2022, added paragraph (4); redesignated former paragraph (3.1) as present paragraph (5); added paragraph (6); redesignated former paragraphs (4), (4.1), and (5) through (16) as present paragraphs (7) through (20), respectively; rewrote present paragraphs (9) and (12); and deleted the former definitions concerning "The Commission on Accreditation for Marriage and Family Therapy Education" and "The Council on Social Work Education".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, the definitions in paragraphs (6) and (7) were arranged in alphabetical order.

Editor's notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.' "

Ga. L. 2016, p. 257, § 1/SB 319, not codified by the General Assembly, provides: "The General Assembly finds that the mental health and wellness needs of Georgia's citizens require the availability of trained mental health professionals who can accurately diagnose, treat, prescribe, and appropriately assess the mental and emotional illnesses, disorders, and conditions from which they suffer and the vocational, educational, interpersonal, and intrapersonal needs essential to living and learning how to live productive and useful lives. It is the intent of the General Assembly to assure geographical and financial access for all of Georgia's citizens to excellent mental health services to the extent that Georgia's resources and regulations permit. To these ends, Georgia regulates its licensed psychiatrists, psychologists, professional counselors, marriage and family therapists, and clinical social workers who provide graduate level professional services to Georgia's private and public mental health services and to its public mental health, educational, and vocational support systems. The General Assembly seeks in such regulatory process to protect the public and assure it receives high quality and appropriate services and to define the scopes of practice and diagnostic authority for each of these professional groups consistent with the graduate level training and supervision, or its equivalent, that the members of each profession have sought and successfully completed. The General Assembly has empowered and authorized the Georgia Composite Medical Board, the State Board of Examiners of Psychologists, and the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists to fulfill these responsibilities and expects them to work together to assure a continuum of professional services that ensure appropriate diagnostic and assessment functions for each profession and the psychotherapeutic and counseling treatment services appropriate to each profession. The General Assembly recognizes that advances in medicine, science, education, training, and service delivery occur constantly in our modern history and therefore also expects the regulatory boards for each profession to assure that its licensees seek and successfully complete appropriate continuing education and training for the functions and services authorized to each profession."

43-10A-4. Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists; composition; terms; removal; vacancies.

(a) There is created the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists. The board shall consist of ten members who have been residents of this state

for at least 12 months prior to taking office. The ten members shall be constituted as follows:

(1) Three members licensed in professional counseling;

(2) Three members licensed as social workers;

(3) Three members licensed as marriage and family therapists; and

(4) One member who shall represent the public at large and have no professional connection with any specialty.

(b) All members of the board shall be appointed by the Governor, subject to confirmation by the Senate. Those members of the board who are required to be licensed shall be persons who are practicing in the designated specialty at the time of appointment.

(c) Members of the board shall serve for a term of three years and until the appointment and qualification of their respective successors. No member shall serve on the board more than two consecutive terms.

(d) Members of the board may be removed by the Governor, after notice and opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, or conviction of any felony.

(e) Vacancies occurring on the board, other than those caused by expiration of a term of office, shall be filled in the same manner as the original appointment to the position vacated for the remainder of the unexpired term and until a successor is appointed and qualified.

(f) Any person appointed to the board when the Senate is not in regular session may serve on the board without Senate confirmation until the Senate acts upon that appointment.

History.

Code 1981, § 43-7A-4, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the second sentence in subsection (b).

The 2022 amendment, effective July 1, 2022, rewrote paragraphs (a)(1) through (a)(4) and subsections (b) and (c), which read: "(1) Three members licensed in professional counseling, two of whom shall be designated at the time of their appointment to serve an initial term ending December 31, 1988, and one of whom shall be designated to serve an initial term ending December 31, 1987;

"(2) Three members licensed as social workers, one of whom shall be designated at the time of appointment to serve an initial term ending December 31, 1988, the other two of whom shall be designated to serve an initial term ending December 31, 1987;

"(3) Three members licensed as marriage and family therapists, two of whom shall be designated at the time of their appointment to serve an initial term ending December 31, 1987, and one of whom shall be designated to serve an initial term ending December 31, 1988; and

"(4) One member who shall represent the public at large and have no professional connection with any specialty to serve an initial term ending December 31, 1988.

"(b) All members of the board shall be appointed by the Governor, subject to confirmation by the Senate. Those members first appointed to the board under this article shall serve for initial terms of office beginning September 1, 1985. Those members of the board required to be licensed and who are first appointed to the board shall be persons who are practicing in the designated specialty at the time of appointment and who must be licensed therein as required within 12 months following their appointment.

"(c) After the initial terms specified in subsection (a) of this Code section, members of the board shall take office on the first day of January immediately following the expired term of that office and shall serve for a term of three years and until the appointment and qualification of their respective successors. No member shall serve on the board more than two consecutive terms."

43-10A-5. Powers and duties of board; quorum; meetings.

(a) The members of the board shall take an oath to perform faithfully the duties of their office. Within 30 days after taking the oath of office, the first board appointed under this article shall meet for an organizational meeting on call by the division director. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a chairperson and vice chairperson to serve for terms of two years.

(b) The quorum for the transaction of business of the board shall be as provided in subsection (h) of Code Section 43-1-2.

(c) Unless specifically delegated to a standards committee pursuant to Code Section 43-10A-6, the board shall have the following powers and duties:

(1) To adopt, amend, and repeal such rules and regulations not inconsistent with this article necessary for the proper administration and enforcement of this article;

(2) To issue, renew, and reinstate the licenses of duly qualified applicants for licensure to practice a specialty in this state;

(3) To deny, suspend, revoke, or otherwise sanction licenses to practice a specialty in this state;

(4) To initiate investigations for the purpose of discovering violations of this article;

(5) To conduct hearings upon charges calling for the discipline of a licensee or on violations of this article;

(6) To issue to specialists licensed under this article certificates under the seal of the board evidencing such licensure and signed, either by hand or facsimile signature, by the chairperson of the board and the division director;

(7) To adopt a seal; and

(8) To do all other things necessary to administer and enforce this article and all rules and regulations adopted by the board pursuant to this article.

(d) The board shall adopt a code of ethics to govern the behavior of persons licensed under this article, including but not limited to the prohibiting of practice in those areas in which the specialty practitioner has not obtained university level graduate training or substantially equivalent supervised experience.

(e) Each member of the board shall be reimbursed as provided in subsection (f) of Code Section 43-1-2.

(f) After a person has applied for licensure, no member of the board may supervise or direct such applicant for a fee nor shall any member vote on any applicant previously supervised or directed by that member.

(g) The board shall hold at least two regular meetings each year. Additional meetings may be held upon the call of the chairperson of the board or at the written request of any four members of the board.

(h) The board shall administer the Professional Counselors Licensure Compact contained in Article 2 of this chapter.

(i) The board is authorized to conduct national background checks by the submission of fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information Center; provided, however, that reports from such background checks shall not be shared with entities outside of this state.

History.

Code 1981, § 43-7A-5, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2021, p. 729, §§ 1, 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the second sentence in subsection (a), twice in paragraph (c)(1), in paragraphs (c)(4) through (c)(6), twice in paragraph (c)(8), and in subsection (d); and added subsections (h) and (i).

The 2022 amendment, effective July 1, 2022, substituted "subsection (h) of Code Section 43-1-2" for "subsection (b) of Code Section 43-1-12" in subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, the internal reference in the introductory language of subsection (c) was changed to "Code Section 43-10A-6" to reflect the redesignation of this chapter as Chapter 10A.

43-10A-6. Separate standards committees for professional counseling specialty, social work specialty, and marriage and family therapy specialty.

(a) Those members of the board from the professional counseling specialty, the social work specialty, and the marriage and family therapy specialty shall constitute a separate standards committee for

their respective specialty. Each standards committee by majority vote shall approve or disapprove the granting of all licenses in that specialty, approve the examination required of applicants for licensure in that committee's specialty and provide for the grading of that examination, and provide for other matters relating to licensure in that specialty.

(b) No decision of a standards committee shall become effective until approved by the board. The board may initiate or otherwise act regarding any matter in which a standards committee is authorized to act. No decision of the board regarding a particular specialty shall become effective without the approval of at least two of the members of the standards committee for that specialty.

(c) Meetings of a standards committee shall be reimbursed on the same basis as board meetings.

History.
Code 1981, § 43-7A-6, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.
Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-7. Licensing requirement; exceptions.

(a) Except as otherwise provided in this article, a person who is not licensed under this article shall not practice professional counseling, social work, or marriage and family therapy, nor advertise the performance of such practice, nor use the title "professional counselor," "associate professional counselor," "social worker," "marriage and family therapist," or "associate marriage and family therapist," nor use any words, letters, titles, or figures indicating or implying that the person is a professional counselor, associate professional counselor, social worker, marriage and family therapist, or associate marriage and family therapist or is licensed under this article.

(b) The prohibition of subsection (a) of this Code section shall not apply to the following persons; provided, however, that no such person shall hold themselves out as being licensed to practice professional counseling, social work, or marriage and family therapy or any combination thereof or use the words "licensed" or "licensure" or any other words, letters, titles, images, or figures stating or implying that they are licensed to practice any such specialty, and no organization shall present itself as authorized to license individuals to practice any such specialty:

(1) Persons licensed to practice medicine or psychology under Chapter 34 or 39, respectively, of this title;

(2) Persons engaged in the practice of a specialty as an employee of any agency or department of the federal government or any licensed

hospital or long-term care facility, but only when engaged in that practice as an employee of such agency, department, hospital, or facility;

(3)(A) Persons who, prior to July 1, 2000, engaged in the practice of a specialty as an employee of any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, or any agency or department of the state or any of its political subdivisions, but only when engaged in that practice as an employee of such an agency or department.

(B) Persons who, prior to January 1, 2022, engaged in the practice of social work as employees of any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, or any agency or department of the state or any of its political subdivisions, but only when engaged in that practice as employees of such community service board or similar entity, agency, or department, and persons or entities which contract to provide social work services with any community service board or similar entity or any agency or department of the state or any of its political subdivisions, but such contracting persons and entities shall only be exempt under this subparagraph when engaged in providing social work services pursuant to those contracts.

(C) Persons who, prior to January 1, 2022, engaged in the practice of professional counseling as employees of privately owned correctional facilities, the Department of Corrections, Department of Community Health, Department of Public Health, Department of Behavioral Health and Developmental Disabilities, Department of Human Services, any county board of health, or any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, but only when engaged in that practice as employees of such privately owned correctional facility, department, board, or entity and persons or entities which contract to provide professional counseling services with such department or county board of health, but such contracting persons and entities shall only be exempt under this subparagraph when engaged in providing professional counseling services pursuant to those contracts;

(4) Students of a recognized educational institution who are preparing to become practitioners of a specialty, but only if the services they render as such practitioners are under supervision and direction and their student status is clearly designated by the title “trainee” or “intern”;

(5) Persons who have obtained a master’s degree from a program

accredited by the Council on Social Work Education and who are practicing social work under direction and supervision while preparing to take the master's social work licensing examination, but only for a period of up to one year following the granting of such degree;

(6) Persons who have obtained one of the graduate degrees required for licensure as a professional counselor or marriage and family therapist and who are practicing such specialty under supervision and direction in order to obtain the experience required for licensure;

(7) Persons who are undergoing an internship or practicum under supervision or under the direction of a person certified as a rehabilitation counselor by the Commission on Rehabilitation Counselor Certification;

(8) Elementary, middle, or secondary school counselors and school social workers certificated as such by the Department of Education, Professional Standards Commission, or its successor agency but only when practicing within the scope of such certification and only when designated by the title "school counselor," "school social worker," or a title designated by the school system in which they are employed for persons practicing within such certification;

(9) Persons registered as rehabilitation suppliers by the State Board of Workers' Compensation, including those registered as of July 1, 1992, but only when practicing rehabilitation counseling as a rehabilitation supplier for workers' compensation claimants and only so long as they do not use any titles other than titles describing the certifications or licenses they are required to hold under Code Section 34-9-200.1;

(10) Active members of the clergy but only when the practice of their specialty is in the course of their service as clergy;

(11) Members of religious ministries responsible to their established ecclesiastical authority who possess a master's degree or its equivalent in theological studies;

(12) Persons engaged in the practice of a specialty in accordance with Biblical doctrine in public or nonprofit agencies or entities or in private practice;

(13) Persons engaged in the practice of a specialty as an employee of the Division of Family and Children Services of the Department of Human Services but only when engaged in such practice as an employee of that division;

(14) Persons who have obtained a master's degree from a program accredited by the Council on Social Work Education and who are

engaged in the practice of community organization, policy, planning, research, or administration may use the title "social worker" and may only engage in such practice;

(15) Persons who have obtained a bachelor's degree in social work from a program accredited by the Council on Social Work Education may use the title "social worker" and may practice social work, but they may not practice autonomously and may only practice under direction and supervision, and, notwithstanding the definitions in paragraphs (6) and (19) of Code Section 43-10A-3, such supervision shall be provided by a social worker who, as a minimum, has been awarded a bachelor's or a master's degree in social work from a program accredited by the Council on Social Work Education and who has completed at least two years of post-degree practice in the field of social work;

(16) Addiction counselors who have met the certification requirements of the Georgia Addiction Counselors Association or any other similar private association of addiction counselors which includes among its certification requirements the following:

(A) Attainment of a high school diploma or a state approved high school equivalency (HSE) diploma;

(B) Completion of at least 4,000 hours of full-time paid experience under direction provided by a person acceptable to the association in the practice of chemical dependency and abuse counseling;

(C) Completion of at least 180 hours of education in the field of addiction and addiction counseling or treatment; and

(D) Completion of at least 220 hours of supervision provided by a supervisor who meets the qualifications established by the association and which teaches chemical dependency and abuse counseling.

Services which may be provided under this paragraph shall be limited to those practices sanctioned by the certifying association and shall in any event be limited to the provision of chemical dependency treatment in the following settings: screening; intake; orientation; assessment for addiction diseases; treatment planning; individual, family, and group addiction counseling; case management; crisis intervention; client education; referral, reporting, and record keeping; and consultation with other professionals in regard to client treatment and services. Persons exempt under this paragraph shall not use any title indicating or implying that they are licensed under this article;

(17) Persons who are training to be addiction counselors but only when such persons are:

(A) Employed by an agency or facility that is licensed to provide addiction counseling;

(B) Supervised and directed by a supervisor who meets the qualifications established by the Georgia Addiction Counselors Association or any other similar private association of addiction counselors which includes among its certification requirements the criteria specified in paragraph (16) of this subsection;

(C) Graduated from high school or have a state approved high school equivalency (HSE) diploma; and

(D) Actively seeking certification in accordance with the requirements of paragraph (15) of this subsection.

No person shall qualify for the exception provided under this paragraph for a period in excess of three years. Services which may be provided under this paragraph shall be limited to those practices sanctioned by the certifying association and shall in any event be limited to the provision of chemical dependency treatment in the following settings: screening; intake; orientation; assessment for addiction diseases; treatment planning; individual, family, and group addiction counseling; case management; crisis intervention; client education; referral, reporting, and record keeping; and consultation with other professionals in regard to client treatment and services. Persons exempt under this paragraph shall not use any title indicating or implying that they are licensed under this article; and

(18) Any person engaged in the practice of professional counseling as an employee or student peer counselor of the University System of Georgia or its educational units, the Technical College System of Georgia or its educational units, or of a public or private college or university within this state, but only when engaged in that practice as such an employee or student peer counselor and excepting the use of psychotherapeutic techniques to evaluate and treat emotional and mental illness, disorder, or dysfunction;

(19) Persons who engage in the practice of professional counseling, excluding the use of psychotherapy, as employees of organizations which maintain, now or in the future, accreditation from the Commission on Accreditation of Rehabilitation Facilities or the national Accreditation Council for Agencies Serving People with Blindness or Visual Impairment, but only when those persons are providing those services as employees of those organizations pursuant to contracts between such organizations and the state or a department, agency, county, municipality, or political subdivision of the state;

(20) Persons engaged in the practice of a specialty as an employee of the Department of Labor, but only when engaged in such practice as an employee of such department; and

(21) Persons currently licensed to practice a specialty in another jurisdiction and who are practicing such specialty within a defined disaster area in order to alleviate the impact on persons affected by a disaster as defined in Code Section 38-3-91 or a state of emergency as defined in Code Section 38-3-3, but only when such specialty services are provided without cost to the recipients, and only for a maximum of 30 consecutive days following a disaster or a state of emergency.

(c) Unless exempt under subsection (b) of this Code section, a person who is not licensed under this article shall not practice a specialty for any corporation, partnership, association, or other business entity which uses in its corporate, partnership, association, or business name any words, letters, titles, or figures indicating or implying that such entity or any of its employees, officers, or agents are practicing a specialty.

(d) Notwithstanding any other provision of law to the contrary, a person who is exempt from licensure pursuant to paragraph (10) of subsection (b) of this Code section may be authorized by the board to serve as a supervisor as defined in paragraph (16) of Code Section 43-10A-3 without being licensed if such person meets all the requirements to be licensed and to serve as a supervisor in the specialty for which such person would serve as a supervisor and has filed the necessary documentation with and been approved by the standards committee of that specialty as required by the rules of the board.

(e) Nothing in this article shall be construed to prohibit the licensed practice of nursing or the performance of duties which constitute a standard procedure of the practice of medicine by any person acting under the direct supervision of a licensed medical doctor, provided that such supervised persons are qualified by virtue of their education, training, or experience to perform such duties and that such persons shall not use any titles indicating or implying that they are licensed under this article.

History.

Code 1981, § 43-7A-7, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1989, p. 825, § 1; Ga. L. 1993, p. 330, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 404, § 1; Ga. L. 1994, p. 450, § 2; Ga. L. 1994, p. 953, § 1; Ga. L. 1996, p. 701, §§ 1, 2; Ga. L. 1996, p. 843, § 1; Ga. L. 1996, p. 1073, § 1; Ga. L. 1997, p. 1387, §§ 1, 2; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1584, § 2; Ga. L. 2003, p. 312, § 1; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, § 1-44/HB 228; Ga. L. 2009, p. 995, § 1/HB 60; Ga. L. 2011, p. 705, § 5-25/HB 214; Ga. L. 2017, p. 774, § 43/HB 323; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 168, § 11/SB 397; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in three places in subsection (a), at the end of the undesignated paragraph in paragraphs (b)(15) and (b)(15.1), in subsection (c), and twice in subsection (e).

The 2022 amendments.

The first 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educa- tional development (GED) equivalency" in subparagraphs (15)(A)

and (15.1)(C) (now present subparagraphs (16)(A) and (17)(C), respectively). The second 2022 amendment, effective July 1, 2022, rewrote subsection (b); deleted "paragraph (1), (2), (4), (5), (6), (11), (13), (14), (15), (16), or (17) of" preceding "subsection (b)" in subsection (c); and, substituted "paragraph (10)" for "paragraph (9)" in subsection (d).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, in subsection (b), "Division of Family and Children Services of the Department of Human Resources" was substituted for "Department of Family and Children Services" and "division" was substituted for "department" in paragraph (b)(12) and, in paragraph (b)(14), "paragraphs (5) and (15) of Code Section 43-10A-3" was substituted for "paragraph (15) and (16) of this Code section".

Pursuant to Code Section 28-9-5, in 1994, the amendments by Ga. L. 1994, p. 953, Ga. L. 1994, p. 404, and Ga. L. 1994, p. 450, each purporting to add a new paragraph (b)(15), were added as paragraphs (b)(15), (b)(16), and (b)(17), respectively, and, in subsection (c), "(15), (16), or (17)" was substituted for "or (15)".

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 233 (1994).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 223 (2003).

JUDICIAL DECISIONS

Testimony in child molestation trial. — Testimony from an unlicensed psychologist was not rendered inadmissible in a prosecution for child molestation and attempted child molestation based solely on a witness's lack of licensure as Georgia law carved out an exception to the licensing requirements for those witnesses who, like the state's expert, were practicing under supervision in order to obtain a license. Nelson v. State, 279 Ga. App. 859, 632 S.E.2d 749, 2006 Ga. App. LEXIS 704 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Use of title "professional school counselor." — Practicing school counselors may use the title "professional school counselors" so long as the counselors meet the requirements of O.C.G.A. § 43-10A-7(b)(7). 1997 Op. Att'y Gen. No. U97-31.

Master's level degree and licensure. — A master's level social work graduate from a program accredited by the Council on Social Work Education may provide social work services without a license as long as such person does not hold himself or herself out as being licensed or use words, letters, titles, images, or figures stating or implying licensure. Practice without licensure by a master's program graduate social worker may include services that are provided under direction and supervision while the individual is preparing to take the master's social work licensing examination, but only for a period of up to one year following the granting of the degree, or that are provided by a graduate who is engaged in the practice of community organization, policy, planning, research, or administration or under other specified circumstances listed in O.C.G.A. § 43-10A-7(b). 2017 Op. Att'y Gen. No. U17-3.

43-10A-8. Eligibility for licensure.

No person shall be eligible for licensure under this article unless such person furnishes satisfactory evidence to the board of all of the following:

(1) Having met the education, training, and experience requirements of Code Section 43-10A-11, 43-10A-12, or 43-10A-13 regarding that specialty for which a license is sought;

(2) Having successfully passed the examination established for that specialty under Code Section 43-10A-9, except that persons meeting the requirements of subparagraph (a)(2)(A) of Code Section 43-10A-13 shall not be required to pass such examination;

(3) Having paid any required license fee;

(4) All persons licensed under this article who were licensed after April 26, 2006, are required to have completed a graduate level course or equivalent related to diagnosing and shall complete such curriculum in order to renew the license or apply for licensure; and

(5) Having satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for the issuance of a license under this Code section shall constitute express consent and authorization for the board to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. Any such applicant shall be responsible for all fees associated with the performance of such background check.

History.

Code 1981, § 43-7A-8, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1989, p. 825, § 2; Ga. L. 1996, p. 843, § 2; Ga. L. 2021, p. 729, §§ 2, 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the introductory paragraph; deleted "and" at the end of paragraph (3); substituted "; and" for a period at the end of paragraph (4); and added paragraph (5).

The 2022 amendment, effective July 1, 2022, rewrote paragraph (4), which read: "Having furnished at least two personal references from supervisors, teachers, or any combination thereof; and".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, the internal references in paragraphs (1) and (2) were changed to reflect the redesignation of this chapter as Chapter 10A.

Administrative rules and regulations.

Application for licensure, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-3.

43-10A-9. Examination.

The board shall provide for the conduct of examinations for licensure in each specialty at least twice a year. Examinations may be written, oral, experiential, or any combination thereof and shall deal with such theoretical and applied fields as prescribed by the board. The examinee's name shall not be disclosed to any person grading the examination until that grading is complete.

History.
Code 1981, § 43-7A-9, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.
Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-10. Licensure without examination.

The board may issue a license without examination to any applicant licensed in a specialty under the laws of another jurisdiction having requirements for licensure in that specialty which are substantially equal to the licensure requirements for that specialty in this state.

History.
Code 1981, § 43-7A-10, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 2; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.
Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-11. Requirements for licensure as associate professional counselor or professional counselor.

(a) The education, experience, and training requirements for licensure in professional counseling are as follows:

(1) For licensure as an associate professional counselor:

(A) A minimum of an earned master's degree or higher from a regionally accredited program in clinical counseling or counseling psychology that consists of at least 60 semester hours or 80 quarter hours with an approved supervised internship or practicum that is primarily counseling in content as a part of the degree program; and

(B) Registration with the board of an acceptable contract for obtaining the post-degree experience under direction and supervision that is required for licensure as a professional counselor.

(2) For licensure as a professional counselor:

(A)(i) A minimum of an earned master's degree or higher from a regionally accredited program in clinical counseling or counseling psychology that consists of at least 60 semester hours or 80

quarter hours with an approved supervised internship or practicum that is primarily counseling in content as a part of the degree program; and

(ii) Two years of post-degree experience under direction and supervision in a work setting acceptable to the board; or

(B) A doctoral degree from a recognized educational institution in a program that is primarily counseling in content and requires at least one year of supervised internship in a work setting acceptable to the board.

(b) For purposes of subsection (a) of this Code section, work settings acceptable to the board may include, but are not limited to, educational, rehabilitation, career development, mental health, or community organizations.

(c) Only a person licensed as an associate professional counselor may use the title "associate professional counselor" or "licensed associate professional counselor." Associate professional counselors shall practice professional counseling only under direction and supervision and only for a period not to exceed five years while obtaining the post-degree experience required for licensure as a professional counselor.

History.

Code 1981, § 43-7A-11, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 3; Ga. L. 1993, p. 330, § 4; Ga. L. 1994, p. 450, § 3; Ga. L. 1997, p. 1387, § 3; Ga. L. 2002, p. 1479, §§ 2, 3; Ga. L. 2022, p. 523, § 1/HB 972.

The 2022 amendment, effective July 1, 2022, rewrote this Code section, which read: "(a) The education, experience, and training requirements for licensure in professional counseling are as follows:

"(1) For licensure as an associate professional counselor, a master's degree from a recognized educational institution in a program that is primarily counseling in content or in a program of applied psychology, which degree includes a supervised internship or practicum as part of the degree program and registration with the board of an acceptable contract for obtaining the post-master's experience under direction and supervision required for licensure as a professional counselor; and

"(2) For licensure as a professional counselor:

"(A) A doctoral degree from a recognized educational institution in a program that is primarily counseling in content and requires at least one year of supervised internship in a work setting acceptable to the board; or

"(B) A specialist degree from a recognized educational institution in a program that is primarily counseling in content with supervised internship or practicum and two years of post-master's directed experience under supervision in a setting acceptable to the board; or

"(C)(i) A master's degree in rehabilitation counseling or in a program that is primarily counseling in content from a recognized educational institution;

"(ii) An internship or practicum supervised either by a supervisor, as defined in paragraph (16) of Code Section 43-10A-3, or by a Certified Rehabilitation Counselor certified as such by the Commission on Rehabilitation Counselor Certification;

"(iii) The Certified Rehabilitation Counselor designation from the Commission on Rehabilitation Counselor Certification; and

"(iv) Three years of post-master's directed experience providing rehabilitation services in a rehabilitation setting under supervision provided either by a supervi-

sor, as defined in paragraph (16) of Code Section 43-10A-3, or by a Certified Rehabilitation Counselor certified as such by the Commission on Rehabilitation Counselor Certification. Up to one year of such experience may have been in an approved practicum or internship placement as part of the degree program; or

"(D) A master's degree from a recognized educational institution in a program that is primarily counseling in content with supervised internship or practicum and four years of post-master's directed experience under supervision in a setting acceptable to the board. Up to one year of such experience may have been in an approved practicum placement as part of the degree program; or

"(E) A master's degree from a recognized educational institution in a program of applied psychology with supervised internship or practicum and four years of post-master's directed experience under supervision in a setting acceptable to the board. Up to one year of such experience may have been in an approved practicum placement as part of the degree program. Supervision of the practicum or internship and the post-master's directed experience shall be provided by a supervisor, as defined in paragraph (16) of Code Section 43-10A-3, except that such supervision may be provided all or in part by a psychologist or, before January 1, 2004, by a person with a master's degree from a recognized educational institution in a program of applied psychology.

"(b) For purposes of subsection (a) of this Code section, work settings acceptable to the board may include, but are not limited to, educational, rehabilitation, career development, mental health, community, or industrial organizations.

"(c) Associate professional counselors may only use the title "associate professional counselor" and may practice professional counseling only under direction and supervision and only for a period not to exceed five years while obtaining the post-master's experience required for licensure as a professional counselor."

43-10A-12. Requirements for licensure in social work; authorized services.

(a) The education, experience, and training requirements for licensure in social work are as follows:

(1) For licensure as a master's social worker, a master's degree in social work from a program accredited by the Council on Social Work Education; and

(2) For licensure as a clinical social worker:

(A) A master's degree in social work from a program accredited by the Council on Social Work Education; and

(B) As defined by the board, three years' full-time supervised experience in the practice of social work following granting of the master's degree. Of the three years of supervised experience, only the first two must be under direction. A doctoral degree in a specialty, an allied profession, or child and family development may substitute for one year of such experience. At least one year of experience shall have occurred within two years immediately preceding application for licensure as a clinical social worker or the applicant shall have met the continuing education requirement established by the board for clinical social work during the year immediately preceding application.

(b) Licensed master's social workers may render or offer to render to individuals, marriages, couples, families, groups, organizations, governmental units, or the general public service which is guided by knowledge of social resources, social systems, and human behavior. They may provide evaluation, prevention, and intervention services which include but are not restricted to community organization, counseling, and supportive services such as administration, direction, supervision of bachelor's level social workers, consultation, research, or education. The first two years of their practice after licensure as a master's social worker shall be under direction and supervision. Thereafter, they may engage in private practice, except that those social workers whose practice includes counseling or psychotherapeutic techniques may only engage in such practice under the supervision of a duly qualified supervisor and only for such period of time as is prescribed for qualification to take the clinical social work licensing examination.

(c) Licensed clinical social workers may practice all authorized services of licensed master's social workers and may: provide supervision and direction; provide psychosocial evaluation through data collection and analyses to diagnose the nature of an individual's mental, cognitive, emotional, behavioral, and interpersonal problems or conditions; provide counseling and psychotherapy to individuals, marriages, couples, families, and groups; interpret the psychosocial dynamics of a situation and recommend and implement a course of action to individuals, marriages, couples, families, or groups in such settings as private practice, family service and counseling agencies, health care facilities, and schools; and provide direct evaluation, casework, social work advocacy, education, training, prevention, and intervention services in situations threatened or affected by social, intrapersonal, or interpersonal stress or health impairment.

History.

Code 1981, § 43-7A-12, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 467, § 1; Ga. L. 1990, p. 1484, §§ 4, 5; Ga. L. 1993, p. 330, § 5; Ga. L. 2012, p. 347, § 2/HB 434; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

OPINIONS OF THE ATTORNEY GENERAL

Master's level degree and licensure. — A master's level social work graduate from a program accredited by the Council on Social Work Education may provide social work services without a license as long as such person does not hold himself or herself out as being licensed or use words, letters, titles, images, or figures stating or implying licensure. Practice without licensure by a master's program graduate social worker may include services that are provided under direction and supervision while the individual is preparing to take the master's social work licensing examination, but only for a period of up to one year following the granting of the degree, or that are provided by a graduate who is engaged in the practice of community organization, policy, planning, research, or administration or under other

specified circumstances listed in O.C.G.A. § 43-10A-7(b). 2017 Op. Att'y Gen. No. U17-3.

43-10A-13. Requirements for licensure in marriage and family therapy.

(a) The education, experience, and training requirements for licensure in marriage and family therapy are as follows:

(1) For licensure as an associate marriage and family therapist, a master's degree in a program in marriage and family therapy or a program including a master's degree and additional post-master's degree coursework, both of which programs shall include three courses in marriage and family studies, three courses in marriage and family therapy, three courses in human development, one course in marriage and family therapy ethics, and one course in research, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution; completion of a one-year practicum in marriage and family therapy under supervision before or after the granting of the master's degree, which practicum shall include 500 hours of direct clinical experience in marriage and family therapy and 100 hours of supervision of such experience; and registration with the board of an acceptable contract for obtaining the post-master's experience under direction and supervision required for licensure as a marriage and family therapist; and

(2) For licensure as a marriage and family therapist:

(A) Licensure as an associate marriage and family therapist and two years of full-time post-master's experience or its equivalent in the practice of marriage and family therapy under direction and supervision as an associate marriage and family therapist, which shall include a minimum of 2,000 hours of direct clinical experience and 100 hours of supervision of such experience and which shall be completed within a period of not less than two years and not more than five years;

(B) A master's degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of the degree program or as additional post-master's degree coursework, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy

ethics; and three years' full-time post-master's experience or its equivalent under direction and supervision in the practice of any specialty, which shall include a minimum of 2,500 hours of direct clinical experience, one year of which may have been in an approved practicum before or after the granting of the master's degree which shall include a minimum of 500 hours of direct clinical experience, and two years of which shall have been in the practice of marriage and family therapy which shall include a minimum of 2,000 hours of direct clinical experience, and 200 hours of supervision of such experience all of which shall be completed within a period of not less than three years and not more than five years; or

(C) A doctorate degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of a master's or doctoral degree program or as additional postgraduate degree coursework, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy ethics; two years' full-time post-master's experience under direction in the practice of marriage and family therapy which shall include a minimum of 1,500 hours of direct clinical experience, one year of which may have been in an approved internship program before or after the granting of the doctoral degree, which shall include a minimum of 500 hours of direct clinical experience, and one year of which shall have been full-time post-master's experience, which shall include a minimum of 1,000 hours of direct clinical experience; and 100 hours of supervision of such experience in the practice of marriage and family therapy, 50 hours of which may have been obtained while a student or intern in an accredited doctoral program.

(b) Persons intending to apply for licensure as a marriage and family therapist and who have completed one of the graduate degrees required for such licensure may register a contract with the board for obtaining the required post-master's experience under direction and supervision.

(c) Associate marriage and family therapists may only use the title "associate marriage and family therapist" and may practice marriage and family therapy only under direction and supervision and only for a period not to exceed five years while obtaining the post-master's experience required for licensure as a marriage and family therapist.

History. Code 1981, § 43-7A-13, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1988, p. 580, § 1; Ga. L. 1989, p. 825, § 3; Ga. L. 1994,

p. 97, § 43; Ga. L. 1995, p. 874, § 1; Ga. L. 1996, p. 843, § 3; Ga. L. 1997, p. 452, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2013, p. 141, § 43/HB 79; Ga. L. 2015, p. 5, § 43/HB 90; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-14. Fees.

Application, examination, license, license renewal, and penalty fees shall be established by the board pursuant to Code Section 43-1-7.

History.

Code 1981, § 43-7A-14, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

Administrative rules and regulations.

Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-2.

43-10A-15. Expiration, renewal, and penalty dates.

Expiration, renewal, and penalty dates for licenses issued under this article shall be established pursuant to Code Section 43-1-4. No person whose license has expired shall have such license reinstated without complying with the rules and regulations regarding reinstatement set forth by the board.

History.

Code 1981, § 43-7A-15, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2021, p. 729, § 3/HB 395; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the first sentence.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-16. Requirements for continuing education.

The board shall establish continuing education requirements for license renewal. The number of hours of continuing education in each specialty shall not exceed the number of hours available that year in each such specialty in board approved courses within the state. The board may waive these continuing education requirements for not more than 12 months, but such waiver shall only be available upon the licensee's satisfactory showing to the board of undue hardship.

History.

Code 1981, § 43-7A-16, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2016, p. 257, § 3/SB 319; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in three places in subsection (b).

The 2022 amendment, effective July 1, 2022, deleted the subsection (a) desig-

nation; and deleted former subsection (b), which read: "On or before January 1, 2017, the board shall develop a curriculum of continuing education relating to diagnosing by persons licensed under this article working with people with mental illness, developmental disabilities, or substance abuse. All persons licensed under this article who have not already completed as of January 1, 2017, sufficient training, experience, or classes related to diagnosing as part of their licensure requirements as required by the board shall complete such curriculum no later than January 1, 2018. As of April 26, 2016, persons licensed under this article with at least ten years of experience as a professional counselor, clinical social worker, or marriage and family therapist working with people with mental illness, developmental disabilities, or substance abuse and in good standing with the board shall be exempt from the requirements of this subsection.".

Editor's notes.

Ga. L. 2016, p. 257, § 1/SB 319, not codified by the General Assembly, provides: "The General Assembly finds that the mental health and wellness needs of Georgia's citizens require the availability of trained mental health professionals who can accurately diagnose, treat, prescribe, and appropriately assess the mental and emotional illnesses, disorders, and conditions from which they suffer and the vocational, educational, interpersonal, and intrapersonal needs essential to living and learning how to live productive and useful lives. It is the intent of the General Assembly to assure geographical and financial access for all of Georgia's citizens to excellent mental health services to the extent that Georgia's resources and regulations permit. To these ends, Georgia regulates its licensed psychiatrists, psychologists, professional counselors, marriage and family therapists, and clinical social workers who provide graduate level professional services to Georgia's private and public mental health services and to its public mental health, educational, and vocational support systems. The General Assembly seeks in such regulatory process to protect the public and assure it receives high quality and appropriate services and to define the scopes of practice and diagnostic authority for each of these professional groups consistent with the graduate level training and supervision, or its equivalent, that the members of each profession have sought and successfully completed. The General Assembly has empowered and authorized the Georgia Composite Medical Board, the State Board of Examiners of Psychologists, and the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists to fulfill these responsibilities and expects them to work together to assure a continuum of professional services that ensure appropriate diagnostic and assessment functions for each profession and the psychotherapeutic and counseling treatment services appropriate to each profession. The General Assembly recognizes that advances in medicine, science, education, training, and service delivery occur constantly in our modern history and therefore also expects the regulatory boards for each profession to assure that its licensees seek and successfully complete appropriate continuing education and training for the functions and services authorized to each profession."

Administrative rules and regulations.

Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-9.

43-10A-17. Denial or revocation of license; other discipline; fitness of licensee; voluntary surrender of license.

(a) The board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by the

board or to discipline a person licensed by the board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this article or rules or regulations promulgated thereunder; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that the applicant meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if the applicant so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a specialty or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the specialty; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication or sentence was otherwise withheld or not entered on the charge except with respect to a plea of nolo contendere.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had a license to practice a specialty revoked, suspended, or annulled by any lawful licensing authority other than the board; or been the subject of other disciplinary action by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by

any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice the specialty or is of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the specialty but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the specialty, as well as the practice of any professional activity which the licensee or applicant is not qualified to perform by virtue of not having acquired the requisite professional education, training, or experience;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice unlawfully a specialty or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of the specialty, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or without this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice the specialty with reasonable skill and safety to the public or has become unable to practice the specialty with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material:

(A) In enforcing this subsection, the board may, if it has a reasonable basis to believe that the licensee is practicing while incapacitated in the performance of such licensee's duties by reason

of substance abuse or mental or physical illness, require a licensee or applicant to submit to a mental, physical, or mental and physical examination by an appropriate licensed practitioner designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. If a licensee fails to submit to each examination when properly directed to do so by the board, the board may summarily suspend the license of such licensee, if the public health, safety, and welfare imperatively require such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal; and

(B) For the purpose of this subsection, the board, if it has a reasonable basis to believe that the licensee is incapacitated in the performance of such licensee's duties by reason of substance abuse or mental or physical illness, may require the licensee to produce or give the board permission to obtain any and all records relating to the alleged incapacitating mental or physical condition of a licensee or applicant, including that individual's personal psychiatric, psychological, and mental health records; and such records shall be admissible in any hearing before the board. If a licensee fails to provide such records when properly directed to do so by the board, the board may summarily suspend the license of such licensee, if the public health, safety, and welfare imperatively require such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, the board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to a specialty, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite

period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or

(7) Impose a fine not to exceed $500.00 for each violation of a law, rule, or regulation relating to the specialty.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as the division director or the board may deem necessary or proper for the enforcement of the provisions of this article. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or the division director's appointed representative may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this article may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records

be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in the capacity as licensee shall be admissible at any hearing held to determine whether a violation of this article has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of this article or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if the applicant or licensee so requests.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the board, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director

shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the division director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. The board may restore and reissue a license to practice a specialty and, as a condition thereof, may impose any disciplinary sanction provided by this Code section.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) Regulation by the board of a specialty shall not exempt licensees under this article from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

History.

Code 1981, § 43-7A-17, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1993, p. 123, § 25; Ga. L. 1993, p. 330, § 6; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 718, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 10; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the beginning of paragraph (a)(1), at the end of the first and third sentence in paragraph (h)(1), in paragraph (h)(3), in the first sentence in subsection (i), and in subsection (n).

The 2022 amendment, effective July 1, 2022, in paragraph (a)(1), substituted "the applicant meets" for "he meets" near the middle and substituted "the applicant so" for "he so" near the end; in the first sentence of paragraph (a)(5), substituted "Had a license" for "Had his license" at the beginning, and "been the subject of other disciplinary action" for "had other disciplinary action taken against him" near the middle; in subparagraphs (a)(10)(A) and (a)(10)(B), substituted "performance of such licensee's duties" for "performance of his or her duties"; in paragraph (h)(1), substituted "the division director or" for "he or she or" in the first sentence and substituted "the division director's" for "his or her" in the last sentence; substituted "in the capacity" for "in his or her capacity" in paragraph (h)(3); and, substituted "the applicant or licensee so requests" for "he so requests" at the end of subsection (j).

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews.

For review of 1996 professions and businesses legislation, see 13 Georgia U.L. Rev. 287 (1996).

43-10A-18. Enforcement.

Whenever it shall appear to the board that any person is or has been violating any provisions of this article or any of the lawful rules, regulations, or orders of the board, the board, the division director, or the appropriate district attorney may file a petition for injunction in the proper

superior court of this state against such person for the purpose of enjoining any such violation. It shall not be necessary to allege or prove that there is no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other legal remedy available, including but not limited to any right of criminal prosecution provided by law.

History.

Code 1981, § 43-7A-18, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2021, p. 729, § 3/HB 395; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" in the middle of the first sentence.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-19. Obtaining license by fraudulent representation.

It shall be unlawful for a person to obtain or attempt to obtain a license under this article by fraudulent representation.

History.

Code 1981, § 43-7A-19, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2021, p. 729, § 3/HB 395; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the end.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

43-10A-20. Penalty.

Any person violating Code Section 43-10A-19 or Code Section 43-10A-7 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $1,000.00 for each offense or by imprisonment for up to 12 months, or both.

History.

Code 1981, § 43-7A-20, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2022 amendment, effective July 1, 2022, substituted "$500.00 nor more than $1,000.00 for each offense or by imprisonment for up to 12 months, or both" for "$100.00 nor more than $1,000.00 for each offense and, in addition, may be imprisoned for a term not to exceed 12 months" at the end of this Code section.

43-10A-21. Restrictions on use of terms in corporate, partnership, association, or business names.

(a) No corporation, partnership, association, or other business entity may use in its corporate, partnership, association, or business name any term or title restricted under subsection (a) of Code Section 43-10A-7 or the term "professional counseling," "social work," or "marriage and family therapy," or any words, letters, titles, or figures indicating or implying that such entity or any of its employees, officers,

or agents are practicing a specialty regulated under this article, unless each person practicing a specialty in that entity, except those persons exempt under paragraph (1), (4), (5), (6), (12), (14), or (15) of subsection (b) of Code Section 43-10A-7, is licensed under this article.

(b) Any corporation, partnership, association, or other business entity which violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $1,000.00 for each offense or by imprisonment for up to 12 months, or both.

History.

Code 1981, § 43-7A-21, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 6; Ga. L. 1993, p. 330, § 7; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" twice in subsection (a).

The 2022 amendment, effective July 1, 2022, substituted "(12), (14), or (15)" for "(11), (13), or (14)" in subsection (a), and added "or by imprisonment for up to 12 months, or both" at the end of subsection (b).

43-10A-22. Restrictions on scope of article.

Nothing in this article shall be construed to authorize persons licensed under this article to practice nursing, occupational therapy, physical therapy, medicine, or psychology, as regulated under Chapters 26, 28, 33, 34, and 39, respectively, of this title nor shall anything in this article be construed to limit or regulate the practice of those licensed under Chapters 26, 28, 33, 34, and 39 of this title, nor shall anything in this article be construed to authorize persons licensed under this article to perform psychological testing as defined in Code Section 43-39-1.

History.

Code 1981, § 43-7A-22, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1993, p. 330, § 8; Ga. L. 2016, p. 257, § 4/SB 319; Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" throughout subsection (a) and in the first sentence of subsection (b).

The 2022 amendment, effective July 1, 2022, deleted the subsection (a) designation; and deleted former subsection (b), which read: "On or before January 1, 2017, the board, in consultation with the State Board of Examiners of Psychologists, shall promulgate rules and regulations that define for its licensees testing and assessments authorized by this article and not prohibited by this Code section. The board shall retain its full authority to determine the education, experience, and training necessary and appropriate to any testing or assessments conducted by its licensees. The board and the State Board of Examiners of Psychologists shall notify each other in the event of any enforcement inquiry, penalty, or legal order relating to testing or assessments that are not within the scope of authority for licensees of either board and permit the other board to render any advice or comment relating to such action 30 days prior to any final action by the board.".

Editor's notes.

Ga. L. 2016, p. 257, § 1/SB 319, not codified by the General Assembly, provides: "The General Assembly finds that the mental health and wellness needs of Georgia's citizens require the availability of trained mental health professionals

who can accurately diagnose, treat, prescribe, and appropriately assess the mental and emotional illnesses, disorders, and conditions from which they suffer and the vocational, educational, interpersonal, and intrapersonal needs essential to living and learning how to live productive and useful lives. It is the intent of the General Assembly to assure geographical and financial access for all of Georgia's citizens to excellent mental health services to the extent that Georgia's resources and regulations permit. To these ends, Georgia regulates its licensed psychiatrists, psychologists, professional counselors, marriage and family therapists, and clinical social workers who provide graduate level professional services to Georgia's private and public mental health services and to its public mental health, educational, and vocational support systems. The General Assembly seeks in such regulatory process to protect the public and assure it receives high quality and appropriate services and to define the scopes of practice and diagnostic authority for each of these professional groups consistent with the graduate level training and supervision, or its equivalent, that the members of each profession have sought and successfully completed. The General Assembly has empowered and authorized the Georgia Composite Medical Board, the State Board of Examiners of Psychologists, and the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists to fulfill these responsibilities and expects them to work together to assure a continuum of professional services that ensure appropriate diagnostic and assessment functions for each profession and the psychotherapeutic and counseling treatment services appropriate to each profession. The General Assembly recognizes that advances in medicine, science, education, training, and service delivery occur constantly in our modern history and therefore also expects the regulatory boards for each profession to assure that its licensees seek and successfully complete appropriate continuing education and training for the functions and services authorized to each profession."

43-10A-23. Insurance coverage for specialty practitioners.

Nothing in this article shall be construed to mandate insurance coverage or reimbursement for specialty practitioners licensed under this article.

History.

Code 1981, § 43-7A-23, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2021, p. 729, § 3/HB 395; § 1; Ga. L. 2022, p. 523, § 1/HB 972.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" twice.

Editor's notes.

Ga. L. 2022, p. 523, § 1/HB 972, effective July 1, 2022, reenacted this Code section without change.

ARTICLE 2

PROFESSIONAL COUNSELORS LICENSURE COMPACT

Effective date.

Ga. L. 2021, p. 729, § 3/HB 395 provides that this article becomes effective upon enactment by the tenth member state. This requirement was met April 19, 2022.

43-10A-50. Short title.

This article shall be known and may be cited as the "Professional Counselors Licensure Compact Act."

History.
Code 1981, § 43-10A-50, enacted by Ga. L. 2021, p. 729, § 3/HB 395; Ga. L. 2022, p. 352, § 43/HB 1428.
The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "as the 'Professional" for "as 'The Professional".

43-10A-51. Text of compact.

The Professional Counselors Licensure Compact is enacted into law and entered into by the State of Georgia with any and all other states legally joining therein in the form substantially as follows:

"PROFESSIONAL COUNSELORS LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services. The practice of Professional Counseling occurs in the State where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure. This Compact is designed to achieve the following objectives:

A. Increase public access to Professional Counseling services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multistate practice for Licensed Professional Counselors;

D. Support spouses of relocating Active Duty Military personnel;

E. Enhance the exchange of licensure, investigative, and disciplinary information among Member States;

F. Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

G. Support the uniformity of Professional Counseling licensure requirements throughout the States to promote public safety and public health benefits;

H. Invest all Member States with the authority to hold a Licensed Professional Counselor accountable for meeting all State practice

laws in the State in which the client is located at the time care is rendered through the mutual recognition of Member State licenses;

I. Eliminate the necessity for licenses in multiple States; and

J. Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. 'Active Duty Military' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. 'Adverse Action' means any administrative, civil, equitable or criminal action permitted by a State's laws which is imposed by a licensing board or other authority against a Licensed Professional Counselor, including actions against an individual's license or Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other Encumbrance on licensure affecting a Licensed Professional Counselor's authorization to practice, including issuance of a cease and desist action.

C. 'Alternative Program' means a non-disciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.

D. 'Continuing Competence/Education' means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

E. 'Counseling Compact Commission' or 'Commission' means the national administrative body whose membership consists of all States that have enacted the Compact.

F. 'Current Significant Investigative Information' means:

1. Investigative Information that a Licensing Board, after a preliminary inquiry that includes notification and an opportunity for the Licensed Professional Counselor to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative Information that indicates that the Licensed Professional Counselor represents an immediate threat to public

health and safety regardless of whether the Licensed Professional Counselor has been notified and had an opportunity to respond.

G. 'Data System' means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

H. 'Encumbered License' means a license in which an Adverse Action restricts the practice of licensed Professional Counseling by the Licensee and said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

I. 'Encumbrance' means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Licensed Professional Counseling by a Licensing Board.

J. 'Executive Committee' means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

K. 'Home State' means the Member State that is the Licensee's primary State of residence.

L. 'Impaired Practitioner' means an individual who has a condition(s) that may impair their ability to practice as a Licensed Professional Counselor without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

M. 'Investigative Information' means information, records, and documents received or generated by a Professional Counseling Licensing Board pursuant to an investigation.

N. 'Jurisprudence Requirement' if required by a Member State, means the assessment of an individual's knowledge of the laws and Rules governing the practice of Professional Counseling in a State.

O. 'Licensed Professional Counselor' means a counselor licensed by a Member State, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.

P. 'Licensee' means an individual who currently holds an authorization from the State to practice as a Licensed Professional Counselor.

Q. 'Licensing Board' means the agency of a State, or equivalent, that is responsible for the licensing and regulation of Licensed Professional Counselors.

R. 'Member State' means a State that has enacted the Compact.

S. 'Privilege to Practice' means a legal authorization, which is equivalent to a license, permitting the practice of Professional Counseling in a Remote State.

T. 'Professional Counseling' means the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor.

U. 'Remote State' means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Privilege to Practice.

V. 'Rule' means a regulation promulgated by the Commission that has the force of law.

W. 'Single State License' means a Licensed Professional Counselor license issued by a Member State that authorizes practice only within the issuing State and does not include a Privilege to Practice in any other Member State.

X. 'State' means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

Y. 'Telehealth' means the application of telecommunication technology to deliver Professional Counseling services remotely to assess, diagnose, and treat behavioral health conditions.

Z. 'Unencumbered License' means a license that authorizes a Licensed Professional Counselor to engage in the full and unrestricted practice of Professional Counseling.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To Participate in the Compact, a State must currently:

1. License and regulate Licensed Professional Counselors;

2. Require Licensees to pass a nationally recognized exam approved by the Commission;

3. Require Licensees to have a 60 semester-hour (or 90 quarter-hour) master's degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the following topic areas:

a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

4. Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

5. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws;

6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member State in accordance with the terms of the Compact and Rules; and

7. Provide for the attendance of the State's commissioner to the Counseling Compact Commission meetings.

C. Member States may charge a fee for granting the Privilege to Practice.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. A license issued to a Licensed Professional Counselor by a Home State to a resident in that State shall be recognized by each Member State as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member State.

SECTION 4. PRIVILEGE TO PRACTICE

A. To exercise the Privilege to Practice under the terms and provisions of the Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States Social Security Number or National Practitioner Identifier;

3. Be eligible for a Privilege to Practice in any Member State in accordance with Section 4(D), (G) and (H);

4. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years;

5. Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote State(s);

6. Pay any applicable fees, including any State fee, for the Privilege to Practice;

7. Meet any Continuing Competence/Education requirements established by the Home State;

8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Privilege to Practice; and

9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member State within 30 days from the date the action is taken.

B. The Privilege to Practice is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of Section 4(A) to maintain the Privilege to Practice in the Remote State.

C. A Licensee providing Professional Counseling in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

D. A Licensee providing Professional Counseling services in a Remote State is subject to that State's regulatory authority. A Remote State may, in accordance with due process and that State's laws, remove a Licensee's Privilege to Practice in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

E. If a Home State license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

F. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4(A) to obtain a Privilege to Practice in any Remote State.

G. If a Licensee's Privilege to Practice in any Remote State is removed, the individual may lose the Privilege to Practice in all other Remote States until the following occur:

1. The specific period of time for which the Privilege to Practice was removed has ended;

2. All fines have been paid; and

3. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

H. Once the requirements of Section 4(G) have been met, the Licensee must meet the requirements in Section 4(A) to obtain a Privilege to Practice in a Remote State.

SECTION 5. OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

A. A Licensed Professional Counselor may hold a Home State license, which allows for a Privilege to Practice in other Member States, in only one Member State at a time.

B. If a Licensed Professional Counselor changes primary State of residence by moving between two Member States:

1. The Licensed Professional Counselor shall file an application for obtaining a new Home State license based on a Privilege to Practice, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of a Privilege to Practice, the new Home State shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:

a. a Federal Bureau of Investigation fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with Public Law 92-544;

b. other criminal background check as required by the new Home State; and

c. completion of any requisite Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Privilege to Practice once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Licensed Professional Counselor cannot meet the criteria in Section 4, the new Home State may apply its requirements for issuing a new Single State License.

5. The Licensed Professional Counselor shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If a Licensed Professional Counselor changes Primary State of Residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the State criteria shall apply for issuance of a Single State License in the new State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States, however for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active Duty Military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new State, or through the process outlined in Section 5.

SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

A. Member States shall recognize the right of a Licensed Professional Counselor, licensed by a Home State in accordance with Section 3 and under Rules promulgated by the Commission, to practice Professional Counseling in any Member State via Telehealth under a Privilege to Practice as provided in the Compact and Rules promulgated by the Commission.

B. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

SECTION 8. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice within that Member State, and

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Only the Home State shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home State.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a

Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Licensed Professional Counselor who changes primary State of residence during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

E. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Professional Counseling practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member States during the pendency of the order.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint public agency known as the Counseling Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one (1) delegate selected by that Member State's Licensing Board.

2. The delegate shall be either:

a. A current member of the Licensing Board at the time of appointment, who is a Licensed Professional Counselor or public member; or

b. An administrator of the Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the law of the State from which the delegate is appointed.

4. The Member State Licensing Board shall fill any vacancy occurring on the Commission within 60 days.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

8. The Commission shall by Rule establish a term of office for delegates and may by Rule establish term limits.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate Rules which shall be binding to the extent and in the manner provided for in the Compact;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Committee; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Professional Counseling licensure and practice.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

2. The Executive Committee shall be composed of up to eleven (11) members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission; and

b. Up to four (4) ex-officio, nonvoting members from four (4) recognized national professional counselor organizations.

c. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually.

5. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Privilege to Practice;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting

if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against

whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Privilege to Practice;

4. Non-confidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for

a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 11. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its Rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.

B. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty (30) days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State Professional Counseling Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;

2. A State or federal governmental subdivision or agency; or

3. An association having at least twenty-five (25) members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

G. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

H. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Professional Counseling Licensing Board to comply with the investigative and Adverse Action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Professional Counseling licensure agreement or

other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 14. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations, including scope of practice, of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws properly promulgated by the Commission, are binding upon the Member States.

E. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State."

History.
Code 1981, § 43-10A-51, enacted by Ga. L. 2021, p. 729, § 3/HB 395.

CHAPTER 11

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

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43-11-80. Acts, services, practices, and procedures authorized.
43-11-81. Direct supervision required.
43-11-82. Exceptions to application of article.

Cross references.

Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-1.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Trials.

Periodontal Malpractice, 89 Am. Jur. Trials 1.

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C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 508 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 4 et seq., 41, 47, 61 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes,

§§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 42 A.L.R. 1342; 54 A.L.R. 600.

Right of corporation or individual, not himself licensed, to practice medicine, surgery, or dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality, construction, and application of statute relating to dental hygienists, 11 A.L.R.2d 724.

Regulation of prosthetic dentistry, 45 A.L.R.2d 1243.

Liability of doctor or dentist using force to restrain or discipline patient, 89 A.L.R.2d 983.

What constitutes total or permanent disability within the meaning of insurance policy issued to physician or dentist, 21 A.L.R.3d 677.

Criticism or disparagement of physician's or dentist's character, competence, or conduct as defamation, 38 A.L.R.4th 836.

Liability for dental malpractice in provision or fitting of dentures, 77 A.L.R.4th 222.

Liability of orthodontist for malpractice, 81 A.L.R.4th 632.

Medical Malpractice: Dental Crowns or Bridges, 58 A.L.R.7th Art. 2.

ARTICLE 1

GENERAL PROVISIONS

43-11-1. Definitions.

As used in this chapter, the term:

(1) "Accredited dental college" and "accredited dental school" or "accredited school of dentistry" means a dental school, college, or university with an education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(2) "Accredited dental hygiene school" means a dental hygiene education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(3) "Advanced dental education program" means an accredited dental advanced specialty education program or accredited dental education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(4) "Board" means the Georgia Board of Dentistry.

(5) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or combination thereof. A patient whose only response is reflex withdrawal from

repeated painful stimuli shall not be considered to be in a state of conscious sedation. The use of nitrous oxide is not considered conscious sedation for purposes of this chapter.

(6) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, or any combination thereof, whether using surgical or nonsurgical procedures, of diseases, disorders, or conditions, or any combination thereof, of the oral cavity, maxillofacial area, or the adjacent and associated structures, or any combination thereof, and their impact on the human body provided by a dentist, within the scope of his or her education, training, and experience, in accordance with the ethics of the profession and applicable law, including, but not limited to, the acts specified in Code Section 43-11-17.

(6.1) "Executive director" means the executive director appointed by the board pursuant to Code Section 43-11-2.1.

(7) "General anesthesia" means an induced state of depressed consciousness, or an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually and independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacological or nonpharmacological method or combination thereof. For purposes of this chapter, "general anesthesia" includes deep sedation.

(8) "Instructor" means either a dentist or a dental hygienist whom the board has granted a teacher's or instructor's license pursuant to Code Section 43-11-42.

(9) "Licensed dental hygienist" means a dental hygienist licensed and in good standing in this state pursuant to this chapter.

(10) "Licensed dentist" means a dentist licensed and in good standing in this state pursuant to this chapter.

(11) "Training clinic" means a clinic operated as a nonprofit facility by an accredited dental college, advanced dental education program, or accredited dental hygiene school primarily to train students or residents of such college, program, or school.

History.

Code 1981, § 43-11-1, enacted by Ga. L. 1987, p. 932, § 1; Ga. L. 1999, p. 234, § 1; Ga. L. 2004, p. 720, § 1; Ga. L. 2008, p. 530, § 1/SB 363; Ga. L. 2013, p. 192, § 2-1/HB 132; Ga. L. 2014, p. 866, § 43/SB 340.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, punctuation was revised in paragraph (1).

Editor's notes.

For application of this statute in 2021, see Executive Orders 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, 05.28.21.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 6, 13 et seq., 26 et seq., 45, 74 et seq., 121 et seq., 131 et seq.
C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 4 et seq., 52 et seq., 71 et seq.
ALR.
Physicians' and surgeons' liens, 39 A.L.R.5th 787.

43-11-2. Georgia Board of Dentistry; members; qualifications; terms; voting; powers.

(a) A board to be known as the Georgia Board of Dentistry is created. The board shall consist of 17 members to be appointed and commissioned by the Governor as provided in subsection (b) of this Code section.

(b)(1) Thirteen members of the board shall be dentists and shall be appointed as follows: The members of the board who are dentists serving on July 1, 1981, shall continue to serve out their respective terms of office. As each such member's term of office subsequently expires, the Governor shall appoint a new member who shall be a practicing dentist licensed by this state. The Georgia Dental Association may, at each annual meeting, nominate four reputable practicing dentists for each expired or next expiring board member's term; and, from each group of four dentists so nominated, the Governor may appoint one as the new member of said board.

(2) Two members of the board shall be dental hygienists who are not dentists, who are residents of this state, and who are practicing dental hygienists in this state and shall be appointed by the Governor. No one shall be eligible as a dental hygienist member of the board unless he or she is a citizen of this state and has lawfully practiced as a dental hygienist for five or more years at the time of his or her appointment and is not financially interested in, nor connected with, any dental college or dental hygiene school. If such a member ceases to be a resident of this state or ceases practicing in this state, that position on the board shall be deemed vacated. The Georgia Dental Hygienists Association may nominate four reputable dental hygienists who are not dentists for each expired or expiring term; and, from each group of four dental hygienists so nominated, the Governor may appoint one as the new member of the board.

(3) One member of the board shall be a citizen of this state who is not a dentist or a dental hygienist and shall be appointed by the Governor.

(4) One member of the board shall be a resident of this state who has direct knowledge of the education of dental students in this state

and shall be appointed by the Board of Regents of the University System of Georgia.

(5) The term of office of each member of the board shall be for five years and until the appointment and qualification of a successor.

(6) Each vacancy on the board shall be filled by the Governor for the unexpired term in the same manner as the original appointment.

(c) No one shall be eligible as a dentist member of the board unless he or she is a citizen of this state and has lawfully engaged in the practice of dentistry for five or more years at the time of his or her appointment and is not financially interested in, nor connected with, any dental college.

(d)(1) The dental hygienist members of the board may vote only on matters relating to dental hygiene, administration, and policy which do not directly relate to practical or scientific examination of dentists for licensing in this state.

(2) The citizen member of the board appointed pursuant to paragraph (3) of subsection (b) of this Code section may vote only on matters relating to administration and policy which do not directly relate to practical and scientific examination of dentists and dental hygienists for licensing in this state.

(e) The board may bring an action to enjoin any person, firm, partnership, corporation, or other entity who without being licensed or registered to do so by the board engages in or practices the profession of dentistry. The proceeding shall be filed in the county in which such person resides or, in the case of a firm, partnership, corporation, or other entity where the firm, partnership, corporation, or other entity maintains its principal office. Unless it shall be made to appear that such person, firm, partnership, corporation, or other entity so engaging in or practicing dentistry is licensed or registered, the injunction shall be issued, and such person, firm, partnership, corporation, or other entity shall be perpetually enjoined from such activities throughout the state. It shall not be necessary in order to obtain the equitable relief provided in this subsection that the board allege and prove that there is no adequate remedy at law. It is declared that such unlicensed activities as are mentioned in this chapter are a menace and a nuisance dangerous to the public health, safety, and welfare.

History.

Ga. L. 1920, p. 132, § 1; Ga. L. 1921, p. 179, § 1; Code 1933, § 84-702; Ga. L. 1949, p. 1367, § 2; Ga. L. 1956, p. 25, § 1; Ga. L. 1972, p. 815, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 240, § 1; Ga. L. 1981, p. 610, § 1; Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 234, § 2; Ga. L. 2022, p. 652, § 1/HB 1219.

The 2022 amendment, effective July 1, 2022, substituted "17 members" for "11 members" in the second sentence in subsection (a); rewrote subsection (b), relating to the same subject matter; substi-

tuted "members of the board" for "member of the board" in paragraph (d)(1), and substituted "appointed pursuant to paragraph (3) of subsection (b) of this Code section" for "who is not a dentist or dental hygienist" in paragraph (d)(2).

Law reviews.

For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners (now Georgia Composite Medical Board) be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Constitutionality of statute. See Hortman v. Yarbrough, 214 Ga. 693, 107 S.E.2d 202, 1959 Ga. LEXIS 312 (1959) (see O.C.G.A. § 43-11-2).

This law is a general and not a special law and does not offend Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Hortman v. Yarbrough, 214 Ga. 693, 107 S.E.2d 202, 1959 Ga. LEXIS 312 (1959).

Board's exclusion of black dentists from board's membership as state action. — Legislature, by giving to voluntary associations of dentists the right to nominate members of various state agencies, made the association an agency of the State of Georgia to that extent. By excluding black dentists from the association's membership it thereby deprives black dentists of the right to vote in connection with the nomination of dentists to fill places in the agencies. The result of such action is that only dentists approved by those of the white race can be elected to such offices and black dentists can have no voice in their selection. This seems to be a clear violation of U.S. Const., amend. 14. Bell v. Georgia Dental Ass'n, 231 F. Supp. 299, 1964 U.S. Dist. LEXIS 7590 (N.D. Ga. 1964).

Making dentures, even at cost, constitutes practice of dentistry. — Respondent's testimony admitting that the respondent had performed services for witnesses in making and repairing appliances to be used as teeth, and that the appliances had not been ordered by, or returned to, a licensed dentist, and stating that the respondent had not charged a sufficient amount for services to realize any profit over and above material that went into the work, and an amount to take care of overhead expense since the respondent was enjoined in 1957 from practicing dentistry, showed that the respondent had practiced dentistry under the definition of the law, and the judgment of the trial judge finding the respondent in contempt of court was amply supported by evidence. Hortman v. Georgia Bd. of Dental Exmrs., 214 Ga. 560, 105 S.E.2d 732, 1958 Ga. LEXIS 491 (1958).

OPINIONS OF THE ATTORNEY GENERAL

Voting rights of consumer and dental hygienist board members. — Consumer member of the Georgia Board of Dentistry may vote on all matters except those which relate directly to practical and scientific examination for licensing of dental hygienists and dentists; the dental hygienist member may vote on all matters except those which relate directly to practical and scientific examination for licensure of dentists. 1978 Op. Att'y Gen. No. 78-72. (But see 2004 Op. Att'y Gen. No. 04-2).

Consumer member for the Georgia Board of Dentistry may vote on any matter coming before the board without restriction; to the extent that the amendment of O.C.G.A. § 43-1-18 in 2000 changed the voting authority of the consumer member, the views expressed in 1978 Op. Att'y Gen. 78-72 are modified. Voting rights of the dental hygienist member are unaffected by the statutory change and remain as expressed in the prior opinion. 2004 Op. Att'y Gen. No. 04-2.

RESEARCH REFERENCES

C.J.S.

66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104, 108.

ALR.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-11-2.1. Board authority; appointment, powers, and duties of executive director; meetings.

(a) On and after July 1, 2013, the board shall not be under the jurisdiction of the Secretary of State but shall be a division of the Department of Community Health; provided, however, that except as otherwise specifically provided, the board shall be autonomous from the Board of Community Health and the commissioner of community health and shall exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department and prepare its budget and submit its budgetary requests, if any, through the department. Such transfer shall in no way affect any existing obligations, liabilities, or rights of the board, as such existed on June 30, 2013. The board shall have with respect to all matters within the jurisdiction of the board as provided under this chapter the powers, duties, and functions of professional licensing boards as provided in Chapter 1 of this title.

(b) The board shall appoint and fix the compensation, which shall be approved by the Board of Community Health, of an executive director of such board who shall serve at the pleasure of the board. Any reference in this chapter to the executive director shall mean the executive director appointed pursuant to this subsection. The executive director shall have those duties and powers prescribed by the board and any power, duty, and functions granted to the division director with respect to professional licensing boards under Chapter 1 of Title 43 but shall not be subject to any approval or other powers exercised by the Secretary of State.

(c) Meetings and hearings of the board shall be held at the site of the office of the board or at such other site as may be specified by the president of the board. A majority of the members of the board shall constitute a quorum for the transaction of business of the board.

(d) The board, through the executive director, may hire investigators for the purpose of conducting investigations. Any person so employed, if a P.O.S.T. certified peace officer under Chapter 8 of Title 35, shall be considered to be a peace officer and shall have all powers, duties, and status of a peace officer of this state; provided, however, that such investigators shall only be authorized, upon written approval of the executive director, notwithstanding Code Sections 16-11-126 and 16-11-

129, to carry firearms in the performance of their duties and exercise the powers of arrest in the performance of their duties.

(e) The venue of any action involving members of the board shall be the county in which is found the primary office of the governmental entity of which the defendant is an officer. The executive director of the board shall not be considered a member of the board in determining the venue of any such action and no court shall have jurisdiction of any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(f) The board shall give point credit to veterans in the same manner as required under Code Sections 43-1-9 through 43-1-13.

(g) Initial judicial review of a final decision of the board shall be held solely in the superior court of the county of domicile of the board.

(h) The executive director shall make a report no later than December 31 of each year covering the activities of the board for that calendar year, which shall be made available to any member of the General Assembly upon request.

(i) The executive director shall prepare and maintain a roster containing the names and addresses of all current dental and dental hygiene licensees. A copy of this roster shall be available to any person upon request at a fee prescribed by the executive director sufficient to cover the cost of printing and distribution.

(j) The executive director, with the approval of the board, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required of the board.

(k) It shall be the duty of the executive director to keep minutes and a record of all acts of the board and such other books and records as may be necessary to show the acts of the board.

History.
Code 1981, § 43-11-2.1, enacted by Ga. L. 2013, p. 192, § 2-2/HB 132.

43-11-3. Election of officers.

The board shall elect from its members a president and such other officers as the board in its discretion may see fit.

History.
Ga. L. 1920, p. 132, § 2; Code 1933, § 84-704; Ga. L. 1976, p. 484, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Duties of joint-secretary under former Code 1933, § 84-702. — While a board had authority under former Code 1933, § 84-704 (see now O.C.G.A. § 43-11-3) to elect from the board's members a president and such other officers as the board may see fit, any application filed with or communication addressed to "such other officer" as the board in the board's discretion had seen fit to elect had no legal status since former Code 1933, § 84-702 (see now O.C.G.A. § 43-11-2) clearly imposed upon the joint-secretary the duty to bring together and keep records relating to the several boards, to receive all applications for licenses, and to collect all fees required by law. 1963-65 Ga. Op. Att'y Gen. 182.

43-11-4. Meetings.

It shall be the duty of the board to meet annually at the close of the session of a majority of the dental colleges and to hold such other meetings as the duties of the board may require. It shall also be the duty of the board to meet in any called meeting that may be ordered in writing by not less than three members of the board, or by its president, upon not less than 15 days' notice in writing, stating the time, place, and object of such called meeting.

History.
Ga. L. 1920, p. 132, § 3; Code 1933, § 84-705; Ga. L. 1976, p. 484, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Board meeting without full notice is valid if no rights affected. — When all members of the board convene in a called meeting after notice, even though notice is not for the period of 15 days, and transact any business coming before the board, and when failure to give 15 days notice does not involve the right of any third person, the meeting is legal and any business transacted in such meeting is in order. 1945-47 Ga. Op. Att'y Gen. 489.

43-11-5. Address of board members.

Each member of the board, upon the receipt of his or her commission, shall file with the executive director his or her post office address and thereafter a notice of any change thereof. Any notice mailed to such address by the executive director shall be deemed to comply with the requirements of this chapter as notice to him or her.

History.
Ga. L. 1920, p. 132, § 20; Code 1933, § 84-703; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-3/HB 132.

43-11-6. Expense and mileage allowances; other reimbursements.

Each member of the board shall receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same

mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within this state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car equal to that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the president and executive director. Out-of-state travel by board members must be approved by the board president and the executive director.

History.

Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 2; Ga. L. 2013, p. 192, § 2-4/HB 132.

43-11-7. Powers and duties of board.

The board shall perform such duties and possess and exercise such powers, relative to the protection of the public health and the control and regulation of the practice of dentistry as this chapter prescribes and confers upon it. The board shall also have the following powers and duties:

(1) To adopt, amend, and repeal rules and regulations to carry out the performance of its duties as set forth in this chapter;

(2) To examine all applicants for licenses to practice dentistry who are entitled under this chapter to be so examined and issue licenses to practice dentistry according to this chapter;

(3) To make all necessary bylaws and rules for the governance of the board and the performance of its duties;

(4) To have and use a common seal bearing the name "Georgia Board of Dentistry" by which the board shall authenticate the acts of the board;

(5) To establish rules regarding licensure including, but not limited to, inactive status as the board deems appropriate;

(6) To issue, deny, or reinstate the licenses or permits of duly qualified applicants for licensure or permits under this chapter;

(7) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional dental training, require dental community service, or otherwise sanction licensees,

permit holders or others over whom the board has jurisdiction under this chapter;

(8) To employ an executive director and such other staff as the board may deem necessary and appropriate to implement this chapter and provide support and who shall be subject to the same confidentiality requirements of the board;

(9) To keep a docket of public proceedings, actions, and filings;

(10) To set its office hours;

(11) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;

(12) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(13) To initiate investigations for purposes of discovering violations of this chapter;

(14) To administer oaths, subpoena witnesses and documentary evidence including dental records, and take testimony in all matters relating to its duties;

(15) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(16) To conduct investigative interviews;

(17) To issue cease and desist orders to stop the unlicensed practice of dentistry or other professions licensed or permitted under this chapter and impose penalties for such violations;

(18) To refer cases for criminal prosecution or injunctive relief to appropriate prosecuting attorneys or other law enforcement authorities of this state, another state, or the United States;

(19) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(20) To sue and be sued in a court of competent jurisdiction;

(21) To enter into contracts; and

(22) To accept donations, contributions, grants, or bequests of funds or property.

History. Code 1933, § 84-704.1, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 4; Ga. L. 2013, p. 192, § 2-5/HB 132.

OPINIONS OF THE ATTORNEY GENERAL

Board lacks authority to restrict scope of practice of a dentist through the board's rule-making power unless and until the General Assembly grants to the board this power through new legislation. 1976 Op. Att'y Gen. No. U76-54.

43-11-8. Board to examine applicants, issue licenses, make by-laws and rules; seal; books and records.

Reserved. Repealed by Ga. L. 2013, p. 192, § 2-6/HB 132, effective July 1, 2013.

Editor's notes.
This Code section was based on Ga. L. 1920, p. 132, § 4; Code 1933, § 84-707; Ga. L. 1976, p. 484, § 1; Ga. L. 1979, p. 853, § 1; Ga. L. 2000, p. 1706, § 19.

43-11-9. Rules and regulations affecting dental hygienists, dental assistants, or other persons.

In order to protect and promote the public health and welfare of the citizens of this state, the board shall prescribe by rule or regulation those acts, services, procedures, and practices which may be performed by dental hygienists, dental assistants, or other persons at the direction of and under the supervision of a licensed dentist and shall impose such requirements and restrictions, including the degree of supervision required, on the performance thereof by such dental hygienists, dental assistants, and other persons as it shall deem necessary and proper.

History.
Code 1933, § 84-702.1, enacted by Ga. L. 1972, p. 843, § 2; Ga. L. 1976, p. 484, § 1.

43-11-10. Dental specialties.

The board is authorized to provide by rule or regulation for definitions of the several dental specialties.

History.
Code 1933, § 84-733, enacted by Ga. L. 1976, p. 484, § 1.
Administrative rules and regulations.
Specialities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-11.

43-11-11. Gathering of census data on practicing dentists and dental hygienists; standard form.

(a) The board shall gather census data on each dentist and dental hygienist in this state. Such census data shall be obtained from each dentist and dental hygienist as part of the license renewal process on a biennial basis. Renewal of a license shall be contingent on completion and provision of a census questionnaire to the board. Failure by a licensee to submit the census questionnaire shall authorize the board to

refuse to grant a license renewal, revoke a license, or discipline a licensee under Code Section 43-11-47.

(b) The board shall by regulation establish a standard form for the collection of census data. Such form and the census data obtained shall be available for dissemination to any member of the public.

(c) The standard form shall at a minimum request the following information from dentists renewing their license:

(1) The dentist's age and gender;

(2) Each location identified by ZIP Code in which the dentist operates a private dental practice or practices dentistry;

(3) Whether the dentist is a specialist and the specialty in which the dentist is engaged; and

(4) Whether the dentist practices dentistry full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week.

(d) The standard form shall at a minimum request the following information from dental hygienists renewing their license:

(1) The dental hygienist's age and gender;

(2) Each location identified by ZIP Code in which the dental hygienist provides treatment services; and

(3) Whether the dental hygienist provides treatment full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week.

History. Ga. L. 1920, p. 132, § 20; Code 1933, § 84-715; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 5; Ga. L. 2013, p. 192, § 2-7/HB 132.

43-11-12. Public inspection of board records; nondisclosure of confidential records.

It shall be the duty of the executive director to keep at his or her office the minutes of the board, together with all the books and records of the board, which shall be public records open to inspection by the public except on Sundays and legal holidays. The following shall be treated as confidential and need not be disclosed without prior approval of the board:

(1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in the official board minutes.

History.
Ga. L. 1920, p. 132, § 5; Code 1933, § 84-708; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 67/HB 24; Ga. L. 2013, p. 192, § 2-8/HB 132.

Cross references.
Inspection of public records generally, § 50-18-70 et seq.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-11-13. Service of orders and subpoenas of board; service of notice or process on executive director.

(a) It shall be the duty of the several sheriffs, their deputies, and the constables to serve any and all lawful orders and subpoenas of the board. The board may also appoint any other person to serve any decision, order, or subpoena of the board, and it shall be that person's duty to execute the same.

(b) All orders and processes of the board shall be signed and attested by the executive director or the president of the board in the name of the board with its seal attached; and any notice or legal process necessary to be served upon the board may be served upon the executive director.

History.
Ga. L. 1920, p. 132, §§ 18, 19; Code 1933, §§ 84-719, 84-720; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 1; Ga. L. 1999, p. 234, § 7; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-9/HB 132.

JUDICIAL DECISIONS

Service upon joint-secretary is insufficient to obtain appearance of individual board members. — Service upon the joint-secretary of the state examining boards, in reliance upon provisions of former Code 1933, §§ 84-101 and 84-102 (see now O.C.G.A. § 43-1-2), was not sufficient to obtain appearance of individual members of the Georgia Board of Dentistry since the board was itself a legal entity capable of suing and being sued under former Code 1933, § 84-702 (see now O.C.G.A. § 43-11-2). Clark v. Board of Dental Exmrs., 240 Ga. 289, 240 S.E.2d 250, 1977 Ga. LEXIS 1480 (1977).

43-11-14. Enforcement of orders and subpoenas of board; contempt.

The board shall have the power to enforce any and all of its lawful

orders or subpoenas; to punish as for a contempt anyone obstructing or violating the same and shall also have the power to conduct any and all hearings before it in an orderly and legal manner; to punish anyone as for a contempt who may attempt to or who shall interfere with or in any manner obstruct such hearing; and may also punish as for a contempt any act of indecorum or discourtesy committed in the presence of the board when in session. The board may fine anyone an amount not exceeding $100.00 for a contempt and in default of the payment thereof may make application to any superior court having jurisdiction to confine the offender to jail for not more than ten days.

History.
Ga. L. 1920, p. 132, § 17; Code 1933, § 84-718; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 8.

43-11-15. Enforcement of chapter.

For the purpose of carrying out this chapter, the board is authorized to enforce this chapter by prosecution or otherwise and to authorize the payment of expenses incurred in prosecuting cases out of the funds collected under this chapter.

History.
Ga. L. 1920, p. 132, § 23; Code 1933, § 84-717; Ga. L. 1976, p. 484, § 1.

43-11-16. Liability for action of peer review committee or board.

No dentist licensed under this chapter and acting or serving on a peer review committee or board or hospital review committee shall be liable for damages for any action of such board or committee or for any official action taken or recommendation made as a member of such board or committee.

History.
Code 1933, § 84-714.1, enacted by Ga. L. 1974, p. 532, § 2; Ga. L. 1976, p. 484, § 1.

Cross references.
Medical peer review groups generally, § 31-7-130 et seq.

RESEARCH REFERENCES

ALR.
Right of voluntary disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 A.L.R.4th 1273.

43-11-17. Acts which constitute the practice of dentistry.

(a) Except as expressly provided in this chapter, any person who performs any of the following procedures, operations, or services shall be regarded as practicing dentistry within the meaning of this chapter:

(1) Operates or performs part of any dental operation of any kind

upon the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures for the treatment of diseases or lesions of such structures;

(2) Extracts teeth or attempts to correct a malposition thereof;

(3) Fills or crowns a human tooth or teeth;

(4) Does any dental operation whatsoever on the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures;

(5) Examines any human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures or takes an impression thereof for the purpose of diagnosing, treating, or operating upon the same;

(6) Supplies, makes, fits, repairs, adjusts, or relines, directly for or to an ultimate user of the product in the State of Georgia, any appliance, cap, covering, prosthesis, or cosmetic covering, as defined by rules and regulations established by the board, usable on or as human teeth unless such provision, production, fit, repair, adjustment, or reline of such product is ordered by and returned to a licensed dentist or unless such product is used solely for theatrical purposes as defined by rules and regulations established by the board;

(7) Undertakes to do or perform any physical evaluation of a patient in his or her office or in a hospital, clinic, or other medical or dental facility prior to, incident to, and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(8) Diagnoses dental radiographs or makes radiographs except for use by a licensed dentist or a licensed physician; or

(9) By any means whatsoever makes it known, implies, or holds out to the public in any fashion that such person will do any of the operations, procedures, or services set forth in this subsection.

(b) Proof of any one or all of the acts mentioned in this Code section shall constitute prima-facie evidence of the practice of dentistry.

History.

Ga. L. 1920, p. 132, § 6; Code 1933, § 84-701; Ga. L. 1949, p. 1161, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 2; Ga. L. 1987, p. 932, § 2; Ga. L. 1991, p. 450, § 1; Ga. L. 1999, p. 234, § 9; Ga. L. 2004, p. 720, § 2.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, in paragraphs (a)(1), (a)(4) and (a)(5), commas were inserted following "associated structures".

Editor's notes.

For application of this statute in 2021, see Executive Orders 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, 05.28.21.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02..

JUDICIAL DECISIONS

Statute was constitutional and was not violative of constitutional rights under federal or state constitutions. Clark v. Board of Dental Exmrs., 240 Ga. 289, 240 S.E.2d 250, 1977 Ga. LEXIS 1480 (1977).

Constitutionality of section. — See Hortman v. Yarbrough, 214 Ga. 693, 107 S.E.2d 202, 1959 Ga. LEXIS 312 (1959).

Provision regarding making or repairing dentures does not offend due process principles. — Portion of O.C.G.A. § 43-11-17 defining making or repairing appliances usable on teeth or as teeth, unless ordered by a licensed dentist as part of the practice of dentistry, does not offend due process of law principles. Holcomb v. Johnston, 213 Ga. 249, 98 S.E.2d 561, 1957 Ga. LEXIS 351 (1957); Wrzesinski v. State, 271 Ga. 659, 522 S.E.2d 461, 1999 Ga. LEXIS 792 (1999).

Taking impressions or fitting plates as practice of dentistry. — Taking an impression and fitting a plate made from such impression to the mouth of a particular person, and the doing of the acts necessary therefore, may constitute the practice of dentistry, even though making or preparing a plate may be purely mechanical. Atlanta S. Dental College v. State, 51 Ga. App. 379, 180 S.E. 620, 1935 Ga. App. LEXIS 703 (1935).

Accepting cash payment for examining person's mouth and gums and making alginate impression of the sort customarily made as a necessary preliminary to the manufacture of a permanent denture constituted the practice of dentistry. West v. State, 178 Ga. App. 550, 343 S.E.2d 759, 1986 Ga. App. LEXIS 2549 (1986).

Charge of any sort for dental work constitutes practice of dentistry. — When one charges a fee or salary or any reward, whether paid or unpaid to anyone directly or indirectly for dental work, such person practices dentistry. Rivers v. Atlanta S. Dental College, 187 Ga. 720, 1 S.E.2d 750, 1939 Ga. LEXIS 763 (1939).

Respondent's testimony admitting that services were performed for witnesses in making and repairing appliances to be used as teeth, and that the appliances had not been ordered by, or returned to, a licensed dentist, and respondent's statement that respondent had not charged a sufficient amount for services to realize any profit over and above material that went into the work and an amount to take care of the overhead expense since the respondent was enjoined in 1957 from practicing dentistry, showed that the respondent had practiced dentistry under the definition of the law, and the judgment of the trial judge finding the respondent in contempt of court was amply supported by the evidence. Hortman v. Georgia Bd. of Dental Exmrs., 214 Ga. 560, 105 S.E.2d 732, 1958 Ga. LEXIS 491 (1958).

Charge for expenses incidental to service constitutes practice of dentistry. — All things incidental to the several kinds of service specified in the definition are to be included as overhead or part of the service; when charges are made for one or more of the overhead or incidental services necessary or convenient for operations specifically mentioned in the definition, the performance of such operations and charging therefor will constitute the practice of dentistry within the meaning of the statutory definition. Rivers v. Atlanta S. Dental College, 187 Ga. 720, 1 S.E.2d 750, 1939 Ga. LEXIS 763 (1939).

Examples of overhead or incidental expenses. — Lights, electric current, water, laundry, obsolescence and depreciation in building and equipment, heat, repairs, printing and stationery, clerks, maids and the like, used by the practitioner in connection with a dental office, are incidental or overhead adjuncts, and inclusion of one or more of these in charges for operations of any of the kinds specified would bring the practice within the statutory definition; this applies whether the statutory definition is considered alone or in connection with former Code 1933, § 84-722 (see now O.C.G.A. § 43-11-20). Rivers v. Atlanta S. Dental College, 187

Ga. 720, 1 S.E.2d 750, 1939 Ga. LEXIS 763 (1939).

After state shows practice without license, burden is on defendant to establish right to practice. — When the state makes out a case by proving that the defendant practiced dentistry without having obtained a license, this proof casts the burden upon the defendant to prove the defendant's right to so practice; the law makes the having of a license or other authority to practice dentistry a matter of defense. Jordan v. State, 77 Ga. App. 700, 49 S.E.2d 694, 1948 Ga. App. LEXIS 622 (1948).

Negligence per se in cosmetic procedure. — Dentist's performance of elective cosmetic procedures to a patient's face constituted negligence per se since the dentist exceeded the statutory limits of the scope of dentistry. Brown v. Belinfante, 252 Ga. App. 856, 557 S.E.2d 399, 2001 Ga. App. LEXIS 1335 (2001), cert. denied, No. S02C0549, 2002 Ga. LEXIS 348 (Ga. Apr. 15, 2002).

Dentist's action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board's position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke the dentist's license to practice dentistry. Thomas v. Georgia Bd. of Dentistry, 197 Ga. App. 589, 398 S.E.2d 730, 1990 Ga. App. LEXIS 1395 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Dentist may prescribe drugs. — Silence of statute as to authority to prescribe drugs means that the dentist is at the very least authorized to prescribe such drugs as are, at the time of prescription, generally accepted as being necessary or incidental to the dentist's practice of dentistry. 1968 Op. Att'y Gen. No. 68-62.

Allowable surgical procedures. — Dentist performing a dental operation may also perform procedures which are necessary or incidental to proper treatment of the patient, provided the procedures are limited to the oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or contiguous masticatory structures. 1996 Op. Att'y Gen. No. U96-3.

Acts constituting unlicensed practice of medicine. — Performance of osteopathic adjustments of the cranial bones (cranial osteopath) for the treatment of temporomandibular (craniomandibular) disorders is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Performing thermographic studies of the cervical and lumbar spine and extremities is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Taking and interpreting x-rays to evaluate cervical spine relationships including flexion, extension and anterior-posterior views of the cervical spine is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Application to the neck, shoulders and back of physical therapy modalities such as ultrasound, transcutaneous electrical nerve stimulation ("TENS"), or galvanic stimulation is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

"Trigger-point" intramuscular injections of local anesthetic into any muscle

other than the primary muscles of mastication (*i.e.*, temporalis, masseter, and internal and external pterygoids) are not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Awarding disability ratings on factors other than those directly relating to jaw function (*i.e.*, mastication (chewing) and deglutition (swallowing)), or to injury to the nerves that directly innervate the mouth, teeth, gums and jaws is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Liability of dentist to patient, 83 A.L.R.2d 7; 11 A.L.R.4th 748.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

43-11-18. Use of full names of practitioners.

All signs, cards, announcements, advertisements, or methods used to state or imply that dentistry may or will be done by anyone at any place in this state shall be required to list the full name of at least one individual practicing dentistry in such place; provided, however, that the names of all dentists practicing at a location shall be supplied to any person who inquires, and a list containing the names of all dentists practicing at a location shall be posted at the entry of such location.

History.

Ga. L. 1920, p. 132, § 12; Code 1933, § 84-714; Ga. L. 1976, p. 484, § 1; Ga. L. 1991, p. 1056, § 1.

43-11-19. Compliance with chapter as prerequisite to collection of fees for services.

No person who practices dentistry in this state shall be entitled to collect any fee or reward for his or her services without first complying with this chapter.

History.

Ga. L. 1920, p. 132, § 22; Code 1933, § 84-721; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 10.

RESEARCH REFERENCES

ALR.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-11-20. Training and affiliated sites; clinics; licensure examination.

(a) Nothing in this chapter shall prohibit accredited dental colleges or advanced dental education programs from maintaining on-campus training clinics and affiliated sites for the purpose of educational training of dental students or dental residents approved by the board under the supervision of licensed dentists or instructors; nor shall this chapter prevent licensed dental practitioners of other states and countries from giving clinics before any dental society or association of this state whose objects are the advancement and improvement of dentistry as a science.

(b) Nothing in this chapter shall prevent students of accredited dental colleges or residents in advanced dental education programs in this state from engaging in activities otherwise defined as the practice of dentistry, provided that said students work under the direct supervision and responsibility of a licensed dentist or instructor as a part of a training clinic; nor shall this chapter prevent students of accredited dental hygiene schools in this state from engaging in activities otherwise defined as the practice of dental hygiene, provided that said students work under the direct supervision and responsibility of a licensed dentist or dental hygienist as a part of an on-campus training clinic or at affiliated sites approved by said schools, colleges, or programs and the board for the purpose of educational training. Nothing in this chapter shall prevent said schools or colleges of dentistry or dental hygiene or advanced dental education programs from establishing and collecting charges for services rendered by training students or residents under the supervision of a licensed dentist, licensed dental hygienist, or instructor. These charges shall not exceed charges made by similar dental schools and colleges and advanced dental education programs located within the United States.

(c) Nothing in this chapter shall be construed to prohibit the administration of a board approved clinical licensure examination as a prerequisite for licensure as a dentist or dental hygienist in this state. Nothing in this chapter shall prevent the conducting of a Georgia clinical licensure examination by a board approved examiner who is licensed as a dentist or dental hygienist in another jurisdiction. Nothing in this chapter shall prevent the taking of a Georgia clinical licensure examination by an individual who is eligible to apply for licensure as a dentist or dental hygienist in this state.

History.

Ga. L. 1920, p. 132, § 27; Code 1933, § 84-722; Ga. L. 1949, p. 1367, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 11; Ga. L. 2008, p. 530, § 2/SB 363.

JUDICIAL DECISIONS

Examples of expenses whose inclusion in charges equals practicing dentistry. — Lights, electric current, water, laundry, obsolescence and depreciation in building and equipment, heat, repairs, printing and stationery, clerks, maids and the like, used by the practitioner in connection with the practitioner's dental office, are incidental or overhead adjuncts, and inclusion of one or more of these in charges for operations of any of the kinds specified would bring the practice within the statutory definition. This applies whether the statutory definition is considered alone or in connection with this statute. Rivers v. Atlanta S. Dental College, 187 Ga. 720, 1 S.E.2d 750, 1939 Ga. LEXIS 763 (1939).

43-11-21. Conscious sedation.

(a) No dentist licensed and practicing in the State of Georgia shall administer either single or multiple pharmacologic agents by oral, parenteral, enteral, transdermal, or transmucosal route that renders a patient to a state of conscious sedation as defined in Code Section 43-11-1, unless such dentist has been issued a permit by the board under the conditions specified therefor in this Code section. The dentist shall ensure that the pharmacologic agents and methods used to administer such agents shall include a margin of safety so that loss of consciousness of the patient is unlikely. This Code section shall not restrict the use of nitrous oxide or pharmacological agents that do not render a patient to a state of conscious sedation. Such permit shall be subject to biennial renewal at the time the dentist is required to renew that dentist's license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section unless the board has received satisfactory evidence that such dentist:

(1) Has received formal training in the use of conscious sedation at an institution accredited by the Commission on Dental Accreditation of the American Dental Association (ADA), its successor agency, or other board approved organization and is certified by such organization as competent in the administration of pharmacologic agents for conscious sedation and the handling of emergencies relating to conscious sedation. Such certification shall specify the type, number of hours, and length of training. The minimum didactic hours, patient contact hours, and number of patients sedated under supervision shall be established by rule or regulation of the board;

(2) Utilizes a properly equipped facility for the administration of conscious sedation, including physical plant and equipment, which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any

designee thereof proficiency in administering sedative techniques in the dentist's office on a patient or patients in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examinations and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the induction of conscious sedation.

(d) The board or its appointed designee may, upon reasonable notice, make on-site inspections of the facility, equipment, and personnel of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(e)(1) The board may, upon proper application, grant a provisional permit to administer conscious sedation to any dentist who meets the requirements of paragraph (1) of subsection (b) of this Code section.

(2) A provisional permit issued under this subsection shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(f) A dentist holding a current, valid permit to administer general anesthesia as provided in this chapter shall not be required to obtain a permit under this Code section in order to administer conscious sedation.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18.

(h)(1) Any person who administers conscious sedation in this state in a dental facility or during the practice of dentistry in a medispa, without a license to practice dentistry from the board, shall be deemed to be engaged in the unlawful practice of dentistry and subject to the provisions of subsection (e) of Code Section 43-11-2 and Code Section 43-11-50. As used in this paragraph, the term "medispa" means a facility that offers a range of services for the purpose of

improving an individual's well-being or appearance, including medical and surgical procedures such as liposuction, laser procedures, intense pulsed light, and injection of cosmetic filling agents and neurotoxins, in a nontraditional setting.

(2) Nothing in this subsection shall be construed to prevent a physician licensed in this state from administering conscious sedation or to deem a physician licensed in this state to be engaged in the unlawful practice of dentistry.

(3) Nothing in this subsection shall be construed to expand the scope of the practice of dentistry.

(i)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering conscious sedation in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given conscious sedation by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering conscious sedation in a dental facility nor deem a certified registered nurse anesthetist to be engaged in the unlawful practice of dentistry, provided that such sedation is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given conscious sedation by such nurse anesthetist is stabilized and has regained consciousness.

(3) This Code section shall not prohibit a person who is duly licensed as a physician assistant in this state who has completed an anesthesiologist assistant program approved by the Georgia Composite Medical Board from administering conscious sedation nor deem such physician assistant to be engaged in the unlawful practice of dentistry, pursuant to their job description as approved by the Georgia Composite Medical Board, provided that such sedation is administered under the direction and responsibility of an anesthesiologist permitted under this Code section.

History.

Code 1981, § 43-11-21, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 179, § 1; Ga. L. 2004, p. 720, § 3; Ga. L. 2021, p. 749, § 1/SB 5.

The 2021 amendment, effective July 1, 2021, added subsection (h); redesignated former subsection (h) as present subsection (i); inserted "nor deem a certified registered nurse anesthetist to be engaged in the unlawful practice of dentistry" in the middle of paragraph (i)(2); and added paragraph (i)(3).

Cross references.
Certified registered nurse anesthetists, § 43-26-11.1.

Editor's notes.
Ga. L. 1987, p. 932, § 3, effective July 1, 1987, repealed the former Code section and enacted the current Code section. The former Code section, concerning general anesthesia, was based on Ga. L. 1981, p. 726, § 1. For present provisions concerning general anesthesia, see Code Section 43-11-21.1.

Administrative rules and regulations.
Sedation permits, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-13.

RESEARCH REFERENCES

Am. Jur. Trials.
Anesthesiology Malpractice Litigation, 70 Am. Jur. Trials 101.

43-11-21.1. General anesthesia.

(a) No dentist shall administer general anesthesia on an outpatient basis unless such dentist has been issued a permit by the board under the conditions specified in this Code section. Such permit shall be subject to biennial renewal at the time the dentist is required to renew his or her license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section nor have such permit renewed unless the board has received satisfactory evidence that such dentist:

(1)(A) Has successfully completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level at an institution accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency or by a nationally recognized health care accreditation body for hospitals; or

(B) Is a diplomate of the American Board of Oral and Maxillofacial Surgery, is a member of the American Association of Oral and Maxillofacial Surgeons, or is a fellow of the American Dental Society of Anesthesiology;

(2) Utilizes a properly equipped facility for the administration of general anesthesia, including physical plant and equipment which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any designee thereof proficiency in administering general anesthesia on a patient or patients in the dentist's office in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examination and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the administration of general anesthesia.

(d)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering general anesthesia in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given a general anesthetic by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering general anesthesia in a dental facility, provided that such anesthesia is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given a general anesthetic by such nurse anesthetist is stabilized and has regained consciousness.

(e) The board or its authorized designee may, upon reasonable notice, conduct an on-site inspection of the facility, equipment, and personnel of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(f) The board may, upon proper application, grant a provisional permit to any dentist who meets the requirements of subparagraph (b)(1)(A) or (b)(1)(B) of this Code section, but such permit shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18.

History.
Code 1981, § 43-11-21.1, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1999, p. 234, § 12; Ga. L. 2012, p. 337, § 9/SB 361; Ga. L. 2013, p. 141, § 43/HB 79.

Law reviews.
For annual survey on torts law, see 69 Mercer L. Rev. 299 (2017).

For annual survey on trial practice and procedure, see 69 Mercer L. Rev. 321 (2017).

43-11-21.2. Report of morbidity or mortality.

(a) All dentists licensed to practice in Georgia shall submit a complete report to the board of any morbidity or mortality occurring in the course of such dentist's practice or other injury which results in temporary or permanent physical injury requiring any period of hospitalization. This report shall be filed with the board no later than 30 days following such incident and shall contain such information as the board shall deem necessary to investigate the circumstances of the incident.

(b) Any report received by the board pursuant to this Code section shall be subject to the limitations on disclosure set forth in paragraph (2) of subsection (h) of Code Section 43-11-47.

History.
Code 1981, § 43-11-21.2, enacted by Ga. L. 1987, p. 932, § 3.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "board" was substituted for "Georgia Board of Dentistry" in the first sentence of subsection (a).

43-11-22. Exceptions to application of chapter.

This chapter shall not apply to physicians licensed in this state in extracting teeth or performing surgical operations. This chapter also shall not apply to any person who extracts any exfoliating deciduous teeth.

History.
Ga. L. 1920, p. 132, § 28; Code 1933, § 84-723; Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 4; Ga. L. 1999, p. 234, § 13.

RESEARCH REFERENCES

ALR.
Dentist as a physician or surgeon within statutes, 115 A.L.R. 261.

43-11-23. Specialized training for dental assistant or hygienist performing certain procedures.

(a) A dental assistant or licensed dental hygienist performing phlebotomy and venipuncture procedures shall be required to complete

board approved training in phlebotomy, intravenous access, infection control, the handling of any medical or dental emergencies associated with such procedures, and any other safety related topics required by the board.

(b) A dental assistant or licensed dental hygienist assisting a licensed dentist during the lawful administration of conscious sedation under Code Section 43-11-21 or general anesthesia under Code Section 43-11-21.1 shall complete board approved training on the applicable procedures, protocols, patient monitoring techniques, equipment, and any other safety related topics required by the board. A dental assistant or licensed dental hygienist performing phlebotomy and venipuncture procedures while assisting the supervising dentist pursuant to this subsection shall also complete the training requirements contained in subsection (a) of this Code section.

(c) The procedures authorized in subsections (a) and (b) of this Code section shall only be performed under the direct supervision of a licensed dentist.

(d) A licensed dentist shall not delegate to a dental assistant or a dental hygienist the administration of any medication or drugs given to a patient through phlebotomy and venipuncture procedures.

History.
Code 1981, § 43-11-23, enacted by Ga. L. 2021, p. 749, § 2/SB 5.
Effective date.
This Code section became effective July 1, 2021.
Editor's notes.
Former Code Section 43-11-23, relating to termination of the Georgia Board of Dentistry, was based on Ga. L. 1982, p. 1056, §§ 1, 3; Ga. L. 1983, p. 3, § 32; and Ga. L. 1988, p. 530, § 3, and was repealed by Ga. L. 1992, p. 3137, § 11, effective July 1, 1992.

ARTICLE 2

LICENSES FOR THE PRACTICE OF DENTISTRY

43-11-40. Qualification of applicants; criminal background check.

(a)(1) Applicants for a license to practice dentistry must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A) Successful completion at an accredited dental school ap-

proved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must pass a clinical examination approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(b) All applications to the board for a license shall be made through the executive director, who shall then submit all such applications to the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, applicants who have met the requirements of this Code section shall be granted licenses to practice dentistry.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

History.

Ga. L. 1920, p. 132, § 7; Code 1933, § 84-709; Ga. L. 1949, p. 1367, § 4; Ga. L. 1963, p. 273, § 1; Ga. L. 1972, p. 843, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 4; Ga. L. 1987, p. 932, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 4; Ga. L. 2012, p. 1081, § 1A/SB 338; Ga. L. 2013, p. 192, § 2-10/HB 132.

Administrative rules and regulations.

License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-3.

RESEARCH REFERENCES

ALR.

Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 A.L.R. 742.

Right to enjoin business competitor

from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-11-41. Application for provisional license to practice dentistry by credentials; procedure; criminal background check; expiration and revocation of license.

(a)(1) Applicants for a provisional license to practice dentistry by credentials must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Applicants must have been in full-time clinical practice, as defined by rules and regulations established by the board; full-time faculty, as defined by board rule and regulation; or a combination of both for the five years immediately preceding the date of the application and must hold an active dental license in good standing from another state. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for provisional licensure by credentials:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for provisional licensure.

(3) In order to be granted a provisional license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a provisional license by credentials shall be made through the executive director, who shall then

submit all such applications to the board. The fee for provisional licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, an applicant who has met the requirements of this Code section shall be granted a provisional license to practice dentistry, which shall be valid for two years from the date it is issued and may be renewed subject to the approval of the board.

(d) Application for a provisional license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for provisional licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in this state within two years of receiving such license under this Code section or the license shall be automatically revoked.

History.
Code 1981, § 43-11-41, enacted by Ga. L. 2004, p. 720, § 5; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2013, p. 192, § 2-11/HB 132.
Editor's notes.
Former O.C.G.A. § 43-11-41 was based on Ga. L. 1967, p. 417, § 1; Ga. L. 1974, p. 1223, § 4; Ga. L. 1976, p. 484, § 1 and was repealed by Ga. L. 1982, p. 1056, § 5, effective November 1, 1982.

43-11-42. Reciprocity; criminal background check.

(a) The board may issue, in its discretion, without examination, a teacher's or instructor's license to a dental hygienist who has graduated from a school or college approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, for the sole purpose of teaching or instructing, in an accredited dental hygiene school in this state, those procedures and services recognized in this state to be within the scope of practice of such person's professional license.

(a.1)(1) The board may issue, in its discretion, without examination, a teacher's or instructor's license to a dentist who has graduated from a school, college, or advanced dental education program approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, for the sole purpose of teaching or instructing, in an accredited dental college, advanced dental education program, or training clinic in this state, those procedures and services recognized in this state to

be within the scope of practice of such person's professional license. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A)(i) Successful completion at an accredited dental school approved by the board of the last two years of a program leading to the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; or

(ii) Successful completion at an accredited dental school or college approved by the board of at least a two-year advanced education program in one of the dental specialties recognized by the American Dental Association (ADA) or in an advanced dental education program in general dentistry; or

(iii) Successful completion of at least two one-year advanced dental education programs in general dentistry at an accredited dental school or college approved by the board; or

(iv) Successful completion of a one-year program in operative dentistry at a dental school or college approved by the board and a one-year advanced dental education program in general dentistry at an accredited dental school or college approved by the board; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this subsection, all applicants must pass a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(b) The board may issue, in its discretion, without examination, a license to dentists for the sole purpose of practicing public health dentistry in an official state or a local health department or to render dental services to patients in state operated eleemosynary or correctional institutions, provided that these dentists possess a license in another state, are in good standing in said state, and have graduated from an accredited dental college. Such license shall be considered to be a temporary license which shall be valid for a period to be established by board rule.

(c) The cost of such teacher's, instructor's, or temporary public health license shall be established by the board.

(d) Any license issued or considered for issuance under this Code section shall be subject to the provisions set forth in Code Section 43-11-47.

(e) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

History.
Ga. L. 1920, p. 132, § 8; Code 1933, § 84-710; Ga. L. 1949, p. 1367, § 3; Ga. L. 1956, p. 372, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 3; Ga. L. 1996, p. 226, § 1; Ga. L. 1999, p. 234, § 14; Ga. L. 2002, p. 415, § 43; Ga. L. 2004, p. 720, § 6; Ga. L. 2008, p. 530, § 3/SB 363.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes.
For application of this statute in 2020 and 2021, see Executive Orders 08.15.20.01, 08.31.20.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

RESEARCH REFERENCES

ALR.
Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 A.L.R. 742.

43-11-43. Fees.

Each person applying for examination for a license to practice dentistry shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Each person applying for the renewal of a license or authority to practice dentistry or for the establishment of a license or authority that has been lost shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Such fee shall cover the entire service for granting or issuing licenses to practice dentistry.

History.
Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 15; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-12/HB 132.

43-11-44. Discretionary decisions involving treatment of patients.

It is a matter of public interest that all decisions involving or affecting the clinical dental treatment of a patient shall be left to the sole

discretion of the licensed dentist providing treatment to the patient. The board shall be authorized to promulgate rules and regulations to supplement and ensure compliance with the requirements of this Code section.

History.
Code 1981, § 43-11-44, enacted by Ga. L. 1999, p. 234, § 16.
Editor's notes.
The original version of this Code section was based on Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1976, p. 484, § 1. Subsequently, a new Code section was enacted, concerning registration of licenses, that was then repealed by Ga. L. 1983, p. 1389, § 4.

43-11-45. [Reserved] Registration certificates.

History.
Ga. L. 1920, p. 132, § 10; Code 1933, § 84-712; Ga. L. 1976, p. 484, § 1; repealed by Ga. L. 1983, p. 1389, § 5, effective March 29, 1983.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.
Editor's notes.
Ga. L. 1983, p. 1389, § 5 repealed and reserved this Code section, effective March 29, 1983.

43-11-45.1. Display of license.

Every person licensed under this article shall display such license in a conspicuous place in such person's principal place of business.

History.
Code 1981, § 43-11-45.1, enacted by Ga. L. 1982, p. 1056, § 6.

43-11-46. License renewal.

(a) Every person licensed by the board to practice dentistry shall register biennially on the renewal date set by the board and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dentistry pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dentists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation as may be defined by rule or regulation of the board.

History.
Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1937, p. 627, § 2; Ga. L. 1958, p. 25, § 1; Ga. L. 1963, p. 273, § 3; Ga. L. 1974, p. 1223, § 3; Code 1933, § 84-725, enacted

by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 6; Ga. L. 1996, p. 226, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-13/HB 132.

43-11-46.1. Continuing education requirements; waiver.

(a) The board shall be authorized to require persons seeking renewal of a dental license under this chapter to complete board approved continuing education of not less than 40 hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations and to designate the number of hours required and the category in which those hours should be earned.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, and renewal cycle which begins after the 1990-1991 renewal.

(e) On and after January 1, 2022, continuing education requirements for dentists shall include legal ethics and professionalism in the practice of dentistry, which shall include, but shall not be limited to, education and training regarding professional boundaries; unprofessional conduct relating to the commission of acts of sexual intimacy, abuse, misconduct, or exploitation with regard to the practice of dentistry; legislative updates and changes to the laws relating to the practice of dentistry and rules, policies, and advisory opinions and rulings issued by the board; professional conduct and ethics; proper billing practices; professional liability; and risk management.

History. Code 1981, § 43-11-46.1, enacted by Ga. L. 1991, p. 350, § 1; Ga. L. 2021, p. 777, § 1/HB 458.

The 2021 amendment, effective July 1, 2021, added subsection (e).

43-11-47. Refusal to grant, or revocation of, licenses; disciplining licensees; subpoenas; judicial review; investigations; immunity; failure to appear; voluntary surrender.

(a) The board shall have the authority to refuse to grant a license to an applicant or to revoke the license of a dentist licensed by the board or to discipline a dentist licensed under this chapter or any antecedent law upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or in the rules and regulations issued by the board, pursuant to specific statutory authority; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of dentistry or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice dentistry; or made a false statement or deceptive annual registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this subsection, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought. Any licensee who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the board of conviction within ten days of the conviction. The failure to notify the board of a conviction shall be considered grounds for revocation of his or her license;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice dentistry revoked, suspended, or annulled by any lawful licensing dental authority other than the board; or had other disciplinary action taken against him or her by

any lawful licensing dental authority other than the board; or was denied a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice dentistry, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of dentistry but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing dental practice;

(7)(A) Engaged in the practice of dentistry as an employee of any individual not licensed to practice dentistry in this state or engaged in the practice of dentistry as an officer or employee of any corporation other than one organized and existing pursuant to Chapter 10 of Title 14, "The Georgia Professional Association Act," or Chapter 7 of Title 14, the "Georgia Professional Corporation Act," or engaged in the practice of dentistry as an employee, manager, or member of any limited liability company organized and existing pursuant to Chapter 11 of Title 14 or a limited liability partnership pursuant to Chapter 8 of Title 14 other than one in which all members are licensed dentists and all professional services and professional judgment decisions are delivered by and made by licensed dentists, except as a licensed dentist or an intern or resident of a hospital or teaching institution licensed by this state.

(B) Possession of an ownership interest of a deceased licensed dentist in a limited liability company which is wholly owned by licensed dentists as described in subparagraph (A) of this paragraph shall not constitute a violation of that subparagraph if that interest is transferred to another licensed dentist member or redeemed by the limited liability company within six months after the date of death of that licensed dentist member;

(8) Reserved;

(9) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice dentistry or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(10) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of dentistry, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(11) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(12) Displayed an inability to practice dentistry with reasonable skill and safety to patients or has become unable to practice dentistry with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, or by reason of displaying habitual intoxication, addiction to, or recurrent personal misuse of alcohol, drugs, narcotics, chemicals, or any other type of similar substances. In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing dentistry in this state, or shall file an application for a license to practice dentistry in this state, shall be deemed to have given that person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure is due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing dentistry under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin the practice of dentistry with reasonable skill and safety to patients;

(13) Reserved;

(14) Engaged in the excessive prescribing or administering of drugs or treatment or the use of diagnostic procedures which are

detrimental to the patient as determined by the customary practice and standards of the local community of licensees; or knowingly prescribed controlled drug substances or any other medication without a legitimate dental purpose; or knowingly overprescribed controlled drug substances or other medication, in light of the condition of the patient at the time of prescription; or

(15) Knowingly made any fraudulent, misleading, or deceptive statement in any form of advertising or made any statement in any advertisement concerning the quality of the dental services rendered by that dentist or any dentist associated with him or her. For purposes of this paragraph, "advertising" shall include any information communicated in a manner designed to attract public attention to the practice of the licensee.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by the board and summary suspension of a license are adopted and incorporated by reference into this chapter.

(c) For purposes of this Code section, the board may obtain, and is authorized to subpoena, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license; or

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judg-

ment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this chapter.

(h)(1) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she or the board or any district attorney may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The executive director, the president of the board, or the appointed representative of either may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of dentistry may have taken place. Upon approval of the board, any person properly conducting an investigation on behalf of the board shall have access to and shall have the right to examine the physical premises of a dental practice.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the executive director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to any law enforcement agency or prosecuting attorney or to another enforcement agency or lawful licensing authority.

(3) All records relating to any patient of a licensee who is the subject of a board inquiry shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a patient shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss

any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a dentist, dental hygienist, or dental assistant or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a dentist or a dental hygienist shall be immune from civil and criminal liability for so testifying.

(j) Neither a denial of a license on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests.

(k) If any licensee or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the executive director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the executive director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorpo-

rated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to distance, tender of fees and expenses, and protective orders; provided, further, any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed.

History.

Ga. L. 1920, p. 132, § 13; Code 1933, § 84-9908; Ga. L. 1937, p. 627, § 1; Ga. L. 1958, p. 25, § 2; Ga. L. 1972, p. 843, § 4; Ga. L. 1974, p. 532, § 1; Ga. L. 1974, p. 1223, § 5; Code 1933, § 84-724, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 1760, § 1; Ga. L. 1979, p. 853, § 2; Ga. L. 1983, p. 1389, § 6; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 932, § 7; Ga. L. 1988, p. 13, § 43; Ga. L. 1993, p. 123, § 26; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 226, § 3; Ga. L. 1999, p. 234, § 17; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-14/HB 132.

Cross references.

Insurance fraud, § 33-1-9.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, in subsection (a), the paragraph (a)(13) designation, which had been inadvertently stricken by the 1996 amendment, was added.

Pursuant to Code Section 28-9-5, in 1999, "paragraph" was substituted for "subsection" in the last sentence in paragraph (a)(12) and "of this Code section" was inserted in subsection (j).

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

Administrative rules and regulations.

Investigations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-4.

Law reviews.

For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Appellant's summary suspension need not have been predicated upon conviction. — Arrest of the appellant for possession of marijuana, exhibiting pornography to minors, contributing to the delinquency of minors, and sexual battery was sufficient to justify suspension. Everett v. Georgia Bd. of Dentistry, 264 Ga. 14, 441 S.E.2d 66, 1994 Ga. LEXIS 130 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Dentist who files a claim for third party payment in which the dentist asserts a certain fee charged, when in fact the dentist has waived or intends to waive the patient's copayment for the service, without full disclosure to the third party insurer that such waiver has or will be taking place, may be subject to disciplinary action by the Georgia Board of Dentistry, and may be guilty of a violation of O.C.G.A. § 33-1-9. 1983 Op. Att'y Gen. No. 83-25.

RESEARCH REFERENCES

ALR.

Validity of statute providing for revocation of license of physician, surgeon, or dentist, 5 A.L.R. 94; 79 A.L.R. 323.

What offenses involve moral turpitude within statute providing grounds for denying or revoking license of dentist, physician, or surgeon, 109 A.L.R. 1459.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for canceling license or special privilege, 113 A.L.R. 1179.

Practice of medicine, dentistry, or law through radio broadcasting stations, newspapers, or magazines, 114 A.L.R. 1506.

Pardon as defense to proceeding for suspension or cancellation of license of physician, surgeon, or dentist, 126 A.L.R. 257.

Statutory power to revoke or suspend license of physician, dentist, or attorney for "unprofessional conduct" as exercise without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

Conviction as proof of grounds for revocation or suspension of license of physician, surgeon, or dentist, where conviction of such is not an independent cause, 167 A.L.R. 228.

Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry, 93 A.L.R.2d 1398.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 A.L.R.3d 487.

Pretrial discovery in disciplinary proceedings against physician, 28 A.L.R.3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with insurance claims or claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 A.L.R.3d 549; 70 A.L.R.4th 132.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 A.L.R.4th 668.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

43-11-48. Initiation of proceedings for violation of chapter; records.

(a) Proceedings under this chapter may be initiated by the board upon its own motion or upon receipt of a signed, written complaint. A board member who forwards a complaint to the attention of the board shall not participate in any further disciplinary proceedings with respect to such applicant or licensee. Disposition of "contested cases," within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be governed by Chapter 13 of Title 50.

(b) A record of all hearings, decisions, and orders shall be kept for the board by the executive director.

History.
Ga. L. 1920, p. 132, § 16; Code 1933, § 84-716; Ga. L. 1937, p. 627, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 7; Ga. L. 1983, p. 1389, § 7; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-15/HB 132.

JUDICIAL DECISIONS

Verified accusation or board knowledge of wrongdoing needed for revocation proceedings. — If revocation proceedings of the board are not taken either from matters within the knowledge of the board or upon written verified accusation, the proceedings are invalid and require reversal. Salerno v. Board of Dental Exmrs., 119 Ga. App. 743, 168 S.E.2d 875, 1969 Ga. App. LEXIS 1229 (1969) (decided prior to 1982 amendment, which substituted "signed" for "under oath verified" in subsection (a)).

Former Code 1933, § 84-716 (see now O.C.G.A. § 43-11-48) did not require that accused be served with written verified accusation, nor was such required by Ga. L. 1965, p. 283, § 13 (see now O.C.G.A. § 50-13-13) of the Administrative Procedure Act. Salerno v. Board of Dental Exmrs., 119 Ga. App. 743, 168 S.E.2d 875, 1969 Ga. App. LEXIS 1229 (1969).

Dentist's action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board's position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke the dentist's license to practice dentistry. Thomas v. Georgia Bd. of Dentistry, 197 Ga. App. 589, 398 S.E.2d 730, 1990 Ga. App. LEXIS 1395 (1990).

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

43-11-49. Burden of proof as to authority to practice dentistry.

On the trial of anyone charged with the violation of this chapter or with the illegal practice of dentistry, it shall be incumbent on the defendant, upon proof that he or she practiced dentistry, to show that he or she had authority under the law to practice dentistry in order to exempt himself or herself from the penalty for such violation.

History.
Ga. L. 1920, p. 132, § 24; Code 1933, § 84-9911; Ga. L. 1999, p. 234, § 18.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 84-701, 84-9909, 84-9911, are included in the annotations for this Code section.

Burden on defendant whom state shows practiced without license to establish authority to practice. — When the state made out a case by proving that the defendant practiced dentistry in Georgia without having obtained a license from the board, this proof cast the burden upon the defendant to prove a right to so practice, the law makes the having of a license or other authority to practice dentistry at the time of the passage of former Code 1933, Ch. 84-7 (see now O.C.G.A. Ch. 11, T. 43) a matter of defense. Jordan v. State, 77 Ga. App. 700, 49 S.E.2d 694, 1948 Ga. App. LEXIS 622 (1948) (decided under former Code 1933, §§ 84-701, 84-9909, 84-9911).

43-11-50. Practice of dentistry without a license.

Any person, firm, partnership, corporation, or other entity who practices dentistry in this state without obtaining a license to practice from the board shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $1,000.00 or by imprisonment from two to five years, or both.

History.

Ga. L. 1920, p. 132, § 11; Code 1933, § 84-9909; Ga. L. 1992, p. 2062, § 1; Ga. L. 1999, p. 234, § 19; Ga. L. 2002, p. 578, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 84-701, 84-9909, 84-9911, are included in the annotations for this Code section.

Constitutionality. — O.C.G.A. § 43-11-50 is not unconstitutional on the basis that the 1992 statute which amended it "refers to more than one subject matter" in violation of Ga. Const. 1983, Art. III, Sec. V, Para. III. Ga. L. 1992. p. 2062 is simply comprehensive legislation in the area of regulation of health professionals. Wrzesinski v. State, 271 Ga. 659, 522 S.E.2d 461, 1999 Ga. LEXIS 792 (1999).

Burden of defendant whom state shows practiced without license to establish authority to practice. — When the state made out a case by proving that the defendant practiced dentistry in Georgia without having obtained a license from the board, this proof cast the burden upon the defendant to prove a right to so practice; the law makes the having of a license or other authority to practice dentistry at the time of the passage of former Code 1933, Ch. 84-7 (see now O.C.G.A. § 43-11-50) a matter of defense. Jordan v. State, 77 Ga. App. 700, 49 S.E.2d 694, 1948 Ga. App. LEXIS 622 (1948) (decided under former Code 1933, §§ 84-701, 84-9909, 84-9911).

Charge barred by limitations period. — Since the defendant's crimes of practicing dentistry without a license in violation of an earlier version of O.C.G.A. § 43-11-50 was subject to the two-year limitations period of O.C.G.A. § 17-3-1(d), and defendant's crime of false statements and writings in violation of O.C.G.A. § 16-10-20 was subject to the four-year limitations period of § 17-3-1(c), the court found that the claims were barred by the limitations period when the offenses were not charged in a timely manner, based on the evidence presented of when the crimes occurred; although the period of limitations did not include any period when the defendant was unknown or the crime was unknown pursuant to O.C.G.A. § 17-3-2(2), it was shown that various individuals, state courts, and other agencies were

aware that the defendant held oneself out as a dentist, which knowledge was imputed to the state and accordingly, the limitations time ran during that period. McMillan v. State, 266 Ga. App. 729, 598 S.E.2d 17, 2004 Ga. App. LEXIS 344 (2004), overruled in part, Glidewell v. State, 279 Ga. App. 114, 630 S.E.2d 621, 2006 Ga. App. LEXIS 469 (2006).

Evidence was legally sufficient to support the defendant's convictions for misdemeanor theft in violation of O.C.G.A. § 16-8-2 and for practicing dentistry without a license in violation of an earlier version of O.C.G.A. § 43-11-50, since the defendant served as a dentist to numerous individuals, obtained loans for business ventures involving a dentistry practice, obtained services for the dentist practice which the dentist did not pay for, and performed services on patients; the jury resolved the credibility and weight of the evidence issues pursuant to former O.C.G.A. § 24-9-80 (see now O.C.G.A. § 24-6-620). McMillan v. State, 266 Ga. App. 729, 598 S.E.2d 17, 2004 Ga. App. LEXIS 344 (2004), overruled in part, Glidewell v. State, 279 Ga. App. 114, 630 S.E.2d 621, 2006 Ga. App. LEXIS 469 (2006).

Defendant's conviction for practicing dentistry without a license in violation of O.C.G.A. § 43-11-50 was upheld on appeal because sufficient evidence was presented based on the testimony of an insurance investigator who discovered and observed the defendant practicing dentistry and later learned the defendant lacked licensing. Little v. State, 332 Ga. App. 553, 774 S.E.2d 132, 2015 Ga. App. LEXIS 356 (2015).

Variance between allegation and proof. — Specification of "repairing" a dental device rather than of "manufacturing" one was not sufficient to constitute a fatal variance between allegata and probata when the language of the accusation was sufficiently definite regarding time, place, and nature of the offense to put the defendant on notice as to the nature of the charges. West v. State, 178 Ga. App. 550, 343 S.E.2d 759, 1986 Ga. App. LEXIS 2549 (1986).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining, or operating an office therefor, 20 A.L.R.2d 808.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

43-11-51. Practicing dentistry under another's license.

Any person, firm, partnership, corporation, or other entity who practices dentistry or performs any dental operation under the protection of another's license shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $500.00 nor more than $1,000.00 or by imprisonment for not less than two nor more than five years, or both.

History.

Ga. L. 1897, p. 119, § 14; Civil Code 1910, § 1751; Code 1933, § 84-9907; Ga. L. 1999, p. 234, § 20; Ga. L. 2004, p. 720, § 7.

JUDICIAL DECISIONS

Terms of contract. — Terms of the contract governing the relationship between the orthodontist and the practice management company made it very clear that the company did not intend, and in fact did not, employ the orthodontist to carry out the company's own corporate practice of orthodontics and, accordingly, Georgia case law counseled against voiding the contract for illegality. Clower v. Orthalliance, Inc., 337 F. Supp. 2d 1322, 2004 U.S. Dist. LEXIS 20038 (N.D. Ga. 2004).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offenses. — Violation of O.C.G.A. § 43-11-51 is not designated as an offense for which fingerprinting is required. 1999 Op. Att'y Gen. No. 99-17.

43-11-52. Volunteers in dentistry and dental hygiene; special licensing; construction.

(a) This Code section shall be known and may be cited as the "Georgia Volunteers in Dentistry and Dental Hygiene Act."

(b) Notwithstanding any other provision of law, the board shall issue a special license to qualifying dentists and dental hygienists under the terms and conditions set forth in this Code section and pursuant to requirements which may be set forth in the rules and regulations of the board. The special license shall only be issued to a person who:

(1) Is retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full unrestricted licensure in good standing in dentistry or dental hygiene in any state; or

(2) Is currently licensed to practice dentistry or dental hygiene in any licensing jurisdiction in the United States and whose license is unrestricted and in good standing.

As used in this subsection, the term "unrestricted" means that no restrictions have been placed on the applicant's license by any board, no sanctions or disciplinary actions have been imposed by any board on the applicant, and the applicant is not under probation or suspension by any board.

(c) The special licensee shall be permitted to practice dentistry or dental hygiene only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide dentistry or dental hygiene services only to indigent patients in areas which are underserved by dentists or dental hygienists or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31. The practice of dental hygiene by a dental hygienist awarded a special license under this Code section shall be governed by Code Section 43-11-74.

(d) The person applying for the special license under this Code section shall submit to the board a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any dentistry or dental hygiene services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(f) If, at the time application is made for the special license, the dentist or dental hygienist is not in compliance with the continuing education requirements established by the board for dentists or dental hygienists in this state, the dentist or dental hygienist may be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing dentistry or dental hygiene under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section shall be governed by the provisions of such article.

(h) This Code section, being in derogation of the common law, shall be strictly construed.

(i) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

History.

Code 1981, § 43-11-52, enacted by Ga. L. 2001, p. 329, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2004, p. 720, § 8; Ga. L. 2005, p. 1493, § 3/HB 166; Ga. L. 2008, p. 354, § 4/HB 1222; Ga. L. 2012, p. 1081, § 1/SB 338.

Editor's notes.

Ga. L. 2001, p. 329, § 2, not codified by the General Assembly, provides that this Code section shall be automatically repealed on July 1, 2004, "upon which date any special license issued pursuant to this Act shall also expire."

Ga. L. 2002, p. 639, § 1(b)(2), not codified by the General Assembly, provides: "Section 2 of an Act amending Article 2 of Chapter 11 of Title 43 of the Official Code of Georgia Annotated, relating to licenses for the practice of dentistry, approved April 19, 2001 (Ga. L. 2001, p. 329), which would have provided for a future repeal or

'sunset' of Code Section 43-11-52 of the Official Code of Georgia Annotated, the 'Georgia Volunteers in Dentistry Act,' is hereby repealed."

Ga. L. 2002, p. 639, § 1(c)(2), not codified by the General Assembly, provides: "The provisions of Code Section 43-11-52 of the Official Code of Georgia Annotated, the 'Georgia Volunteers in Dentistry Act,' which were in effect and applicable on January 1, 2002, shall remain in effect and applicable until and unless changed by future Act of the General Assembly."

43-11-53. Charitable dental events; temporary licenses for dentists and dental hygienists in good standing in other states; procedures.

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

(1) "Charitable dental event" means a board approved charitable dental clinic or board approved continuing education course for dentists or dental hygienists provided by a hosting entity meeting the requirements of this Code section in which all dental procedures and treatment are provided to low-income patients at no cost to the patients.

(2) "Hosting entity" means:

(A) Any dental education school approved by the Commission on Dental Accreditation of the American Dental Association;

(B) A nonprofit dental or dental hygiene association or organization; or

(C) A for profit dental continuing education organization.

A hosting entity must be registered and authorized to conduct business in Georgia.

(3) "Low-income" shall have the same meaning as in Code Section 31-8-192.

(4) "Unrestricted" means that no restrictions have been placed on the applicant's license by any state dental board, no sanctions or disciplinary actions have been imposed by any state dental board on the applicant, and the applicant is not under probation or suspension by any state dental board.

(b) The board may issue in its discretion a temporary, limited license to allow a qualifying, non-Georgia licensed dentist or dental hygienist to engage in the lawful practice of dentistry or dental hygiene in Georgia on a volunteer basis under the direct supervision of a Georgia licensed dentist, provided that such treatment is rendered at charitable dental events.

(c) In issuing such licenses, the board shall observe the following criteria:

(1) Dentists and dental hygienists practicing under this license shall only treat low-income patients;

(2) Dentists and dental hygienists practicing under this license shall only treat low-income patients at:

(A) Free and charitable dental events;

(B) Dental clinics located at sites approved by the Commission on Dental Accreditation of the American Dental Association; or

(C) A private dental office owned by a Georgia licensed dentist in good standing with the board; and

(3) The qualifying dentist or dental hygienist shall:

(A) Possess an unrestricted licensed to practice dentistry or dental hygiene in any licensing jurisdiction in the United States and be in good standing with said licensing jurisdiction;

(B)(i) Be retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and, prior to retirement, maintained an unrestricted license to practice dentistry or dental hygiene in good standing with the applicant's licensing jurisdiction; or

(ii) Possess a license issued by the board pursuant to Code Section 43-11-42; and

(C) Have been issued a license by a licensing jurisdiction following the successful completion of a clinical licensing examination.

(d) A dentist or dental hygienist shall submit an application for a temporary, limited license to the board at least 30 calendar days prior to the date on which the dentist or dental hygienist seeks to practice dentistry or dental hygiene in this state pursuant to this Code section and shall pay the applicable licensing fee to the board. The board shall not require the passage of a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry or dental hygiene in this state, nor shall it require the applicant to submit a statement from a physician attesting to the applicant's physical and mental capacity. The following documents shall be submitted with the application:

(1) Proof of good standing with the dentist's or dental hygienist's professional licensing board or, in the case of a retired dentist or dental hygienist, the date on which the dentist or dental hygienist surrendered his or her license to practice dentistry or dental hygiene and a sworn affidavit certifying that his or her license was in good standing on the date he or she surrendered the license;

(2) Proof of current cardiopulmonary resuscitation certification;

(3) A National Practitioner Data Bank report dated within four months of the submission date of the application; provided, however, that this shall not apply to applicants who graduated from dental school or dental hygiene school within the previous six months;

(4) Proof of current dental malpractice insurance and all coverage limits, if applicable;

(5) A certifying statement from the hosting entity of the charitable dental event that all dental procedures shall be performed on a free and uncompensated basis to low-income patients; and

(6) A statement from the applicant expressly agreeing that any violations of Georgia law and applicable board rules and regulations while engaging in the lawful practice of dentistry or dental hygiene under a license issued pursuant to this Code section shall be reported to that dentist's or dental hygienist's professional licensing board in his or her jurisdiction for enforcement and the imposition of sanctions as determined by such board.

(e) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(f)(1) Dentists or dental hygienists holding a license issued pursuant to this Code section shall be authorized to practice dentistry or dental hygiene at charitable dental events under the direct supervision of at least one Georgia licensed dentist in good standing who possesses an unrestricted license to practice dentistry in this state. However, no such Georgia licensed dentist shall be allowed to supervise more than four non-Georgia licensed dentists or four non-Georgia licensed dental hygienists at a charitable dental event pursuant to this Code section.

(2) Under no circumstances shall any dentists holding a license issued pursuant to this Code section be allowed to authorize the performance of dental hygiene functions under general supervision pursuant to Code Section 43-11-74.

(3) Licenses issued pursuant to this Code section shall be valid for no more than five consecutive calendar days during a charitable dental event; provided, however, that a license issued under this Code section to a dentist who also holds a dental faculty license in good standing issued pursuant to Code Section 43-11-42 shall be valid for no more than five nonconsecutive days.

(4) Dentists or dental hygienists holding a license issued pursuant to this Code section shall be prohibited from applying for another license pursuant to this Code section for a period of six months from the expiration date of the previous license issued by the board pursuant to this Code section.

(5) If unforeseen circumstances beyond the reasonable control of a licensee under this Code section prevents the licensee from participating in the charitable dental event, the board shall have the authority to alter or amend the dates for which the license shall be valid, provided that the license holder files a written petition to the board no more than seven calendar days prior to the date of the subsequent charitable dental event.

(g) At least 60 calendar days prior to the date of the charitable dental event, the hosting entity shall submit to the board:

(1) The name and business address of the hosting entity;

(2) Proof that the hosting entity is authorized to conduct business in the State of Georgia;

(3) Proof of the hosting entity's liability coverage, if applicable;

(4) Proof of the board's approval of the charitable dental event;

(5) The name, business address, and license number of each Georgia licensed dentist supervising the licensees of the charitable dental event pursuant to this Code section;

(6) The name and business address of the Georgia licensed dentist or dental clinic responsible for providing follow-up care to patients no less than 30 calendar days after the date of the charitable dental event, and the name and business address of the supervising Georgia licensed dentist, dental clinic, or hosting entity responsible for maintaining patient records as prescribed by the board. Such information shall also be provided in writing to all patients receiving dental treatment at the charitable dental event; and

(7) Proof that the supervising dentist, dental clinic, or hosting entity possesses the applicable permits required pursuant to Code Section 43-11-21 if conscious sedation is to be administered or Code Section 43-11-21.1 if general anesthesia is to be administered to patients at the charitable dental event.

(h)(1) Except as provided in paragraph (2) of this subsection, the liability of persons practicing dentistry or dental hygiene under and in compliance with licenses issued pursuant to this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene

pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with licenses issued pursuant to this Code section shall be governed by the provisions of such article.

(i) The board shall promulgate rules and regulations that are reasonably necessary to implement the provisions of this Code section.

History.
Code 1981, § 43-11-53, enacted by Ga. L. 2020, p. 236, § 1/HB 521.

Effective date.
This Code section became effective July 16, 2020.

ARTICLE 3

DENTAL HYGIENISTS

43-11-70. Examination requirement; issuance of license; posting license.

No person shall practice as a dental hygienist in this state until such person has passed a written and a clinical examination conducted or approved by the board. The fee for such examination shall be paid to the executive director and shall be in an amount established by the board. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination in a manner satisfactory to the board, and the license certificate shall be posted and displayed in the place in which the hygienist is employed.

History.
Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 2; Ga. L. 1963, p. 438, § 1; Code 1933, § 84-726, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 9; Ga. L. 2013, p. 192, § 2-16/HB 132.

Administrative rules and regulations.
Dental hygiene, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-5.

RESEARCH REFERENCES

ALR.
Single or isolated transaction as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

43-11-70.1. Temporary license authorized.

A person who furnishes the board satisfactory proof of being currently licensed to practice as a dental hygienist in another state and who has applied for, paid the fee for, and been authorized by the board to take the examination required by Code Section 43-11-70 shall be issued a

temporary license to practice as a dental hygienist in this state. The temporary license shall be valid from the date of issuance until the results of the first examination scheduled for the applicant are released. If the applicant fails the examination or fails to appear at the examination, the temporary license shall automatically become invalid. No such temporary license shall be issued more than one time nor shall a temporary license be issued to an applicant who has previously failed the examination. If the applicant passes the examination, the temporary license shall remain valid until a license is issued. A temporary license shall be posted and displayed in the place in which the dental hygienist is employed.

History.
Code 1981, § 43-11-70.1, enacted by Ga. L. 1991, p. 352, § 1; Ga. L. 1993, p. 450, § 1.

Editor's notes.
For application of this statute in 2020 and 2021, see Executive Orders 08.15.20.01. 08.31.20.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

43-11-71. Qualifications of applicants for license; criminal background check.

(a) No person shall be entitled to or be issued such license as set out in Code Section 43-11-70 unless such person is at least 18 years of age, of good moral character, and a graduate of a dental hygiene program recognized by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency which is operated by a school or college accredited by an institutional accrediting agency recognized by the United States Department of Education whose curriculum is at least two academic years of courses at the appropriate level and at the completion of which an associate or baccalaureate degree is awarded.

(b) Application for a license under Code Section 43-11-70 shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

History.
Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 3; Ga. L. 1975, p. 832, § 1; Code 1933, § 84-727, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 812, § 1; Ga. L. 2004, p. 720, § 10.

43-11-71.1. Application for license to practice dental hygiene by credentials; procedure; criminal background check; expiration of license.

(a)(1) Applicants for a license to practice dental hygiene by credentials must have received a dental hygiene degree from a dental hygiene school or program accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, and approved by the board. Applicants must also provide proof of full-time clinical practice, as defined by the board; full-time faculty practice, as defined by the board; or a combination of both for the last two preceding years and hold an active dental hygiene license in good standing from another state.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dental hygiene as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a license by credentials shall be made through the executive director, who shall then submit all such applications to the board. The fee for licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of Code Section 43-11-72, an applicant who has met the requirements of this Code section shall be granted a license to practice as a dental hygienist.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in

this state within two years of receiving such license under this Code section or the license shall be automatically revoked.

History.
Code 1981, § 43-11-71.1, enacted by Ga. L. 2004, p. 720, § 11; Ga. L. 2005, p. 60, § 43; Ga. L. 2013, p. 192, § 2-17/HB 132.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2005, a semicolon was substituted for a comma following "the board" twice in the second sentence of paragraph (a)(1).

43-11-72. Corrective action against licensee.

The board shall have the authority to refuse to grant, to revoke, or to discipline the license of any licensed dental hygienist in this state based upon any ground or violation enumerated in Code Section 43-11-47, in the same manner and to the same extent as such Code section applies to licenses of dentists, unless the application of any such provision would not be appropriate to the license of a dental hygienist, in accordance with the sanctions, standards, and procedures set forth in that Code section, or for violation of Code Section 43-11-74 or any other law or rule relating to the practice of dental hygiene, in accordance with the sanctions, standards, and procedures set forth in Code Section 43-11-47.

History.
Ga. L. 1949, p. 1192, § 6; Ga. L. 1958, p. 53, § 1; Code 1933, § 84-730, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 8; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 136, § 43; Ga. L. 2004, p. 720, § 12.

Law reviews.
For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.
Professional incompetency as ground for disciplinary measure against physician or dentist, 28 A.L.R.3d 487.
Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 A.L.R.3d 549; 70 A.L.R.4th 132.

43-11-73. License renewal.

(a) Every person licensed by the board to practice dental hygiene shall register biennially on the renewal date set by the executive director and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty

period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dental hygiene pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dental hygienists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation, as may be defined by rule or regulation of the board.

History.
Code 1981, § 43-11-73, enacted by Ga. L. 1987, p. 932, § 8; Ga. L. 1996, p. 226, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-18/HB 132.
Editor's notes.
Former Code Section 43-11-73, relating to records kept by the board, based on Ga. L. 1958, p. 53, § 2; Ga. L. 1976, p. 484, § 1, was repealed by Ga. L. 1983, p. 1389, § 9, effective March 29, 1983.

43-11-73.1. Continuing education requirement; waiver; rules and regulations.

(a) The board shall be authorized to require persons seeking renewal of a dental hygienist license to complete board approved continuing education of not less than 22 hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning and professional organizations. At least 15 hours of continuing education in each renewal cycle shall be scientifically based.

(b) The board shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, and renewal cycle which begins after the 1990-1991 renewal.

History.
Code 1981, § 43-11-73.1, enacted by Ga. L. 1991, p. 350, § 2; Ga. L. 1997, p. 143, § 43; Ga. L. 1999, p. 234, § 21.

43-11-74. Direct supervision required; scope of duties; exceptions to required supervision for dental screenings.

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

(1) "Direct supervision" means that a licensed dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedure and remains in the dental office or treatment facility while the procedure is being

performed by the dental hygienist, and before dismissal of the patient, examines the patient.

(2) "General supervision" means that a licensed dentist has authorized the delegable duties of a licensed dental hygienist but does not require that a licensed dentist be present when such duties are performed.

(b) Licensed dental hygienists shall perform their duties only under the direct supervision of a licensed dentist, except as otherwise provided in this Code section. No licensed dental hygienist shall diagnose, prescribe, determine the initial dosage, or increase the initial dosage of nitrous oxide, practice dentistry, or do any kind of dental work other than to remove calcareous deposits, secretions, and stains from the surfaces of the teeth, to apply ordinary wash or washes of a soothing character, and to perform those acts, services, procedures, and practices which the board shall prescribe by rule or regulation.

(c) After meeting such additional education and training requirements as the board may require by rule or regulation, a licensed dental hygienist may perform such other acts, practices, services, or procedures under the direct supervision of a licensed dentist, which the board may prescribe by rule or regulation subject, however, to the limitations set forth in subsection (b) of this Code section.

(d) The requirement of direct supervision shall not apply to the educational training of dental hygiene students at an institution approved by the board and the Commission on Dental Accreditation of the American Dental Association, or its successor agency, when such instruction is carried out under such degree of supervision by a licensed dentist as the board may prescribe by rule or regulation.

(e) The requirement of direct supervision shall not apply to the performance of dental hygiene duties at approved dental facilities of the Department of Public Health, county boards of health, or the Department of Corrections or the performance of dental hygiene duties by personnel of the Department of Public Health or county boards of health at approved offsite locations.

(f)(1) As used in this subsection, the term "dental screening" means a visual assessment of the oral cavity without the use of X-rays, laboratory tests, or diagnostic models to determine if it appears that a more thorough clinical examination and diagnosis should be conducted by a licensed dentist.

(2) The requirement of direct supervision shall not apply to the performance of licensed dental hygienists providing dental screenings in settings which include: schools; hospitals; clinics; state, county, local, and federal public health programs; federally qualified

health centers; volunteer community health settings; senior centers; and family violence shelters, as defined in Code Section 19-13-20. Other health fair settings must be preapproved by the board.

(3) Each person who receives a dental screening pursuant to this subsection, or the parent or legal guardian if the person is a minor, must be informed in writing of the purpose and limitations of a dental screening and advised to seek a more thorough clinical examination by a licensed dentist to determine whether or not problems exist that might not be discovered in a dental screening. There shall be no fees charged for providing a dental screening pursuant to this subsection except for dental screenings provided by employees of the Department of Public Health or county boards of health. These fees must be paid directly to that department or county board of health and not to the individual who performs the dental screening.

(g)(1) In a private dental office setting, a licensed dental hygienist may perform only the following functions under general supervision:

(A) Application of sealants and oral prophylaxis and assessment;

(B) Fluoride treatment;

(C) Oral hygiene instruction and education; and

(D) Exposure and processing of radiographs if provided for by specific standing orders of the authorizing licensed dentist, including any protocols regarding urgent dental issues that arise.

(2) A licensed dentist in a private dental office setting may authorize general supervision of a licensed dental hygienist only upon meeting the following criteria:

(A) A new patient of record must be clinically examined by the authorizing licensed dentist during the initial visit;

(B) A patient must be examined by the authorizing licensed dentist at a minimum of 12 month intervals; and

(C) A patient must be notified in advance of the appointment that he or she will be treated by the licensed dental hygienist under general supervision without the authorizing licensed dentist being present or being examined by the authorizing licensed dentist.

(h) In school settings, licensed dental hygienists may apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision, with written permission of the student's parent or guardian. Such written permission may be obtained by the school in the same manner as other parental permissions are obtained. Licensed dental hygienists may also, without prior written permission

of the student's parent or guardian, provide oral hygiene instruction and counseling. Confidentiality of any records related to services provided to a student pursuant to this subsection shall be maintained by the licensed dental hygienist and authorizing licensed dentist in compliance with the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g. School settings shall include only schools that are Title I schools under the federal Elementary and Secondary Education Act, schools in which at least 65 percent of the student population is eligible for free or reduced price lunch under federal guidelines, Head Start programs, and Georgia's Pre-K Program.

(i) In hospitals, nursing homes, long-term care facilities, rural health clinics, federally qualified health centers, health facilities operated by federal, state, county, or local governments, hospices, family violence shelters as defined in Code Section 19-13-20, and free health clinics as defined in Code Section 51-1-29.4, licensed dental hygienists may apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision.

(j) A licensed dental hygienist providing dental hygiene services pursuant to subsection (h) or (i) of this Code section shall:

(1) Not perform any dental hygiene services on a patient that has dental pain or clearly visible evidence of widespread dental disease. The licensed dental hygienist shall immediately refer such patient to the authorizing licensed dentist for clinical examination and treatment. The licensed dental hygienist shall notate such patient's file and the patient shall not be eligible to receive dental hygiene services pursuant to subsection (h) or (i) of this Code section until a licensed dentist provides written authorization that such services may be performed on the patient;

(2) Prior to providing any dental hygiene services, obtain, study, and comprehend the school's or facility's protocols and procedures regarding medical emergencies and implement and comply with such protocols and procedures if a medical emergency arises during the provision of dental hygiene services; and

(3) Provide to each patient receiving such services written notice containing:

(A) The name and license number of the licensed dental hygienist and the authorizing licensed dentist;

(B) Any dental hygiene issues that the licensed dental hygienist identified during the performance of dental hygiene duties. If dental hygiene services are not performed on the patient pursuant to paragraph (1) of this subsection, the written notice shall include a statement that the patient is not eligible to receive dental

hygiene services until a clinical examination is performed by a licensed dentist and a licensed dentist provides written authorization that services may be performed; and

(C) A statement advising each patient who receives dental hygiene services to seek a more thorough clinical examination by a licensed dentist within 90 days, unless the authorizing licensed dentist performed an initial clinical examination of the patient.

The licensed dental hygienist shall make all reasonable efforts to provide such written notice to parents or legal guardians of minors or incapacitated adults who receive dental hygiene services and to the long-term care facility or nursing home for residents of such facilities who receive dental hygiene services.

(k)(1) Any licensed dental hygienist performing dental hygiene services under general supervision pursuant to this Code section shall have at least two years of experience in the practice of dental hygiene, shall be in compliance with continuing education requirements pursuant to Code Section 43-11-73.1 and cardiopulmonary resuscitation certification requirements contained in Code Section 43-11-73, and shall be licensed in good standing.

(2) Licensed dental hygienists practicing under general supervision shall maintain professional liability insurance in accordance with board rules and regulations.

(l)(1) No licensed dentist shall be required to authorize a licensed dental hygienist or dental hygienists to perform dental hygiene duties pursuant to subsection (g), (h), or (i) of this Code section.

(2) It shall be in the sole discretion of the authorizing licensed dentist as to whether or not to require an initial examination of the patient prior to the performance by a licensed dental hygienist of dental hygiene services under general supervision.

(3) A licensed dentist may only authorize up to four licensed dental hygienists to provide dental hygiene services pursuant to subsection (g), (h), or (i) of this Code section at any one time.

(4) A licensed dentist authorizing one or more licensed dental hygienists to provide dental hygiene services pursuant to subsection (h) or (i) of this Code section shall practice dentistry and treat patients in a physical and operational dental office located in this state within 50 miles of the setting in which the dental hygiene services are to be provided under general supervision.

(m) Dental hygiene services provided by licensed dental hygienists in mobile dental vans shall always be provided under direct supervision.

(n) Dental assistants may use rubber cup prophy on a patient with primary dentition under the direct supervision of a licensed dentist in accordance with any guidelines or rules established by the board. Dental assistants shall meet any education, training, or other requirements as established by the board.

(o)(1) Nothing in this Code section shall be construed to require a school or facility receiving dental hygiene services provided pursuant to subsection (h) or (i) of this Code section to purchase any equipment.

(2) Nothing in this Code section shall be construed to establish independent dental hygiene practice.

(p) The Department of Community Health shall collect or cause to be collected data regarding changes to utilization rates for dental services provided to recipients of Medicaid and shall make such data readily available to members of the General Assembly upon written request.

(q) The Georgia Board of Dentistry shall provide a report to the House Committee on Health and Human Services and the Senate Health and Human Services Committee by January 1 in 2018, 2019, and 2020 on the number of licensed dentists providing dental hygienist services under general supervision in each of the following settings: hospitals; nursing homes; long-term care facilities; rural health clinics; federally qualified health centers; health facilities operated by federal, state, county, or local governments; hospices; family violence shelters as defined in Code Section 19-13-20; and free health clinics as defined in Code Section 51-1-29.4.

History.

Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 4; Code 1933, § 84-728, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1986, p. 828, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2001, p. 787, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2017, p. 401, § 2/HB 154; Ga. L. 2018, p. 1112, § 43/SB 365.

Editor's notes.

Ga. L. 2017, p. 401, § 1/HB 154, not codified by the General Assembly, provides that: "(a) The General Assembly finds that:

"(1) Statistics show that nearly one-third of older adults have untreated tooth decay and nearly 25 percent of adults ages 65 to 74 have severe gum disease. Statistics also show that a significant percentage of lower income children in Georgia do not have adequate access to dental care, putting them at significant risk of developing tooth decay and other oral health conditions;

"(2) Professional preventative hygiene services can help prevent such conditions before they begin;

"(3) Preventative care is the most cost-effective care that can be delivered to the public;

"(4) In 2016, 4,106 Georgians sought emergency dental care at Grady Memorial Hospital at a cost of $1.75 million; and

"(5) Of Georgia's 159 counties, 118 are considered dental health professional shortage areas, meaning there are not enough licensed dentists in those areas to meet the dental care needs of the public, resulting in individuals seeking emergency care for dental issues.

"(b) It is the intent of the General Assembly to increase access to preventative dental care for underserved and needy populations. It is further the intent of the General Assembly that the rules and

regulations promulgated by the Georgia Board of Dentistry pursuant to this Act effectuate this purpose to the greatest extent allowable."

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 238 (2001).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Administration of local anesthesia. — Board of dentistry is authorized by O.C.G.A. § 43-11-74 to promulgate rules to permit delegating the administration of local anesthesia to dental hygienists under the supervision of a practitioner. 2003 Op. Att'y Gen. No. 03-1.

43-11-75. Applicability of article.

This article shall not apply to licensed dentists, nor shall this article apply to physicians licensed in this state in extracting teeth or performing surgical operations and in charging therefor or to accredited schools of dentistry.

History.

Ga. L. 1949, p. 1192, § 8; Code 1933, § 84-731, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 1999, p. 234, § 22.

43-11-76. Unlicensed practice of dental hygiene.

Any person who engages in the practice of dental hygiene without first having obtained a license therefor shall be guilty of a misdemeanor.

History.

Code 1981, § 43-11-76, enacted by Ga. L. 1983, p. 1389, § 10; Ga. L. 1987, p. 932, § 8.

ARTICLE 4

DENTAL ASSISTANTS

43-11-80. Acts, services, practices, and procedures authorized.

(a) A dental assistant is one, other than a licensed dentist or licensed dental hygienist, who is employed to assist a licensed dentist by performing those acts, services, practices, and procedures as may be prescribed by rule or regulation of the board.

(b) After meeting such additional education and training requirements as the board may require by rule or regulation, a dental assistant may perform such other acts, practices, services, or procedures, under the direct supervision of a licensed dentist, which the board may prescribe by rule or regulation.

History.
Code 1981, § 43-11-80, enacted by Ga. L. 1987, p. 932, § 9.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "board" was substituted for "Georgia Board of Dentistry" at the end of subsection (a).

43-11-81. Direct supervision required.

Dental assistants shall perform their duties only under the direct, personal supervision of a licensed dentist. No dental assistant shall practice dentistry, dental hygiene, or do any kind of dental work other than those acts, services, procedures, and practices prescribed by rule or regulation of the board.

History.
Code 1981, § 43-11-81, enacted by Ga. L. 1987, p. 932, § 9.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "board" was substituted for "Georgia Board of Dentistry" at the end of the second sentence.

43-11-82. Exceptions to application of article.

This article shall not apply to licensed dentists or dental hygienists, nor shall this article apply to physicians licensed in this state in extracting teeth or performing surgical operations and in charging therefor or to accredited schools of dentistry.

History.
Code 1981, § 43-11-82, enacted by Ga. L. 1987, p. 932, § 9; Ga. L. 1999, p. 234, § 23.

CHAPTER 11A

DIETITIANS

Sec.	
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Administrative rules and regulations.

Organization of board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-1.

Code of conduct and ethics of dietitians, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-6.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 4 et seq., 41, 47, 61 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-11A-1. Short title.

This chapter shall be known and may be cited as the "Dietetics Practice Act."

History. Code 1981, § 43-11A-1, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-2. Purpose of chapter.

The General Assembly acknowledges that the application of scientific knowledge relating to nutrition is important in the treatment of disease and in the attainment and maintenance of health; and acknowledges further that the rendering of sound dietetic or nutrition services in hospitals, nursing homes, school districts, health departments, private practice and consultation, and in other settings requires trained and competent professionals. It is declared, therefore, to be the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in dietetic practice.

History. Code 1981, § 43-11A-2, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-3. Definitions.

As used in this chapter, the term:

(1) "Advertise" means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory or announcement on radio or announcement or display on television.

(2) "Applicant" means any person seeking a license under this chapter.

(3) "Board" means the Georgia Board of Examiners of Licensed Dietitians established by this chapter.

(4) "Dietetic practice" or "dietetics" means the integration and application for compensation of principles derived from the sciences of nutrition, biochemistry, food, physiology, management, and behavioral and social sciences to achieve and maintain client health through the provision of nutrition care services, which shall include:

(A) Assessing the nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate intake including enteral and parenteral nutrition;

(B) Establishing priorities, goals, and objectives which meet nutritional needs and are consistent with available resources;

(C) Providing dietetic nutrition counseling by advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

(D) Developing, implementing, and managing nutrition care delivery systems; and

(E) Evaluating, making changes in, and maintaining standards of quality in food and nutrition care services.

As used in this chapter, the terms "dietetic practice," "dietetics," and "medical nutrition therapy" are interchangeable.

(5) "Dietitian" means a person duly licensed under this chapter to practice dietetics. As used in this chapter, the terms "dietitian" and "dietetic counselor" are interchangeable.

(6) "Provisionally licensed dietitian" means a person provisionally licensed under this chapter.

(7) "Registered dietitian" means a person registered by the Commission on Dietetic Registration of the American Dietetic Association.

History.
Code 1981, § 43-11A-3, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.

43-11A-4. Creation of Georgia Board of Examiners of Licensed Dietitians.

(a) There is created the Georgia Board of Examiners of Licensed Dietitians. The board shall consist of seven members as follows:

(1) Six members shall be dietitians with at least one member from each of the following areas of dietetic practice: clinical dietetics; community or public health dietetics; an educator on the faculty of a college or university specializing in the field of dietetics; and the private practice of dietetics; and

(2) One member shall represent the public at large.

(b) The Georgia Board of Examiners of Licensed Dietitians existing immediately prior to July 1, 1994, is continued in existence and shall continue to consist of seven members to be appointed by the Governor with the confirmation of the Senate. Members of the board shall take office on the first day of July immediately following the expired terms of

that office and shall serve for a term of four years and until their successors are appointed and qualified. Those persons serving as members of the board immediately prior to July 1, 1994, shall continue to serve out their respective terms of office and until their respective successors are appointed and qualified. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two consecutive terms. Any vacancy shall be filled by the Governor subject to confirmation of the Senate.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) All members of the board shall take the constitutional oath of office.

History. Code 1981, § 43-11A-4, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.

43-11A-5. Qualifications, appointment, and removal of board members.

(a) Professional members of the board shall:

(1) Be citizens of the United States and residents of this state;

(2) Have engaged in the dietetic practice for compensation for not less than five years; and

(3) Be licensed under this chapter.

(b) Consumer members of the board shall be appointed by the Governor from the public at large, shall be citizens of the United States and residents of this state, and shall have no connection whatsoever with dietetic practice.

(c) The Governor may remove members of the board, after notice and opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

History. Code 1981, § 43-11A-5, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-6. Election of officers; meetings of board.

The board shall meet annually and shall elect from its members a chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office according to the rules adopted by the board.

In addition to its annual meeting, the board shall hold at least two other meetings each year as provided by the rules adopted by the board.

History. Code 1981, § 43-11A-6, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-7. Powers of board.

This board shall have the power to:

(1) Enforce the provisions of this chapter, and it shall be granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) License duly qualified applicants by examination, endorsement, or reinstatement;

(4) Implement the disciplinary process;

(5) Enforce qualifications for licensure;

(6) Set standards for competency of licensees continuing in or returning to practice;

(7) Issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(8) Adopt, revise, and enforce rules regarding the advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(9) Adopt, publish in print or electronically, and enforce a code of ethics;

(10) Establish examination and licensing fees;

(11) Request and receive the assistance of state educational institutions or other state agencies;

(12) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies;

(13) Establish continuing education requirements; and

(14) Adopt a seal which shall be affixed only in such manner as prescribed by the board.

History.
Code 1981, § 43-11A-7, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 2010, p. 838, § 10/SB 388.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, the subsection "(a)" designation was deleted.
Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-1 et seq.

43-11A-8. Grant of license without examination.

The board may grant, upon application and payment of proper fees, a license without examination to a person who, at the time of application, either:

(1) Holds a valid license as a licensed dietitian issued by another state, political territory, or jurisdiction acceptable to the board if, in the board's opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter; or

(2) Presents evidence satisfactory to the board that the applicant is registered as a registered dietitian by the Commission on Dietetic Registration of the American Dietetic Association or its successor organization.

History.
Code 1981, § 43-11A-8, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 2; Ga. L. 1994, p. 971, § 1.

43-11A-9. Eligibility for license.

Each applicant for a license as a dietitian shall be at least 18 years of age, shall have submitted a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and shall be in compliance with the following requirements:

(1) Receipt of a baccalaureate or higher degree from a college or university accredited by the Southern Association of Schools and Colleges or any other regional accreditation agency with a major course of study in dietetics, human nutrition, food and nutrition, nutrition education, or food systems management;

(2) Satisfactory completion of a documented, supervised experience component in dietetic practice of not less than 900 hours supervised by a licensed dietitian or registered dietitian as prescribed by the board;

(3) Successful completion of an examination as required by Code Section 43-11A-13; and

(4) Completion of such other requirements as may be prescribed by the board.

History.
Code 1981, § 43-11A-9, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 3; Ga. L. 1994, p. 971, § 1.

43-11A-10. Provisional permits.

A provisional permit to practice as a provisionally licensed dietitian under the supervision of a dietitian may be issued by the board upon the filing of an application with appropriate fees and submission of evidence of successful completion of a substantial portion of the requirements for licensure as provided by Code Section 43-11A-9, at the discretion of the board. The permit shall be issued for one year and may be renewed at the discretion of the board for a length of time determined by the board. A renewal fee may be required by the board to maintain a provisional license.

History.
Code 1981, § 43-11A-10, enacted by Ga. L. 1994, p. 971, § 1.
Editor's notes.
Ga. L. 1987, p. 1149, § 4, effective April 16, 1987, repealed former Code Section 43-11A-10, relating to exception from internship requirement, which was based on Ga. L. 1984, p. 1377, § 1.

43-11A-11. Power of board to require applications be made under oath.

The board may require that all applications be made under oath.

History.
Code 1981, § 43-11A-11, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-12. Notification of applicants of acceptance or rejection.

After evaluation of an application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

History.
Code 1981, § 43-11A-12, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-13. Examinations.

(a) Examinations to determine competence shall be administered to qualified applicants at least twice each calendar year. The examinations may be administered by a national testing service. The board shall prescribe or develop the examinations which may include an examination given by the Commission on Dietetic Registration of the American Dietetic Association or any other examination approved by two-thirds' vote of the board.

(b) The board shall notify each examinee of the results of the examination.

History. Code 1981, § 43-11A-13, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-14. Surrender of license on demand; display requirement; notice of change of address; renewal; inactive status.

(a) A license issued by the board is the property of the board and must be surrendered on demand.

(b) The licensee shall display the license certificate in an appropriate and public manner.

(c) The licensee shall inform the board of any change of address.

(d) The license shall be renewed biennially if the licensee is not in violation of this chapter at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(e) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(f) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set by the board shall be declared active.

History. Code 1981, § 43-11A-14, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-15. Refusal, suspension, or revocation of license; other disciplinary actions.

The board may refuse to grant or renew a license to an applicant; administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee; suspend any licensee for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license; limit or restrict any licensee as the board deems necessary for the protection of the public; revoke any license; condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or impose a fine not to exceed $500.00 for each violation of a law, rule, or regulation relating to the profession regulated by this chapter upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, or regulations under which licensure is sought or held; it shall be

incumbent upon the applicant to demonstrate to the satisfaction of the board that said applicant meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this Code section, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive,

or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule or regulation; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside of this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material.

History.

Code 1981, § 43-11A-15, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 971, § 1; Ga. L. 2000, p. 1706, § 19.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "Code section" was substituted for "subsection" in paragraph (3).

43-11A-16. License requirement; registered dieticians.

(a) Only a person licensed or otherwise authorized to practice under this chapter shall be engaged in dietetic practice or use the title "dietitian" or use the letters "LD" or any facsimile thereof or represent himself or herself to the public as a dietitian.

(b) Notwithstanding any other provisions of this Code section, a person duly registered as a registered dietitian shall have the right to use the title "registered dietitian," the designation "RD," or any facsimile thereof.

(c) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 43-11A-16, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.

Administrative rules and regulations.
Licensure requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-2.

43-11A-17. Applicability of "Georgia Administrative Procedure Act."

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-11A-17, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

43-11A-18. Exceptions.

Nothing in this chapter shall be construed to affect or prevent:

(1) A student enrolled in an approved academic program in dietetics from engaging in the practice of dietetics under the supervision of a dietitian; or a dietetic technician, certified dietary manager, or dietetic aide in a health care facility from providing nutrition services under the supervision of or in consultation with a dietitian;

(2) A dietitian who is serving in the armed forces of the United States or any other federal agency from engaging in the practice of dietetics, provided that such practice is related to service or employment;

(3) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, or pharmacy from engaging in the practice of dietetics when incidental to the practice of their profession, except that such persons may not use the title "dietitian";

(4) A nonresident registered dietitian from practicing dietetics in

this state for five days without a license or up to 30 days per year with licensure from another state if the requirements for licensure are substantially equal to the requirements contained in this chapter;

(5) Employees of a department, agency, or division of state, county, or local government from engaging in the practice of dietetics within the discharge of official duties when such practice is directed by or in consultation with a dietitian licensed under this chapter;

(6) Persons who were engaged in dietetic practice prior to July 1, 1994, but the prohibition of Code Section 43-11A-16 shall apply to such persons on and after July 1, 1995;

(7) Persons who provide weight control services, provided the weight control program has been reviewed by, consultation is available from, and no program change can be initiated without the prior approval of either a dietitian licensed under this chapter, a dietitian licensed in another state which has licensure requirements which are substantially equal to the requirements contained in this chapter, or a registered dietitian;

(8) Persons from marketing or distributing food, disseminating information on food, food materials, dietary or food supplements, or minerals or herbs, including but not limited to operators and employees of health food stores or other licensed businesses which sell such products, provided that such persons shall not engage in the oral or written explanation of the historical use, benefit, or preparation of such products which is intentionally deceptive or fraudulent, and such persons shall not furnish specific nutrition information related to such products which is deceptive or fraudulent. Persons included in this paragraph shall not use the title "dietitian" and shall not designate themselves by any other term or title which implies that such persons are licensed under this chapter;

(9) The practice of the tenets of any religion, sect, or denomination whatsoever, provided that a member of such religion, sect, or denomination shall not use the title "dietitian" and shall not designate himself or herself by any other term or title which implies that such member is engaged in dietetic practice; or

(10) Persons with a master's or doctorate degree from any regionally accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, food systems management, or nutrition education, or persons with a doctorate degree from a regionally accredited college or university with a major course of study in nutritional biochemistry, provided that such persons shall not use the title "dietitian."

History.
Code 1981, § 43-11A-18, enacted by Ga. L. 1994, p. 971, § 1.
Editor's notes.
Ga. L. 1992, p. 3137, § 12, effective July 1, 1992, repealed former Code Section 43-11A-18, relating to termination of the former Dietitians Licensing Law, which was based on Ga. L. 1984, p. 1377, § 1 and Ga. L. 1989, p. 291, § 1.

43-11A-19. Eligibility of nutritionists for license.

A person who does not meet the requirements for licensure under this chapter but who has been employed as a nutritionist under the state or a county merit system for at least five years prior to July 1, 1993, and who makes application for licensure as a dietitian prior to July 1, 1995, may be granted a license as a dietitian if he or she pays the required fee and complies with the continuing education requirements established by the board.

History.
Code 1981, § 43-11A-19, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.

CHAPTER 12

DISABLED VETERANS AND BLIND PERSONS ENGAGING IN PEDDLING, OPERATING BUSINESSES, OR PRACTICING PROFESSIONS

Sec.		Sec.	
43-12-1.	Exemption from payment of occupation tax, administrative fee, or regulatory fee.		ditional proof; rules and regulations as to certificates of exemption.
43-12-2.	Qualifications; proof of blindness or disability.	43-12-6.	Cancellation or suspension of certificates of exemption.
43-12-3.	Application for certificate of eligibility; ten-year period of validity.	43-12-7.	Payment of income taxes by applicants for exemption.
43-12-4.	Description of proposed business.	43-12-8.	Restrictions on businesses, professions, or semiprofessions which may be engaged in.
43-12-5.	Certificate of eligibility as prima-facie evidence of right to a certificate of exemption; requirement of ad-	43-12-9.	Utilization of certificate of exemption by person other than lawful holder.

Cross references.

Veterans preference, Ga. Const. 1983, Art. IV, Sec. III, Para. II.

Veteran's affairs, T. 38, C. 4.

Veterans' civil service preference, T. 45, C. 2, A. 2.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-20 are included in the annotations for this chapter.

Although cities may compel disabled veterans to obtain licenses, cities cannot compel payment for licenses. — If one has qualified as a disabled veteran under provisions of this chapter, a city cannot compel that veteran to pay license fee or tax imposed upon conduct of that veteran's business; however, if the city has enacted by valid ordinance under police powers vested in the city regulating businesses, the city may require one to obtain a license under provisions of that ordinance though one still may not be required to pay any fee for such license. 1954-56 Ga. Op. Att'y Gen. 904.

Real estate brokers and insurance agents not exempt from payment of license fees. — Veteran's certificate of exemption issued under authority of this chapter does not exempt either a real estate broker or a general insurance agent from payment of license fees. 1950-51 Ga. Op. Att'y Gen. 229 (decided under former Code 1933, Ch. 84-20, as it read prior to its revision by Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et

seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq. Am. Jur. 2d, New Topic Service, Americans with Disabilities Act, § 1 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-12-1. Exemption from payment of occupation tax, administrative fee, or regulatory fee.

Subject to the limitations provided in this chapter, the following classes of persons may peddle, conduct business, or practice the professions and semiprofessions in any county or municipality in this state without paying an occupation tax, administrative fee, or regulatory fee for the privilege of so doing, provided such person receives a certificate of exemption issued by the commissioner of veterans service:

(1) Any disabled veteran of any war or armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise;

(2) Any blind person; or

(3) Any veteran of peace-time service in the United States armed forces who has a physical disability incurred during the period of such service.

History.

Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1935, p. 163, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 2; Ga. L. 1971, p. 348, § 1; Ga. L. 1972, p. 456, § 1; Ga. L. 1983, p. 1401, § 13; Ga. L. 1996, p. 1268, § 1.

Editor's notes.

Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

JUDICIAL DECISIONS

Disabled veterans cannot be compelled to pay city for privilege of doing business. — Disabled soldier of World War I, who is a resident of this state, has a right to conduct a business without paying license for privilege of doing so to a town or city in which business is conducted. City of Marietta v. Brantley, 170 Ga. 258, 152 S.E. 232, 1930 Ga. LEXIS 433 (1930).

Tax as equivalent of paying for privilege of doing business. — To re-

quire a soldier to pay a tax would be to require the soldier to pay a license for privilege of conducting a business. Tyner v. Winslett, 174 Ga. 267, 162 S.E. 807, 1932 Ga. LEXIS 36 (1932).

Statutory exemption was only from occupation taxes, and did not purport to confer any additional right or privilege. McKinney v. Patton, 176 Ga. 719, 169 S.E. 16, 1933 Ga. LEXIS 265 (1933); Snipes v. Flournoy, 178 Ga. 815, 174 S.E. 617, 1934 Ga. LEXIS 193 (1934).

Statute neither expressly nor by implication takes away police powers of towns, cities, or counties. City of Marietta v. Howard, 208 Ga. 719, 69 S.E.2d 246, 1952 Ga. LEXIS 325 (1952).

Exemptions construed strictly against grantee. — Purported exemptions from taxation, being in derogation of sovereign authority of the state, are construed strictly against grantee. Snipes v. Flournoy, 178 Ga. 815, 174 S.E. 617, 1934 Ga. LEXIS 193 (1934).

Although exempt from fee, disabled veteran must obtain license to operate common motor carrier. — When a person was exempted from paying license fees under the provisions of this statute, the person must still obtain the necessary license to operate a common motor carrier and may not operate without the license. McKinney v. Patton, 176 Ga. 719, 169 S.E. 16, 1933 Ga. LEXIS 265 (1933).

Even though a veteran may hold the certificate contemplated by statute, the veteran still may not conduct business of a motor carrier without obtaining from the Public Service Commission a certificate of public convenience and necessity as other persons are required to do. McKinney v. Patton, 176 Ga. 719, 169 S.E. 16, 1933 Ga. LEXIS 265 (1933); Snipes v. Flournoy, 178 Ga. 815, 174 S.E. 617, 1934 Ga. LEXIS 193 (1934).

Exemption does not apply to state license taxes, and such exemption would not authorize a disabled veteran to carry on the business of a real estate broker without obtaining a license from the Georgia Real Estate Commission. Dixon v. Brooke, 44 Ga. App. 608, 162 S.E. 287, 1932 Ga. App. LEXIS 419 (1932).

Exemption applied although veteran did not own peddled goods. — Defendant was authorized to peddle under certificate of exemption issued in the defendant's own name under this statute despite the fact that the defendant did not own the goods being peddled. Roberts v. City of Eatonton, 50 Ga. App. 592, 179 S.E. 144, 1935 Ga. App. LEXIS 230 (1935).

Certificate of exemption as proof that one was a disabled veteran. — Any disabled veteran of the World War, resident in this state, may peddle or conduct business in any town, city, or county without obtaining a license; and the certificate of exemption stating the fact that the individual was a disabled or indigent veteran shall be sufficient proof. Smith v. City of Atlanta, 51 Ga. App. 17, 179 S.E. 558, 1935 Ga. App. LEXIS 522 (1935).

Certificate cannot be transferred. — Disabled veteran, resident of this state, may not transfer or grant disabled veteran's privilege to peddle goods without a license to any other person. Smith v. City of Atlanta, 51 Ga. App. 17, 179 S.E. 558, 1935 Ga. App. LEXIS 522 (1935).

Veteran's remedy was at law, not injunction against city arrest. — After a suit was instituted by a Confederate soldier claiming an exemption under this statute to enjoin the city from arresting the soldier and from in any way interfering with the soldier's business as a peddler, a court of equity would not interfere by injunction to restrain execution of municipal ordinance of a criminal nature, on ground of invalidity of such ordinance, nor on further ground that the plaintiff is exempt from operation of the ordinance. The person affected has a full and adequate remedy at law to test the validity of the ordinance, as well as the question of exemption from the ordinance's operation. City of Marietta v. Brantley, 170 Ga. 258, 152 S.E. 232, 1930 Ga. LEXIS 433 (1930).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Considerations
Limitations on Veterans' Exemption

General Considerations

Veteran's business license exemption applies to all cities and towns in this state. 1948-49 Ga. Op. Att'y Gen. 300; 1948-49 Ga. Op. Att'y Gen. 301.

Holders of certificates of exemption may peddle goods throughout state without paying license fee. — When a certificate of exemption is issued by the state revenue commissioner (now commissioner of veterans service), holder of such certificate is entitled to peddle goods in various cities, towns, and counties of state without paying a license for such privilege. 1965-66 Op. Att'y Gen. 66-183.

Exempt veteran's employees need no license. — Disabled veteran who holds certificate of exemption issued by state revenue commissioner (now commissioner of veterans service) to conduct business may employ agents, servants, and helpers and those agents, servants, and helpers are not required to obtain a license to conduct business. 1954-56 Ga. Op. Att'y Gen. 905.

Exemption applies to local taxes. — If veteran meets with qualifications of law, which is assumed by virtue of holding a license, the veteran is exempt from further taxation by city. 1950-51 Ga. Op. Att'y Gen. 381.

There is no limit on number of employees veteran may have under certificate of exemption. 1945-47 Ga. Op. Att'y Gen. 486.

Veteran may include interrelated business in exemption. — Statute limited a veteran to one independent business license exemption; if a veteran was operating an interrelated business, such interrelated business naturally would come under the exemption. 1948-49 Ga. Op. Att'y Gen. 309.

If business enterprises taken together to form one business, exemption may cover all. — Disabled veteran that operated several different and independent types of businesses was entitled only to an exemption upon one business; it was conceivable that many business enterprises which are made up of several component parts were at the same time interrelated and taken together form one business. 1948-49 Ga. Op. Att'y Gen. 308.

Limitations on Veterans' Exemption

Former Code 1933, § 84-2011 did not exempt disabled veterans from obtaining licenses, only from payment therefor. — There was no provision of law which would authorize a veteran to conduct a business without a license; however, the statute does exempt disabled veterans from payment of certain licenses. 1958-59 Ga. Op. Att'y Gen. 374.

No exemption from regulatory statutes charging fees to defray enforcement expenses. — It is well settled that the statute exempted disabled veterans who qualify under terms and conditions of the law from payment of revenue and occupational taxes and did not confer a right to exemption from state and local police regulation including license fees or taxes imposed under police power for regulatory purposes. 1954-56 Ga. Op. Att'y Gen. 390; 1957 Ga. Op. Att'y Gen. 338; 1958-59 Ga. Op. Att'y Gen. 263.

Provisions of former Code 1933, Ch. 84-20 applicable to veterans do not apply to regulatory statute, wherein fee was not charged to produce revenue but to defray expenses of enforcement of rules and regulations. 1957 Ga. Op. Att'y Gen. 145.

Veterans not exempt from regulation of businesses classified as privileges. — Statute referred only to fees charged by municipalities for exercising rights as distinguished from privileges and the statute does not give one seeking to engage in a business classified as a privilege immunity from satisfying conditions legally imposed by licensing agency including payment of any fee imposed in order to have such privilege. 1954-56 Ga.

Op. Att'y Gen. 909; 1958-59 Ga. Op. Att'y Gen. 374; 1960-61 Ga. Op. Att'y Gen. 585.

Exemption is inapplicable to licenses issued by Surface Mined Land Use Board. 1970 Op. Att'y Gen. No. 70-136.

Exemption is inapplicable to commercial fisherman's license required by game and fish laws. 1957 Ga. Op. Att'y Gen. 145.

Statute did not exempt veterans from payment of ad valorem taxes. 1962 Ga. Op. Att'y Gen. 501.

License exemption is personal and does not extend to corporation owned by veteran. 1960-61 Ga. Op. Att'y Gen. 586.

Exemption extends only to license fees and taxes imposed for conducting business or peddling. — Person holding a certificate of exemption issued in accordance with terms of the veteran's exemption was not exempt from payment of any regulatory fee, but only from license fees or taxes imposed for conducting business or peddling. 1945-47 Ga. Op. Att'y Gen. 484.

Exemption is inapplicable to license taxes imposed for regulatory purposes. 1952-53 Ga. Op. Att'y Gen. 523.

No application to regulatory fee. — Veteran's certificate of exemption does not apply to the regulatory fee imposed on wholesale fish dealers. 1945-47 Ga. Op. Att'y Gen. 484.

Law is not designed to exempt a veteran from a regulatory license; the exemption applies primarily to revenue measures. 1948-49 Ga. Op. Att'y Gen. 428.

Exemption inapplicable to ad valorem taxes. — Exemption applies to business licenses only; there is no provision of law for exemption of ad valorem taxes to veterans. 1948-49 Ga. Op. Att'y Gen. 307.

Merchandise carried in stock by one operating under a disabled veteran's business license is not exempt from ad valorem taxes. 1948-49 Ga. Op. Att'y Gen. 303.

RESEARCH REFERENCES

Am. Jur. 2d.

60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers, §§ 86, 88.

C.J.S.

39A C.J.S., Hawkers and Peddlers, § 19.

ALR.

Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 A.L.R. 1385.

43-12-2. Qualifications; proof of blindness or disability.

(a) No person shall be entitled to an exemption from occupation taxes, administrative fees, or regulatory fees which would otherwise be required to peddle, conduct business, or practice the professions or semiprofessions under this chapter until it has been made to appear to the issuing authority that the person making application therefor is a resident of this state and that the income of such person is such that he or she is not liable for the payment of state income taxes.

(b) Blind persons must furnish satisfactory proof of their blindness to the issuing authority.

(c) A war veteran must furnish satisfactory proof that he or she has a physical disability which is disabling to the extent of 10 percent or more; that his or her service in the armed forces of the United States

was terminated under conditions other than dishonorable; and that his or her service or some part thereof was rendered during a war period as defined by an act of the Congress of the United States, approved March 20, 1933, entitled "An Act to Maintain the Credit of the United States," and commonly known as Public Law No. 2, 73rd Congress; or that some part of his or her service was rendered on or after December 7, 1941, and before December 31, 1946; or that some part of his or her service was rendered on or after June 27, 1950, and before January 31, 1955; or that some part of his or her service was rendered on or after August 5, 1964, and before May 8, 1975. Proof of such 10 percent disability shall be established upon the written certificate of two physicians as to such disability, or by a letter or other written evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability, or by written evidence from the branch of the armed forces of the United States in which such veteran served.

(d) A veteran of peace-time service in the United States armed forces must furnish proof that he or she has a physical disability to the extent of 25 percent or more incurred in the line of duty during the period of such service by a letter or other evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served and that his or her service in the armed forces of the United States was terminated under conditions other than dishonorable.

History.

Ga. L. 1935, p. 163, § 1; Ga. L. 1943, p. 617, § 2; Ga. L. 1947, p. 1163, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 3; Ga. L. 1983, p. 667, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 1268, § 1; Ga. L. 2005, p. 1480, § 1/HB 442.

Cross references.

Notation on driver's license of post traumatic stress disorder, § 40-5-38.

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Exemption available only in years when individual is not liable for state income taxes. — Disabled veteran otherwise qualified for exemption from license taxes cannot be deprived of exemption during any year in which the veteran is not liable for state income taxes; on the other hand, the veteran is not exempt from payment of license taxes in any year for which the veteran is liable for payment of state income taxes. 1957 Ga. Op. Att'y Gen. 287.

Any veteran who paid state income taxes for previous year is ineligible for such a license. 1965-66 Op. Att'y Gen. No. 66-103.

Exemption inapplicable to regulatory statute charging fee to defray enforcement expenses. — Provisions applicable to veterans do not apply to a regulatory statute wherein fee is not charged to produce revenue but to defray expenses of enforcement of rules and regulations. 1957 Ga. Op. Att'y Gen. 145.

Payment for licenses for sale of beer and wine. — In no event would a veteran be exempt from payment of licenses for sale of beer and wine; licenses

levied for the sale of beer and wine are regulatory in character. 1957 Ga. Op. Att'y Gen. 338.

Exemption is inapplicable to commercial fisherman's license required by game and fish laws. 1957 Ga. Op. Att'y Gen. 145.

Procedure for establishing qualification for license. — If a war veteran has a 10 percent disability, the veteran is entitled to license upon producing a certificate of two physicians or a letter from the veteran's branch of service which substantiates the veteran's claim of disability; also, a peacetime veteran with a 25 percent service-connected disability may establish a claim by a letter from the veteran's branch of service, rather than a letter from the Veterans Administration. 1965-66 Op. Att'y Gen. No. 66-103.

War veterans with 10 percent disability entitled to exemption. 1948-49 Ga. Op. Att'y Gen. 309.

Exemption applies to business licenses only and not to ad valorem taxes. 1948-49 Ga. Op. Att'y Gen. 307.

Certificate may cover interrelated business. — Former Code 1933, § 84-2011 (see now O.C.G.A. § 43-12-1) limited a veteran to one independent business license exemption; if a veteran was operating an interrelated business, such interrelated business naturally would come under the exemption. 1948-49 Ga. Op. Att'y Gen. 309.

RESEARCH REFERENCES

ALR.

Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 A.L.R. 1385.

43-12-3. Application for certificate of eligibility; ten-year period of validity.

All persons within the groups enumerated in Code Section 43-12-1 seeking a certificate of exemption from the payment of occupation taxes, administrative fees, or regulatory fees for peddling, conducting a business, or practicing a profession or semiprofession must first make application to the judge of the probate court of the county in which he or she resides for a certificate of eligibility. Each applicant shall make an affidavit before the judge of the probate court that he or she is not subject to payment of any income taxes to this state. Upon receipt of the evidence required in Code Section 43-12-2 and the execution of the affidavit required by this Code section, the judge of the probate court shall issue a certificate of eligibility stating that the applicant has furnished the proof required for the issuance of a certificate of exemption required by the commissioner of veterans service. Such certificate of eligibility shall be valid for a period of ten years from the date of issue.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 4; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 14; Ga. L. 1996, p. 1268, § 1; Ga. L. 2010, p. 202, § 1/HB 128.

Editor's notes.

Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

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Exemption is inapplicable to regulatory statutes charging fee to defray enforcement expenses. 1957 Ga. Op. Att'y Gen. 145.

Exemptions are inapplicable to commercial fisherman's license required by game and fish laws. 1957 Ga. Op. Att'y Gen. 145.

43-12-4. Description of proposed business.

All persons eligible for a certificate of exemption to be issued by the commissioner of veterans service shall state in their application filed with the commissioner of veterans service the kind of business to be operated and the place where such business is proposed to be carried on; and only the business described in the application shall be exempt from the payment of state, county, and municipal business or occupation taxes or administrative fees and regulatory fees imposed by local governments. No person shall operate in his or her own name any other business than that described in his or her application filed with the commissioner of veterans service.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 7; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 15; Ga. L. 1996, p. 1268, § 1.

Editor's notes.

Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

43-12-5. Certificate of eligibility as prima-facie evidence of right to a certificate of exemption; requirement of additional proof; rules and regulations as to certificates of exemption.

The certificates of eligibility issued by any of the judges of the probate courts of this state shall be prima-facie evidence of the right of the holder thereof to a certificate of exemption to be issued by the commissioner of veterans service. However, the commissioner of veterans service may require additional proof when such commissioner has reason to believe that any applicant is not entitled to the exemptions provided for in this chapter. The commissioner of veterans service shall make and prescribe reasonable rules and regulations not inconsistent with this chapter governing the issuance of certificates of exemption.

History.

Ga. L. 1935, p. 163, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 5; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 16; Ga. L. 1996, p. 1268, § 1.

Editor's notes.

Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

43-12-6. Cancellation or suspension of certificates of exemption.

The commissioner of veterans service may cancel or suspend certificates of exemption at any time when it shall appear that the holder has become physically or financially ineligible to claim the exemption, that the certificate of exemption was procured through fraud or mistake, or that the person to whom such certificate was issued has permitted another to enjoy the benefits of such exemption. Any suspension or cancellation of the certificate of exemption may be made only after affording the person concerned an opportunity to be heard either by counsel or pro se. Service of ten days' written notice of the time and place the commissioner of veterans service expects to hear and determine the question of such suspension or cancellation shall be deemed sufficient notice when delivered by registered or certified mail or statutory overnight delivery or by any sheriff, deputy sheriff, marshal, constable, or police officer of any county or municipality of this state; and evidence of such service shall be deemed sufficient on proof of the receipt by the person concerned of the registered or certified item in which notice has been mailed or the return of service of any other officer.

History.

Ga. L. 1935, p. 163, §§ 3, 4; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 6; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 17; Ga. L. 2000, p. 1589, § 3.

Editor's notes.

Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-20 as it read prior to revision of Ga. L. 1953, Nov.-Dec. Sess., p. 431 are included in the annotations for this Code section.

Certificate may not be revoked for conviction of selling alcoholic or malt beverages without a license. 1945-47 Ga. Op. Att'y Gen. 483 (decided under former Code 1933, Ch. 84-2 prior to revision by Ga. L. 1953, Nov.-Dec. Sess., p. 431).

RESEARCH REFERENCES

ALR.

Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 A.L.R. 1385.

43-12-7. Payment of income taxes by applicants for exemption.

The commissioner of veterans service, upon request of the mayor or other executive officer of any municipality of this state, shall furnish

such municipality with information as to the payment of income taxes by applicants for exemption under this chapter.

History.
Ga. L. 1943, p. 617, § 5; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 9; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 18.
Editor's notes.
Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

43-12-8. Restrictions on businesses, professions, or semiprofessions which may be engaged in.

No person qualifying for a certificate of exemption under this chapter shall be licensed to peddle any item, conduct any business, or practice any profession or semiprofession which is prohibited by law. No person shall be licensed under this chapter to deal in or peddle intoxicating drinks; to operate a billiard, pool, or other table of like character; to deal in futures; or to carry on a business of pawnbroker or auctioneer.

History.
Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 10.

43-12-9. Utilization of certificate of exemption by person other than lawful holder.

No person receiving a certificate of exemption from the commissioner of veterans service shall allow the use of his or her name or the use of his or her certificate by any other person for carrying on any business or profession in this state for the purpose of avoiding any tax levied by the state or any county or municipality in this state. Any person allowing his or her certificate of exemption to be used in violation of this Code section shall be subject to having his or her certificate canceled by the commissioner of veterans service. Any person attempting to operate any business or profession under a certificate of exemption issued under this chapter who is not the true and lawful holder of such certificate shall be guilty of a misdemeanor.

History.
Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1935, p. 163, § 3; Ga. L. 1943, p. 617, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 8; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 19; Ga. L. 1996, p. 1268, § 1.
Editor's notes.
Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain

changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

CHAPTER 12A

IGNITION INTERLOCK DEVICE PROVIDERS

Sec.		Sec.	
43-12A-1.	Short title.		having stake in provider center.
43-12A-2.	Definitions.	43-12A-6.	Acts disqualifying person from operating provider center or engaging in practice of providing, installing, or monitoring ignition interlock devices.
43-12A-3.	License to operate a provider center.	43-12A-7.	Issuance and renewal of license.
43-12A-4.	Requirements for operating a provider center.	43-12A-8.	Suspension of license.
43-12A-5.	Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed provider; restrictions on certain individuals	43-12A-9.	Rules and regulations.

Cross references.

Ignition interlock devices as probation condition, § 42-8-110.

Court ordered installation of ignition interlock devices, § 42-8-111.

Specifying provider for ignition interlock device, § 42-8-114.

Administrative rules and regulations.

Ignition interlock devices, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-6.

DUI Alcohol or drug use risk reduction program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver Training and Driver Improvement, Chapter 375-5-6.

43-12A-1. Short title.

This chapter shall be known and may be cited as the "Ignition Interlock Device Providers Act."

History.

Code 1981, § 43-12A-1, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-2. Definitions.

As used in this chapter, the term:

(1) "Commissioner" means the commissioner of driver services.

(2) "Department" means the Department of Driver Services acting directly or through its duly authorized officers and agents.

(3) "Ignition interlock device" means a constant monitoring device certified by the commissioner which prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol concentration of the operator through the taking of a deep lung breath sample. The system shall be calibrated so that the

motor vehicle may not be started if the blood alcohol concentration of the operator, as measured by the device, exceeds 0.02 grams or if the sample is not a sample of human breath.

(4) "Provider center" means a facility established for the purpose of providing and installing ignition interlock devices when their use is required by or as a result of an order of a court.

History.
Code 1981, § 43-12A-2, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-3. License to operate a provider center.

No person shall operate a provider center or engage in the practice of providing, installing, or monitoring ignition interlock devices unless a license therefor has been secured from the department.

History.
Code 1981, § 43-12A-3, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-4. Requirements for operating a provider center.

(a) Every person who desires to operate a provider center shall meet the following requirements:

(1) Maintain an established place of business in the state which is open to the public;

(2) Maintain a general liability policy of insurance, including products and completed operations, with not less than $50,000.00 of combined single limits, with an insurance carrier authorized by the Commissioner of Insurance to write policies in the state. Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed with the department; and such certificate shall stipulate that the insurance shall not be canceled except upon ten days' prior written notice to the department;

(3) Provide a continuous surety bond in the principal sum of $10,000.00 for the protection of the contractual rights of individuals required to maintain an ignition interlock device in such form as will meet with the approval of the department and written by a company authorized to do business in this state; provided, however, that the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of $20,000.00 per location, and a single bond at such rate for all locations separately licensed and operated by the same person may be provided in satisfaction of this paragraph. The surety on any such bond may cancel such bond on giving 30 days' notice thereof in writing to the

department and shall be relieved of liability for any breach of any condition of the bond which occurs after the effective date of cancellation;

(4) Have the equipment and knowledge necessary to provide, install, and monitor ignition interlock devices as prescribed by the department; and

(5) Pay to the department an application fee of $250.00.

(b) The department shall conduct a records check for any applicant for certification as a provider center operator. Each applicant shall submit two sets of classifiable fingerprints to the department. The department shall transmit both sets of fingerprints to the Georgia Crime Information Center, which shall submit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain one set of fingerprints and promptly conduct a search of state records. After receiving a report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be licensed. The applicant shall be responsible for any fee or other charge allowed by law or rule or regulation promulgated by the department, the Georgia Crime Information Center, or the Federal Bureau of Investigation for the submission, processing, and review of such fingerprints.

(c) No applicant shall be licensed or certified who does not meet the requirements set forth in Code Section 43-12A-6.

History.
Code 1981, § 43-12A-4, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-5. Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed provider; restrictions on certain individuals having stake in provider center.

(a) No provider center shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a provider center by the owner of the rights therein to another licensed provider center.

(c) A judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court or any person employed by a private company which has contracted to provide private probation services for misdemeanor cases, or any employee of the Department of

Driver Services or the Department of Behavioral Health and Developmental Disabilities, and any immediate family member thereof shall be prohibited from owning, operating, being employed by, acting as an agent or servant for, or having a financial interest in any provider center.

History.
Code 1981, § 43-12A-5, enacted by Ga. L. 2006, p. 439, § 1/HB 276; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2015, p. 422, § 5-92/HB 310.
Editor's notes.
Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

43-12A-6. Acts disqualifying person from operating provider center or engaging in practice of providing, installing, or monitoring ignition interlock devices.

Every person who desires to operate a provider center or to engage in the practice of providing, installing, or monitoring ignition interlock devices:

(1) Shall not have knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(2) Shall not have been convicted of a second or subsequent violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained;

(3) Shall not have been convicted of any felony or of any crime involving theft, fraud, violence, or moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph, the term "felony" shall mean any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and the term "conviction" shall mean a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Shall not have been arrested, charged, and sentenced for the commission of any felony, or any crime involving theft, fraud, violence, or moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(6) Shall be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History. Code 1981, § 43-12A-6, enacted by Ga. L. 2006, p. 439, § 1/HB 276; Ga. L. 2010, p. 932, § 27/HB 396.

43-12A-7. Issuance and renewal of license.

(a) The department shall issue a license certificate to each provider center operator when such person has met the qualifications required under this chapter. Each provider center shall be required to have a separate license for each location, but mobile units operating out of a particular licensed location need not be separately licensed.

(b) All licenses issued to operators of provider centers pursuant to this chapter shall be valid for four years from the date of issuance unless sooner canceled, suspended, or revoked under Code Section 43-12A-8. All licenses shall be renewed through the department as provided in subsection (d) of this Code section and shall be valid for four years from the date of renewal.

(c) The license of each provider center operator may be renewed subject to the same conditions as the original license and upon payment of a fee of $100.00.

(d) All applications for renewal of a provider center operator's license shall be on a form prescribed by the department and must be filed with the department not more than 60 days nor fewer than ten days preceding the expiration date of the license to be renewed.

History.
Code 1981, § 43-12A-7, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-8. Suspension of license.

The department may cancel, suspend, revoke, or refuse to renew any provider center's license upon good cause being shown and after ten days' notice to the license holder if:

(1) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter;

(2) The licensee permits fraud or engages in fraudulent practices, with reference to either the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit;

(3) The licensee fails to comply with this chapter or any rule of the department made pursuant thereto;

(4) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to lead, or which would reasonably have the effect of leading, persons to believe that such licensee is in fact an employee or representative of the department;

(5) The licensee or any employee or agent of the licensee directly or indirectly solicits business by personal solicitation on public property or in any department, agency, or office of the state which involves the administration of any law relating to motor vehicles, whether by telephone, mail, or electronic communications. A violation of this paragraph shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, or telephone directories, by a provider center shall not be considered a violation of this paragraph; or

(6) The driver's license of the licensee has been canceled, suspended, or revoked.

History.
Code 1981, § 43-12A-8, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

43-12A-9. Rules and regulations.

(a) The commissioner is authorized to prescribe, by rule, standards for the eligibility, conduct, and equipment required for a person to be licensed to operate a provider center and to adopt other reasonable rules and regulations to carry out this chapter. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed $250.00, may be issued.

(b) The commissioner shall have the authority to assess, after a hearing, an administrative fine not to exceed $1,000.00 per violation against any provider center, agent, or employee that fails to comply with any requirement imposed by or pursuant to this chapter.

(c) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner may file in the superior court:

(1) Wherein the person under order resides;

(2) If such person is a corporation, in the county wherein the corporation maintains its principal place of business; or

(3) In the county wherein the violation occurred

a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this chapter or any order, rules, or regulations promulgated pursuant to this chapter.

History.
Code 1981, § 43-12A-9, enacted by Ga. L. 2006, p. 439, § 1/HB 276.

CHAPTER 13

INSTRUCTORS IN DRIVER TRAINING AND OPERATORS OF DRIVER TRAINING SCHOOLS

Sec.		Sec.	
43-13-1.	Short title.	43-13-6.2.	License to teach defensive driving course; license to serve as driver's license examiner.
43-13-2.	Definitions.		
43-13-3.	License requirement.		
43-13-4.	Qualifications of driver training school operators.	43-13-7.	Cancellation, suspension, revocation, or nonrenewal of licenses.
43-13-4.1.	Business names of driver training schools and commercial driver training schools.	43-13-7.1.	Notification in change of ownership for driver training school and other related programs.
43-13-5.	Qualifications of driver training school instructors.		
43-13-6.	Issuance of licenses to qualified applicants; expiration and renewal of licenses.	43-13-8.	Rules and regulations; penalties; judicial review; judgments.
43-13-6.1.	Special licenses for driver training school instructors qualified to teach alcohol and drug course.	43-13-9.	Disposition of funds.
		43-13-10.	Exceptions to operation of chapter.
		43-13-11.	Penalty.

Cross references.

Driver education course accepted for Carnegie unit elective credits, § 20-2-151.2.

Reduction in insurance premiums for completing and availability of driving courses, § 33-9-42.

Drivers' licenses generally, T. 40, C. 5.

Restoration of licenses to persons completing defensive driving course or alcohol or drug program, § 40-5-80 et seq.

JUDICIAL DECISIONS

Valid purpose. — Purpose of Ga. L. 1968, p. 436 (see now O.C.G.A. Ch. 13, T. 43), to improve quality of driving instruction received by prospective drivers in the State of Georgia and to protect the public from unqualified commercial driving programs, is clearly a legitimate and appropriate exercise of the state's police power. Milner v. Burson, 320 F. Supp. 706, 1970 U.S. Dist. LEXIS 9046 (N.D. Ga. 1970).

OPINIONS OF THE ATTORNEY GENERAL

Persons and businesses which must comply with law. — Person or business entity must comply with this chapter if such person or business entity gives instructions for hire and those instructions prepare an applicant for license examination required for a class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101.

Fact that student holds permit to drive does not exempt instructor. — Fact that student holds a permit allowing the student to drive vehicles encompassed within the three, four, and five license classes does not exempt instructing person or business entity from requirements of law if such instructing person or business entity offers instructions which aid the applicant in passing the license ex-

amination required for a class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101.

Business instructing licensed drivers is not subject to provisions of law. — Corporation engaged in business of giving instruction for hire in driving motor vehicles to persons who are already licensed to drive is not subject to provisions of this chapter. 1972 Op. Att'y Gen. No. 72-135.

School's vehicles not subject to inspection more than once a year. — Department of Public Safety is not authorized to inspect a school's vehicles more often than annual safety inspection. 1968 Op. Att'y Gen. No. 68-278.

Administrative Procedure Act applies when applicant is denied a license for school or instructor's permit. 1968 Op. Att'y Gen. No. 68-278.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-13-1. Short title.

This chapter shall be known and may be cited as "The Driver Training School and Commercial Driver Training School License Act."

History.

Ga. L. 1968, p. 436, § 11; Ga. L. 1999, p. 81, § 43; Ga. L. 2003, p. 796, § 9.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, §§ 43, 146.

43-13-2. Definitions.

(a) As used in this chapter, the term:

(1) "Commercial driver training school," except as provided in subsection (b) of this Code section, means any person, partnership, limited liability company, or corporation giving driving instruction for hire to ten or more persons per calendar year for the purpose of

assisting such persons to meet the requirements for licensed driving of Class A or Class B motor vehicles in this state.

(2) "Department" means the Department of Driver Services acting directly or through its duly authorized officers and agents.

(3) "Driver training course" means instruction for the purpose of assisting persons to meet the requirements for licensed driving of Class C or Class M motor vehicles in this state and which may be offered through in-person instruction, online courses, or remote participation platforms.

(4) "Driver training school," except as provided in subsection (b) of this Code section, means any person, partnership, limited liability company, or corporation giving driving instruction for hire to ten or more persons per calendar year for the purpose of assisting such persons to meet the requirements for licensed driving of Class C or Class M motor vehicles in this state, except for motorcycle operator safety training programs conducted by or on behalf of the Department of Driver Services pursuant to Chapter 15 of Title 40. The term shall also include any public school system offering a driver training course during the regular school day as part of a student curriculum at no cost to the student.

(5) "Driver's license examiners" means examiners appointed by the Department of Driver Services for the purpose of giving driver's license examinations.

(6) "Motor vehicle" means every vehicle which is self-propelled upon, or by which any person or property is or may be transported or drawn upon, a public highway except devices used exclusively upon stationary rails or tracks.

(7) "Person" means every natural person, firm, partnership, limited liability company, association, corporation, or school.

(b) The terms "commercial driver training school" as defined in paragraph (2) of subsection (a) of this Code section and "driver training school" as defined in paragraph (4) of subsection (a) of this Code section shall not include:

(1) Hospitals and state licensed rehabilitation centers offering a driver training course for the purpose of rehabilitating persons to maintain or obtain a Class C license; provided, however, that such facilities shall be required to file a memorandum of understanding with the commissioner of driver services in the prescribed format of the department;

(2) Any person, partnership, limited liability company, or corporation offering a for-hire defensive driving safety course for the purpose

of providing training to assist persons to obtain a Class C or Class M license through means of behind-the-wheel training, simulator training, or offering a defensive driving safety course consisting of less than 30 hours of classroom and six hours of behind-the-wheel training. These entities shall be required to obtain a limited license as a driver training school, register and identify all of its vehicles, and shall become subject to the same insurance requirements for a driver training school as outlined in Code Section 43-13-4. Limited driver training schools offering classroom or simulator training only will not be required to comply with the liability insurance requirements outlined in Code Section 43-13-4. The commissioner of driver services shall promulgate and adopt rules and regulations for the qualifications and establish the application fees for the driver training school limited license. The commissioner shall issue the driver training school limited license if the application is complete and the applicant demonstrates compliance with the laws of this state and the rules and regulations of the commissioner regarding insurance and safety. The driver training school limited license shall be valid for a period of four years; or

(3) Any person, partnership, limited liability company, or corporation which offers occasional driver training instruction. These entities may obtain a temporary driver training permit for a period of seven consecutive days beginning and ending on the dates specified on the face of the permit. Temporary driver training permits shall be obtained by schools, individuals, or other entities which offer occasional driver training instruction that do not maintain a permanent classroom located within the state. The fee for each temporary driver training permit shall be $100.00 per week and $25.00 for each vehicle. No temporary driver training permit shall be issued without the commissioner of driver services having first received satisfactory proof that the applicant meets the insurance requirements as defined in Code Section 43-13-4 and the vehicle and safety requirements as set forth in the rules and regulations of the commissioner. A temporary driver training permit shall be displayed in a conspicuous location at any time instruction is being given and a copy of such permit shall be located in each vehicle that is registered for the purpose of providing instruction.

History.

Ga. L. 1968, p. 436, § 1; Ga. L. 1993, p. 123, § 27; Ga. L. 2000, p. 951, § 12-7; Ga. L. 2003, p. 796, § 10; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2005, p. 334, § 25-1/HB 501; Ga. L. 2006, p. 460, § 1/HB 1252; Ga. L. 2021, p. 403, § 9/HB 466.

The 2021 amendment, effective July 1, 2021, rewrote paragraph (a)(3), which read: " 'Driver training course' means a course including but not limited to classroom instruction; behind-the-wheel instruction; instruction by means of simulation training; and defensive driving, distance learning, or virtual driver training courses approved by the Department of Driver Services for the purpose of assisting persons to meet the requirements

for licensed driving of Class C or Class M motor vehicles in this state."

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, "commissioner of driver services" was substituted for "commissioner of the Department of Driver Services" in paragraphs (b)(1) and (b)(2) and "commissioner of driver services having first" was substituted for "commissioner having first" in paragraph (b)(3).

43-13-3. License requirement.

No person shall operate a driver training school, operate a commercial driver training school, or engage in the business of giving instruction for hire to ten or more persons per calendar year in the driving of motor vehicles or in the preparation of an applicant for examination given by driver's license examiners for a driver's license or permit unless a license, a limited license, or a temporary driver training permit therefor has been secured from the department. Separate licenses shall be required for the operation of a driver training school and a commercial driver training school.

History.

Ga. L. 1968, p. 436, § 2; Ga. L. 2003, p. 796, § 11; Ga. L. 2006, p. 460, § 2/HB 1252.

Cross references.

Applicability of laws relating to State Board of Education regulation of nonpublic postsecondary educational institutions, § 20-3-250.1 et seq.

43-13-4. Qualifications of driver training school operators.

Every person who desires to operate a driver training school or a commercial driver training school shall meet the following requirements:

(1) Be of good moral character;

(2) Maintain an established place of business in the State of Georgia which is open to the public;

(3) Maintain bodily injury and property damage liability insurance on motor vehicles while used in driver training instruction, insuring the liability of the driver training school, the driving instructors, and any person taking instruction, in at least the following amounts: $100,000.00 for bodily injury to or death of one person in any one accident and, subject to such limit for one person, $300,000.00 for bodily injury to or death of two or more persons in any one accident and the amount of $50,000.00 for damage to property of others in any one accident. Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed with the department; and such certificate shall stipulate that the insurance shall not be canceled except upon ten days' prior written notice to the department. Such insurance shall be written by a company authorized to do business in this state;

(4) Provide a continuous surety company bond in the principal sum of $10,000.00 for the protection of the contractual rights of students in such form as will meet with the approval of the department and written by a company authorized to do business in this state; provided, however, that the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of $10,000.00 per location, and a single bond at such rate for all schools operated by the same person may be provided in satisfaction of this paragraph. The surety on any such bond may cancel such bond on giving 30 days' notice thereof in writing to the department and shall be relieved of liability for any breach of any condition of the bond which occurs after the effective date of cancellation. If at any time said bond is not valid and in force, the license of the school or program shall be deemed suspended by operation of law until a valid surety company bond is again in force;

(5) Have the equipment necessary to the giving of proper instruction in the operation of motor vehicles as prescribed by the department;

(6) Pay to the department an application fee for the approval of driver training schools and instructors, commercial driver training schools and instructors, and limited license driver training schools and instructors. The amount of this fee shall be established by the commissioner of driver services and shall, as best as the commissioner shall determine, approximate the expense incurred by the department in consideration of the license applications. These licenses and each renewal thereof shall be valid for a period of four years unless suspended or revoked prior to the expiration of that time period;

(7) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(8) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.
Ga. L. 1968, p. 436, § 3; Ga. L. 2003, p. 796, § 12; Ga. L. 2006, p. 460, § 3/HB 1252; Ga. L. 2010, p. 932, § 28/HB 396; Ga. L. 2011, p. 355, § 20/HB 269.

OPINIONS OF THE ATTORNEY GENERAL

Definition of "place of business". — "Place of business" has been defined by Georgia appellate court as a "place where a calling for purpose of gaining or profit is conducted," or a place where public is invited to come to engage services or buy products of offering party. 1968 Op. Att'y Gen. No. 68-278.

RESEARCH REFERENCES

ALR.
Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conduct of business or profession, 120 A.L.R. 950.

43-13-4.1. Business names of driver training schools and commercial driver training schools.

(a) No driver training school or commercial driver training school shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a driver training school or commercial driver training school by the owner of the rights therein to another licensed commercial driver training school.

History.
Code 1981, § 43-13-4.1, enacted by Ga. L. 2003, p. 796, § 13; Ga. L. 2006, p. 460, § 4/HB 1252.

Cross references.
Corporate name, § 14-2-401.

43-13-5. Qualifications of driver training school instructors.

Every person who desires to qualify as an instructor for a driver training school or a commercial driver training school shall meet the following requirements:

(1) Be of good moral character;

(2) Present to the department evidence of credit in driver education and safety from an accredited college or university equivalent to credits in those subjects which are required of instructors in the public schools of this state or give satisfactory performance on a written, oral, performance, or combination examination administered by the department testing both knowledge of the field of driver education and skills necessary to instruct and impart driving skills and safety to students. The examination shall be administered

quarterly or upon the written application of four or more prospective licensees. The examination fee shall be established by the commissioner of driver services;

(3) Be physically able to operate safely a motor vehicle and to instruct others in the operation of motor vehicles;

(4) Hold a valid driver's license;

(5) Pay to the department an application fee to be established by the commissioner of driver services;

(6) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(7) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.
Ga. L. 1968, p. 436, § 4; Ga. L. 1973, p. 259, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2003, p. 796, § 14; Ga. L. 2006, p. 460, § 5/HB 1252; Ga. L. 2010, p. 932, § 29/HB 396.

JUDICIAL DECISIONS

Educational requirements of Ga. L. 1968, p. 436, § 4 (see now O.C.G.A. § 43-13-5) are not unreasonable since to require commercial driving instructors to present evidence of educational credit in field of driver education and safety is reasonably related to ability to teach driving skills and to achievement of purpose of Ga. L. 1968, p. 436 (see now O.C.G.A. Ch. 13, T. 43). Milner v. Burson, 320 F. Supp. 706, 1970 U.S. Dist. LEXIS 9046 (N.D. Ga. 1970).

OPINIONS OF THE ATTORNEY GENERAL

Generally, "evidence of credit" insofar as colleges are concerned would be certified transcript from registrar or records office of college where credits are earned. 1968 Op. Att'y Gen. No. 68-278.

43-13-6. Issuance of licenses to qualified applicants; expiration and renewal of licenses.

(a) The department shall issue a license certificate to each operator of a driver training school, to each operator of a commercial driver training school, to each driver training instructor, or to each commercial driver training instructor when the department is satisfied that such person has met the qualifications required under this chapter.

(b) All licenses issued to driver training schools, commercial driver training schools, driver training instructors, or commercial driver training instructors pursuant to this chapter shall be valid for four years from the date of issuance unless sooner canceled, suspended, or revoked under Code Section 43-13-7. All licenses shall be renewed through the department as provided in subsection (d) of this Code section and shall be valid for four years from the date of renewal.

(c) The license of each driver training school, commercial driver training school, driver training instructor, and commercial driver training instructor may be renewed subject to the same conditions as the original license and upon payment of the same fee.

(d) All applications for renewal of a driver training school's license, commercial driver training school's license, driver training instructor's license, or commercial driver training instructor's license shall be on a form prescribed by the department and must be filed with the department not more than 60 days nor less than ten days preceding the expiration date of the license to be renewed.

History.
Ga. L. 1968, p. 436, § 5; Ga. L. 1986, p. 823, § 1; Ga. L. 1993, p. 453, § 1; Ga. L. 1997, p. 560, § 1; Ga. L. 2000, p. 951, § 12-8; Ga. L. 2003, p. 796, § 15.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2003, "commercial driver training school's license" was substituted for "commercial driver training school license" in subsection (d).

43-13-6.1. Special licenses for driver training school instructors qualified to teach alcohol and drug course.

(a) The commissioner shall be authorized to issue a special license to the instructor of any driver training school who is qualified to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142. A driver training school shall offer such alcohol and drug course only through a qualified instructor and shall not charge a fee for such course of more than $25.00.

(b) Each applicant shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director

of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified.

(c) The commissioner shall not issue a special license to any applicant unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

History.
Code 1981, § 43-13-6.1, enacted by Ga. L. 1983, p. 745, § 4; Ga. L. 1986, p. 839, § 3; Ga. L. 2010, p. 932, § 30/HB 396.

43-13-6.2. License to teach defensive driving course; license to serve as driver's license examiner.

(a) The commissioner of driver services shall be authorized to issue a special license to the instructor of any driver training school authorizing such instructor to teach a defensive driving course at a driver improvement clinic approved pursuant to Code Section 40-5-83 if such instructor is qualified to teach a driver education training course in accordance with Chapter 5 of Title 40 which consists of a minimum of 30 hours of classroom and six hours of behind-the-wheel training and such instructor certifies to the commissioner that he or she has provided at least 300 hours of behind-the-wheel training in a driver education training course in accordance with Chapter 5 of Title 40.

(b) The commissioner of driver services shall be authorized to issue a special license to the instructor of any driver training school authorizing such instructor to serve as a driver's license examiner and conduct tests required for issuance of a driver's license pursuant to subsection (d) of Code Section 40-5-27 if such instructor has held his or her license with a driver training school for at least six months and certifies to the commissioner that he or she has provided at least 500 hours of behind-the-wheel training.

History.
Code 1981, § 43-13-6.2, enacted by Ga. L. 2021, p. 403, § 10/HB 466.

Effective date.
This Code section became effective July 1, 2021.

43-13-7. Cancellation, suspension, revocation, or nonrenewal of licenses.

The department may cancel, suspend, revoke, or refuse to renew any driver training school's, commercial driver training school's, driver training instructor's, or commercial driver training instructor's license upon good cause being shown and after ten days' notice to the license holder if:

(1) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter;

(2) The licensee fails to keep the records required by this chapter;

(3) The licensee permits fraud or engages in fraudulent practices, with reference to either the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit;

(4) The licensee fails to comply with this chapter or any rule of the department made pursuant thereto;

(5) The licensee represents himself or herself as an agent or employee of the department or license examiners or uses advertising designed to lead, or which would reasonably have the effect of leading, persons to believe that such licensee is in fact an employee or representative of the department or license examiners;

(6) The licensee or any employee or agent of the licensee solicits driver training or commercial driver training instruction in an office of any department of the state having to do with the administration of any law relating to motor vehicles; or

(7) The licensee or any employee or agent serving as a driver training instructor or commercial driver training instructor has had his or her license canceled, suspended, or revoked.

History.
Ga. L. 1968, p. 436, § 7; Ga. L. 2003, p. 796, § 16.

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Right to appeal from license revocation but not from denial of initial application. — Applicant has no course of appeal should the applicant initially be denied a license for a school or an instructor's permit; however, denial of an existing license requires a different result since when the state confers a license to engage in a profession, trade, or occupation not inherently inimical to the public welfare such license becomes a valuable right which cannot be denied or abridged except after due notice and a fair and impartial hearing before an unbiased tribunal. 1968 Op. Att'y Gen. No. 68-278.

43-13-7.1. Notification in change of ownership for driver training school and other related programs.

Whenever there is a change in ownership of a driver training school, DUI Alcohol or Drug Use Risk Reduction Program, or driver improvement program, the department shall be notified no later than 30 days after such change in ownership. After any change in ownership to any person otherwise qualified to operate a driver training school, DUI Alcohol or Drug Use Risk Reduction Program, or driver improvement program pursuant to this chapter or Title 40, the department shall consider the duration of operation of any previous owner in any required calculation for duration of operation by a successor owner.

History.
Code 1981, § 43-13-7.1, enacted by Ga. L. 2021, p. 403, § 11/HB 466.

Effective date.
This Code section became effective July 1, 2021.

43-13-8. Rules and regulations; penalties; judicial review; judgments.

(a) The commissioner of driver services is authorized to prescribe, by rule, standards for the eligibility, conduct, equipment, and operation of driver training schools and instructors and commercial driver training schools and instructors and to adopt other reasonable rules and regulations to carry out this chapter. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed $250.00, may be issued.

(b) The commissioner of the department shall have the authority to assess, after a hearing, an administrative fine not to exceed $1,000.00 per violation against any driver training school or commercial driver training school that fails to comply with any requirement imposed by or pursuant to this chapter.

(c) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner may file, in the superior court:

(1) Wherein the person under order resides;

(2) If such person is a corporation, in the county wherein the corporation maintains its principal place of business; or

(3) In the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties.

Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this chapter or any order, rules, or regulations promulgated pursuant to this chapter.

History.
Ga. L. 1968, p. 436, § 6; Ga. L. 2000, p. 951, § 12-9; Ga. L. 2003, p. 796, § 17; Ga. L. 2005, p. 334, § 25-2/HB 501.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2003, "Wherein" was substituted for "wherein" in paragraph (c)(1), "If" was substituted for "if" in paragraph (c)(2), and "In" was substituted for "in" in paragraph (c)(3).

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Department's authority to regulate subject matter of instruction. — Department of Public Safety may set reasonable standards and regulate subject matter to be taught in course of instruction offered by commercial driver training school. 1968 Op. Att'y Gen. No. 68-278.

43-13-9. Disposition of funds.

All moneys received under this chapter shall be deposited with the Office of the State Treasurer.

History.
Ga. L. 1968, p. 436, § 8; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

43-13-10. Exceptions to operation of chapter.

(a) This chapter shall not apply to a college conducting a driver or commercial driver training course; nor shall it apply to driver improvement schools operated by the state or by a county or municipality.

(b) Any public or private secondary school or private postsecondary school may conduct driver training courses or driver's education programs, subject to the requirement that the provisions of this chapter other than paragraph (2) of Code Section 43-13-4 shall apply to

secondary schools and private postsecondary schools conducting driver training courses or driver's education programs and to instructors therefor.

History.
Ga. L. 1968, p. 436, § 10; Ga. L. 1998, p. 207, § 1; Ga. L. 2001, p. 208, § 1-10; Ga. L. 2003, p. 796, § 18.

JUDICIAL DECISIONS

Constitutionality. — Because nothing in the statute specifically exempts public school driver education teachers, both private and public school driving instructors are operating under same standards and restrictions and there is no denial of equal protection to private instructors. Milner v. Burson, 320 F. Supp. 706, 1970 U.S. Dist. LEXIS 9046 (N.D. Ga. 1970).

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Accredited private schools offering driver education are exempt from the statute. 1974 Op. Att'y Gen. No. 74-101.

43-13-11. Penalty.

Any person violating this chapter shall be guilty of a misdemeanor.

History.
Ga. L. 1968, p. 436, § 9.

CHAPTER 14

ELECTRICAL CONTRACTORS, PLUMBERS, CONDITIONED AIR CONTRACTORS, LOW-VOLTAGE CONTRACTORS, AND UTILITY CONTRACTORS

Sec.	
43-14-1.	Declaration of purpose.
43-14-2.	Definitions.
43-14-3.	State Construction Industry Licensing Board; members.
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43-14-12.	Suspension of, or refusal to restore, licenses and certificates by municipal or county inspection authority; appeals; adoption and enforcement of codes at local level; bonds; fees or taxes.
43-14-12.1.	Evidence of violation; cease and desist orders; fines; other penalties for violations.
43-14-12.2.	Proof of unlawful practice of utility contracting by unlicensed individual; cease and desist orders; penalty for violations.
43-14-13.	Applicability of chapter.
43-14-14.	Penalty.
43-14-15.	Certain military certifications entitle persons to obtain certain professional licenses.
43-14-16.	[Repealed] Limited reciprocal licensing of military spouses.
43-14-17.	Redesignated.
43-14-18.	[Repealed] Termination.

Cross references.

Provision of energy conservation assistance to residential customers by electric and gas utilities, T. 46, C. 4A.

Administrative rules and regulations. Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Construction Industry Licensing Board, Chapter 121-1.

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Editor's notes. — In light of the similarity of the statutory provisions some of the opinions noted hereunder were rendered prior to the reenactment and amendment of this chapter by Ga. L. 1983, p. 424, § 1, effective March 14, 1983, and are included within the annotations for this chapter.

Legislature intended to preempt local jurisdictions from establishing and maintaining local licensing schemes by enacting this chapter. 1980 Op. Att'y Gen. No. U80-31 (decided prior to passage of Ga. L.1983, p. 424, § 1).

Issuance of limited license without requiring examination for licensure. — An electrical contractor, master plumber, or journeyman plumber, legally practicing trade pursuant to a valid statewide, county, or municipal qualifications license on the effective date of this chapter (July 1, 1980), may be issued a limited license by the respective Construction Industry Division to practice in the same capacity and within the same geographic area as that individual is currently licensed to practice without the necessity of taking an examination for licensure under this chapter. 1980 Op. Att'y Gen. No. 80-75 (decided prior to passage of Ga. L.1983, p. 424, § 1).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Validity of statutory or municipal regulation of heating contractors, 33 A.L.R. 146.

Municipal regulation of electricians and the installation of electrical work, 96 A.L.R. 1506.

Application of res ipsa loquitur rule in case of injury or damages from heating unit, electrical appliance, etc., installed by defendant, 3 A.L.R.2d 1448.

Validity of regulations as to plumbers and plumbing, 22 A.L.R.2d 816.

43-14-1. Declaration of purpose.

This chapter is enacted for the purpose of safeguarding homeowners, other property owners, tenants, and the general public against faulty, inadequate, inefficient, or unsafe electrical, plumbing, low-voltage

wiring, utility contracting, or conditioned air installations. The practice of electrical contracting, plumbing contracting, installing, or repairing, low-voltage contracting, utility contracting, and conditioned air contracting are declared to be businesses or professions affecting the public interest; and this chapter shall be liberally construed so as to accomplish the purposes stated in this Code section.

History.
Ga. L. 1949, p. 1622, § 1; Ga. L. 1968, p. 308, § 1; Ga. L. 1971, p. 583, § 2; Ga. L. 1980, p. 1299, § 1; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 1; Ga. L. 1989, p. 1756, § 1.

JUDICIAL DECISIONS

Construction contract not enforceable. — Contractor's suit against a homeowner seeking over $33,000 for remodeling services was subject to summary judgment; the contract was void and unenforceable under O.C.G.A. § 43-41-17(b) because the contract provided for electrical and plumbing work and the contractor did not have licenses for electrical and plumbing work as required by O.C.G.A. § 43-14-8. It was inconsequential whether the contractor met the definition of a "specialty contractor" in O.C.G.A. § 43-41-2(12). Restor-It, Inc. v. Beck, 352 Ga. App. 613, 835 S.E.2d 398, 2019 Ga. App. LEXIS 605 (2019).

43-14-2. Definitions.

As used in this chapter, the term:

(.1) "Alarm system" means any device or combination of devices used to detect a situation, causing an alarm in the event of a burglary, fire, robbery, medical emergency, or equipment failure, or on the occurrence of any other predetermined event.

(1) "Board" means the State Construction Industry Licensing Board.

(2) "Certificate of competency" means a valid and current certificate issued by the Division of Electrical Contractors created in Code Section 43-14-3, which certificate shall give the named electrical contractor to which it is issued authority to engage in electrical contracting of the kind described therein. Certificates of competency shall be of two kinds, Class I and Class II, according to the classification of license held by the electrical contractor.

(3) "Conditioned air contracting" means the installation, repair, or service of conditioned air systems or conditioned air equipment. Service to or installation of the electrical connection between the electrical disconnect and conditioned air equipment is considered to be installation, repair, or service of conditioned air equipment or the conditioned air system. Service to or installation of the electrical circuit from the electrical distribution panel to the conditioned air equipment where the electrical service to the building or site is a single-phase electrical circuit not exceeding 200 amperes is consid-

ered to be installation, repair, or service of conditioned air equipment or the conditioned air system.

(4) "Conditioned air contractor" means an individual who is engaged in conditioned air contracting under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform conditioned air contracting services under express or implied contract. The term "conditioned air contractor" shall not include a person who is an employee of a conditioned air contractor and who receives only a salary or hourly wage for performing conditioned air contracting work.

(5) "Conditioned air equipment" means heating and air-conditioning equipment covered under state codes and the natural gas piping system on the outlet side of the gas meter.

(6) "Electrical contracting" means the installation, maintenance, alteration, or repair of any electrical equipment, apparatus, control system, or electrical wiring device which is attached to or incorporated into any building or structure in this state but shall not include low-voltage contracting.

(7) "Electrical contractor" means any person who engages in the business of electrical contracting under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform electrical contracting services under express or implied contract. The term "electrical contractor" shall not include a person who is an employee of an electrical contractor and who receives only a salary or hourly wage for performing electrical contracting work.

(8) "Executive director" means the executive director of the State Construction Industry Licensing Board.

(8.1) "General system" means any electrical system, other than an alarm or telecommunication system, involving low-voltage wiring.

(9) "Journeyman plumber" means any person other than a master plumber who has practical knowledge of the installation of plumbing and installs plumbing under the direction of a master plumber.

(10) "License" means a valid and current certificate of registration issued by a division of the board, which certificate shall give the named person to whom it is issued authority to engage in the activity prescribed thereon.

(10.1) "Low-voltage contracting" means the installation, alteration, service, or repair of a telecommunication system, alarm system, or general system involving low-voltage wiring.

(10.2) "Low-voltage contractor" means an individual who is engaged in low-voltage contracting under express or implied contract or

who bids for, offers to perform, purports to have the capacity to perform, or does perform low-voltage contracting services under express or implied contract. An employee of a low-voltage contractor who receives only a salary or hourly wage for performing low-voltage contracting work shall not be required to be licensed under this chapter, except that those employees upon whom the qualification of a partnership, limited liability company, or corporation rests as outlined in subsection (b) of Code Section 43-14-8.1 shall be licensed.

(10.3) "Low-voltage wiring" means:

(A) Wiring systems of 50 volts or less and control circuits directly associated therewith;

(B) Wiring systems having a voltage in excess of 50 volts, provided such systems consist solely of power limited circuits meeting the definition of a Class II and Class III wiring system as defined in Article 725 of the National Electrical Code; or

(C) Line voltage wiring having a voltage not in excess of 300 volts to ground and installed from the load-side terminals of a suitable disconnecting means which has been installed for the specific purpose of supplying the low-voltage wiring system involved or installed from a suitable junction box which has been installed for such specific purpose.

(11) "Master plumber" means any individual engaging in the business of plumbing under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform plumbing contracting services under express or implied contract.

(12) "Plumbing" means the practice of installing, maintaining, altering, or repairing piping fixtures, appliances, and appurtenances in connection with sanitary drainage or storm drainage facilities, venting systems, medical gas piping systems, natural gas piping systems on the outlet side of gas meters, or public or private water supply systems within or adjacent to any building, structure, or conveyance; provided, however, that after July 1, 1997, only master plumbers and journeyman plumbers who have been certified by the Division of Master Plumbers and Journeyman Plumbers to perform such tasks shall be authorized to install, maintain, alter, or repair medical gas piping systems. The term "plumbing" also includes the practice of and materials used in installing, maintaining, extending, or altering the natural gas, storm-water, sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal; provided, however, that licensure under this chapter shall not be required for a contractor certified by the Department of Public Health to make the connection to any

on-site waste-water management system from the stub out exiting the structure to an on-site waste-water management system. Notwithstanding any other provision of this chapter, any person who holds a valid master plumbing license or any company which holds a valid utility contractor license shall be qualified to construct, alter, or repair any plumbing system which extends from the property line up to but not within five feet of any building, structure, or conveyance, regardless of the cost or depth of any such plumbing system.

(12.1) "Telecommunication system" means a switching system and associated apparatus which performs the basic function of two-way voice or data service, or both, and which can be a commonly controlled system capable of being administered both locally and remotely via secured access.

(13) "Utility contracting" means undertaking to construct, erect, alter, or repair or have constructed, erected, altered, or repaired any utility system.

(14) "Utility contractor" means a sole proprietorship, partnership, or corporation which is engaged in utility contracting under express or implied contract or which bids for, offers to perform, purports to have the capacity to perform, or does perform utility contracting under express or implied contract.

(15) "Utility foreman" means any individual who is employed by a licensed contractor to supervise the construction, erection, alteration, or repair of utility systems.

(16) "Utility manager" means any individual who is employed by a utility contractor to have oversight and charge of the construction, erection, alteration, or repair of utility systems.

(17) "Utility system" means:

(A) Any system at least five feet underground, when installed or accessed by trenching, open cut, cut and cover, or other similar construction methods which install or access the system from the ground surface, including, but not limited to, gas distribution systems, electrical distribution systems, communication systems, water supply systems, and sanitary sewerage and drainage systems; and

(B) Reservoirs and filtration plants, water and waste-water treatment plants, leachate collection and treatment systems associated with landfills, and pump stations, when the system distributes or collects a service, product, or commodity for which a fee or price is paid for said service, product, or commodity or for the disposal of said service, product, or commodity.

History.

Ga. L. 1949, p. 1622, § 2; Ga. L. 1968, p. 308, §§ 2, 3; Ga. L. 1971, p. 583, § 3; Ga. L. 1980, p. 1299, § 2; Ga. L. 1981, p. 1703, § 1; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 2; Ga. L. 1989, p. 1756, § 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 123, § 28; Ga. L. 1993, p. 733, § 1; Ga. L. 1993, p. 1339, § 1; Ga. L. 1994, p. 383, § 1; Ga. L. 1995, p. 860, § 2; Ga. L. 1996, p. 1078, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1527, § 3; Ga. L. 2003, p. 419, § 1; Ga. L. 2004, p. 390, § 1; Ga. L. 2005, p. 472, § 1/HB 207; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following "rests" in paragraph (10.2), and "stormwater" was substituted for "storm water" in paragraph (12).

Pursuant to Code Section 28-9-5, in 2004, "Reservoirs" was substituted for "Reserviors" at the beginning of subparagraph (17)(B).

Law reviews.

For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Electrical work performed as personal favor at homeowners' request and on temporary basis did not come within the meaning of "electrical contracting" in O.C.G.A. § 43-14-2(6) so as to require a license under O.C.G.A. § 43-14-8(a). Echols v. Quality Mechanical, Inc., 177 Ga. App. 870, 341 S.E.2d 328, 1986 Ga. App. LEXIS 1546 (1986).

Septic tank installation, maintenance, or repair is not included within the definition of "plumbing" in O.C.G.A. § 43-14-2(12) and, as a result, state law does not preempt counties from enacting regulations that specify the qualifications of persons who install septic tanks. DeKalb County Bd. of Health v. Lee, 266 Ga. 507, 467 S.E.2d 564, 1996 Ga. LEXIS 108 (1996).

License not required. — Trial court properly denied the contractor's motion for partial summary judgment on the developers' counterclaim that the parties' contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A. § 43-14-8.2 to perform work under the statute's agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in connection with the developers' properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers' properties was done at a depth of five feet or deeper below the surface. Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458, 2012 Ga. App. LEXIS 532 (2012).

"Utility systems." — O.C.G.A. § 43-14-2 is interpreted under the statute's plain terms as defining utility systems to include only water supply systems at least five feet underground that are installed or accessed from the ground surface; thus, any water supply systems less than five feet underground would not be considered utility systems under the statute and would not require a utility contractor license to construct, erect, alter, or repair or have constructed, erected, altered, or repaired. Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458, 2012 Ga. App. LEXIS 532 (2012).

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"Conditioned air contracting" construed. — Cleaning air ducts and air duct systems which involves the disassembly and re-assembly, lubrication, or adjustment of system components constitutes "service of conditioned air systems or con-

ditioned air equipment" as defined in O.C.G.A. § 43-14-2(5) and therefore falls within the statutory definition of "conditioned air contracting." 1991 Op. Att'y Gen. 91-24.

43-14-3. State Construction Industry Licensing Board; members.

(a) There is created within the executive branch of state government the State Construction Industry Licensing Board. The board shall be assigned to the Secretary of State's office for administrative purposes and shall be under the jurisdiction of the division director.

(b) The board shall be composed of 27 members as follows:

(1) Five members known as the Division of Electrical Contractors, one of whom shall be a consulting engineer engaged in electrical practice, another of whom shall be the chief electrical inspector of a county or municipality and shall have served in such office for five years immediately preceding appointment to the board, and the remaining three of whom shall be engaged in the electrical contracting business;

(2) Five members known as the Division of Master Plumbers and Journeyman Plumbers, one of whom shall be a full-time plumbing inspector of a county or municipality, three of whom shall be master or contracting plumbers, and one of whom shall be a journeyman plumber;

(3) Five members known as the Division of Conditioned Air Contractors, one of whom shall be a licensed professional engineer engaged in mechanical practice, one of whom shall be the chief conditioned air inspector of a county or municipality, and three of whom shall be conditioned air contractors with more than five years of installation and service experience in the trade;

(4) Five members known as the Division of Low-voltage Contractors, one of whom shall be an alarm system low-voltage contractor, one of whom shall be an unrestricted low-voltage contractor, one of whom shall be a telecommunication system low-voltage contractor, one of whom shall be a professional electrical engineer, and one of whom shall be the chief electrical inspector of a county or municipality;

(5) Five members known as the Division of Utility Contractors, three of whom shall be utility contractors, one of whom shall be a registered professional engineer, and one of whom shall be an insurance company representative engaged primarily in the bonding of construction projects; and

(6) Two members who shall not have any connection with the electrical contracting, plumbing, or conditioned air contracting busi-

nesses whatsoever but who shall have a recognized interest in consumer affairs and consumer protection concerns.

(c) All members shall be appointed by the Governor, subject to confirmation by the Senate, for four-year terms.

(d) A member shall serve until a successor has been duly appointed and qualified.

(e) The Governor shall make appointments to fill the unexpired portions of any terms vacated for any reason. In making such appointments, the Governor shall preserve the composition of the board as required by this chapter. Members shall be eligible for reappointment.

(f) Any appointive member who, during his or her term, shall cease to meet the qualifications for original appointment shall thereby forfeit membership on the board.

(g) Each member of the board shall take an oath of office before the Governor to faithfully perform the duties of such office.

(h) The Governor may remove any member for failure to attend meetings, neglect of duty, incompetence, revocation or suspension of professional trade license, or other dishonorable conduct.

(i) Members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.

Ga. L. 1949, p. 1622, §§ 7-10; Ga. L. 1968, p. 308, §§ 7, 8; Ga. L. 1971, p. 583, §§ 5, 6, 8; Ga. L. 1980, p. 1299, § 3; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 1129, § 3; Ga. L. 1989, p. 1756, § 3; Ga. L. 1993, p. 1339, § 2; Ga. L. 1994, p. 383, § 2; Ga. L. 2000, p. 1706, § 19.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, subsections (d) through (j) were redesignated as subsections (c) through (i), respectively.

43-14-4. Chairperson; meetings; organization of divisions; meetings of divisions; quorums within divisions.

(a) The office of chairperson shall be rotated among the five divisions enumerated in Code Section 43-14-3 unless the board, through its rules and regulations, provides otherwise. Any vacancy in the office of chairperson shall be filled by the members for the unexpired term. The person selected to fill the vacancy shall be a member of the same division as the previous chairperson.

(b) The board shall meet at the call of the chairperson or upon the recommendation of a majority of its members.

(c) Each division within the board shall also elect from its membership a chairperson who shall serve for a term of two years. Any vacancy

in the office of chairperson shall be filled by one of the members for the unexpired term.

(d) Any member elected chairperson of a division may serve more than one consecutive term of office.

(e) Each division shall carry out its powers and duties provided for in this chapter with the assistance of the executive director and staff of the board.

(f) The divisions shall meet at the call of the chairperson.

(g) Three members of each division shall constitute a quorum for the transaction of business of such division.

History.
Ga. L. 1949, p. 1622, § 8; Ga. L. 1968, p. 308, §§ 7-9; Ga. L. 1971, p. 583, §§ 4, 6, 7; Ga. L. 1980, p. 1299, § 4; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 4; Ga. L. 1989, p. 1756, § 4; Ga. L. 1993, p. 1339, § 3.

43-14-5. General powers of board.

The board shall have the power to:

(1) Request from the various state departments and other agencies and authorities of the state and its political subdivisions and their agencies and authorities such available information as it may require in its work; and all such agencies and authorities shall furnish such requested available information to the board within a reasonable time;

(2) Provide by regulation for reciprocity with other states in the registration and licensing of electrical contractors, master plumbers, journeyman plumbers, low-voltage contractors, utility contractors, or conditioned air contractors and in the certification of utility contracting foremen, provided that such other states have requirements substantially equal to the requirements in force in this state for registration, licensure, and certification; provided, further, that a similar privilege is offered to residents of this state;

(3) Adopt an official seal for its use and change it at pleasure;

(4) Establish the policies for regulating the businesses of electrical contracting, plumbing, low-voltage, utility, and conditioned air contracting;

(4.1) Upon notice and hearing authorized and conducted in accordance with Code Section 43-14-10 and any rules and regulations promulgated by the board, either by the board directly or through a valid delegation of the board's enforcement power to a division thereof, assess civil penalties in an amount up to $10,000.00 per

violation against any person found to be in violation of any requirement of this chapter;

(5) Determine qualifications for licensure or certification including such experience requirements as the board deems necessary; and

(6) Promulgate and adopt rules and regulations necessary to carry out this chapter.

History.
Ga. L. 1949, p. 1622, §§ 9, 11, 15; Ga. L. 1968, p. 308, §§ 10, 12, 16; Ga. L. 1971, p. 583, §§ 9, 14; Ga. L. 1980, p. 1299, § 7; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 5; Ga. L. 1989, p. 1756, § 5; Ga. L. 1993, p. 1339, § 4; Ga. L. 2004, p. 390, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, "and" was deleted from the end of paragraph (4) and added to the end of paragraph (5).

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Construction Industry Licensing Board, Chapter 121-1 et seq.

43-14-6. Powers and duties of divisions.

(a) The Division of Electrical Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of electrical contracting; the Division of Master Plumbers and Journeyman Plumbers, with respect to applicants for a license to engage in or licensees engaging in the business of plumbing as master plumbers or journeyman plumbers; the Division of Low-voltage Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of low-voltage contracting; the Division of Utility Contractors with respect to applicants for a license to engage in or licensees engaging in the business of utility contracting and with respect to applicants for a certificate to be a utility manager or utility foreman or holders of a utility manager or utility foreman certificate; and the Division of Conditioned Air Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of conditioned air contracting, shall:

(1) Approve examinations for all applicants for licenses or certificates, except for utility contractor licenses and utility foreman certificates. The Division of Electrical Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to electrical contracting involving multifamily structures of not more than two levels or single-family dwellings of up to three levels. In addition, the structures shall have single-phase electrical installations which do not exceed 400 amperes at the service drop or the service lateral. Class II licenses shall be unrestricted. The Division of Master Plumbers and Journeyman Plumbers shall approve separate examinations for Master Plumber Class I, Master Plumber Class II, and Journeyman Plumbers. Master

Plumber Class I licenses shall be restricted to plumbing involving single-family dwellings and one-level dwellings designed for not more than two families and commercial structures not to exceed 10,000 square feet in area. Master Plumber Class II licenses shall be unrestricted. The Division of Conditioned Air Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to the installation, repair, or service of conditioned air systems or equipment not exceeding 175,000 BTU (net) of heating and five tons (60,000 BTU) of cooling. Class II licenses shall be unrestricted. The Division of Low-voltage Contractors shall approve separate examinations for Low-voltage Contractor Class LV-A, Low-voltage Contractor Class LV-T, Low-voltage Contractor Class LV-U, and Low-voltage Contractor Class LV-G. Class LV-A licenses shall be restricted to alarm and general system low-voltage contracting, Class LV-T licenses shall be restricted to telecommunication and general system low-voltage contracting, Class LV-G licenses shall be restricted to general system low-voltage contracting, and Class LV-U licenses shall be unrestricted and permit the performance of alarm, telecommunication, and general system low-voltage contracting;

(2) Register and license or grant a certificate and issue renewal licenses and renewal certificates biennially to all persons meeting the qualifications for a license or certificate. The following licenses or certificates shall be issued by the divisions:

(A) Electrical Contractor Class I;

(B) Electrical Contractor Class II;

(C) Master Plumber Class I;

(D) Master Plumber Class II;

(E) Journeyman Plumber;

(F) Conditioned Air Contractor Class I;

(G) Conditioned Air Contractor Class II;

(H) Low-voltage Contractor Class LV-A;

(I) Low-voltage Contractor Class LV-T;

(J) Low-voltage Contractor Class LV-G;

(K) Low-voltage Contractor Class LV-U;

(L) Utility Contractor; Class A;

(M) Utility Contractor; Class B;

(N) Utility Contractor; Class U;

(O) Utility Manager (certificate); and

(P) Utility Foreman (certificate);

(3) Investigate, with the aid of the division director, alleged violations of this chapter or other laws and rules and regulations of the board relating to the profession;

(4) After notice and hearing, have the power to reprimand any person, licensee, or certificate holder, or to suspend, revoke, or cancel the license or certificate of or refuse to grant, renew, or restore a license or certificate to any person, licensee, or certificate holder upon any one of the following grounds:

(A) The commission of any false, fraudulent, or deceitful act or the use of any forged, false, or fraudulent document in connection with the license or certificate requirements of this chapter or the rules and regulations of the board;

(B) Failure at any time to comply with the requirements for a license or certificate under this chapter or the rules and regulations of the board;

(C) Habitual intemperance in the use of alcoholic spirits, narcotics, or stimulants to such an extent as to render the license or certificate holder unsafe or unfit to practice any profession licensed or certified under this chapter;

(D) Engaging in any dishonorable or unethical conduct likely to deceive, defraud, or harm the public;

(E) Knowingly performing any act which in any way assists an unlicensed or noncertified person to practice such profession;

(F) Violating, directly or indirectly, or assisting in or abetting any violation of any provision of this chapter or any rule or regulation of the board;

(G) The performance of any faulty, inadequate, inefficient, or unsafe electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air contracting likely to endanger life, health, or property. The performance of any work that does not comply with the standards set by state codes or by local codes in jurisdictions where such codes are adopted, provided that such local codes are as stringent as the state codes, or by other codes or regulations which have been adopted by the board, shall be prima-facie evidence of the faulty, inadequate, inefficient, or unsafe character of such electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air contracting; provided, however, that the board, in its sole discretion, for good cause shown and

under such conditions as it may prescribe, may restore a license to any person whose license has been suspended or revoked;

(H) With respect to utility contractors, the bidding by such a utility contractor in excess of license coverage; or

(I) With respect to utility contractors, violations of Chapter 9 of Title 25;

(5) Review amendments to or revisions in the state minimum standard codes as prepared pursuant to Part 1 of Article 1 of Chapter 2 of Title 8; and the Department of Community Affairs shall be required to provide to the division director a copy of any amendment to or revision in the state minimum standard codes at least 45 days prior to the adoption thereof; and

(6) Do all other things necessary and proper to exercise their powers and perform their duties in accordance with this chapter.

(b) The Division of Electrical Contractors may also provide, by rules and regulations, for the issuance of certificates of competency pertaining to financial responsibility and financial disclosure; provided, however, that such rules and regulations are adopted by the board. The division shall issue certificates of competency and renewal certificates to persons meeting the qualifications therefor.

(c) The divisions mentioned in subsection (a) of this Code section shall also hear appeals resulting from the suspension of licenses by an approved municipal or county licensing or inspection authority pursuant to Code Section 43-14-12.

(d)(1) The Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of Conditioned Air Contractor Class I and Class II licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to conditioned air contracting provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs shall be in the areas of safety, technological advances, business management, or government regulation. Courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) All provisions of this subsection relating to continuing professional education shall be administered by the division.

(3) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(4) The division shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(5) The continuing education requirements of this subsection shall not be required of any licensed conditioned air contractor who is a registered professional engineer.

(6) This Code section shall apply to each licensing and renewal cycle which begins after the 1990-1991 renewal.

(e)(1) The Division of Electrical Contractors shall be authorized to require persons seeking renewal of Electrical Contractor Class I and Class II licenses to complete board approved continuing education courses of not more than four hours annually. The division shall be authorized to approve continuing education courses to be held within or outside this state that are available to all licensed electrical contractors on a reasonable nondiscriminatory fee basis. Any request for division approval of a continuing education course shall be submitted in a timely manner with due regard for the necessity of investigation and consideration by the division. The division may contract with institutions of higher learning, professional organizations, or other qualified persons to provide programs that meet the requirements of this paragraph and any rules or regulations established by the division. Such programs shall be self-sustaining by the individual fees set and collected by the provider of the program.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(f)(1) The Division of Utility Contractors shall be authorized to require persons seeking renewal of utility foreman certificates and utility manager certificates issued under this chapter to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to utility contracting provided or conducted by institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing

education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(g)(1) The Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to plumbing provided or conducted by institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

History.

Ga. L. 1949, p. 1622, §§ 4-6, 14, 15; Ga. L. 1968, p. 308, §§ 4-6, 14, 15; Ga. L. 1971, p. 583, §§ 10, 13, 16; Ga. L. 1980, p. 1299, § 8; Ga. L. 1981, p. 1703, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 6; Ga. L. 1989, p. 1756, § 6; Ga. L. 1991, p. 1581, § 1; Ga. L. 1993, p. 1339, §§ 5, 6; Ga. L. 1994, p. 383, § 3; Ga. L. 1994, p. 659, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 894, § 1/HB 611; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2015, p. 5, § 43/HB 90; Ga. L. 2019, p. 462, § 4-1/SB 214.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "Master Plumber Class I, Master Plumber Class II, and Journeyman Plumber" was substituted for "master plumber Class I, master plumber Class II, and journeyman plumber" in paragraph (a)(2), and a semicolon was substituted for a period at the end of subparagraph (a)(4)(I).

JUDICIAL DECISIONS

Non-delegable duty did not exist for installation of satellite television company's cable equipment. — When the plaintiffs' home was struck by lightning on or near the exterior satellite cable equipment, causing the lightning to travel through a metal doorknob that the plaintiff was touching, resulting in the plaintiff's injury, the satellite television company's motion for summary judgment was properly granted because, although O.C.G.A. § 43-14-6 required electrical appliances to be installed by licensed electricians, there was no requirement in this statute that imposed a non-delegable duty on the company requiring it to properly and safely install the satellite dish system; and the plaintiffs did not point to any specific provision within the National Electric Code or local code setting forth a non-delegable duty in the plaintiffs' appeal. Ward v. DirecTV LLC, 342 Ga. App. 69, 801 S.E.2d 110, 2017 Ga. App. LEXIS 232 (2017).

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Licensed contractor who subcontracts work to an unlicensed subcontractor may be in violation of O.C.G.A. § 43-14-6(a)(4)(E) by assisting an unli-

censed person to practice the contractor's profession. 1986 Op. Att'y Gen. No. 86-34.

Restrictions on Class I master plumbers. — Class I master plumbers are restricted under O.C.G.A. § 43-14-6 from plumbing (1) attached housing for more than two families even if each unit is separately owned or has separate water and sewer connections, and (2) commercial structures which exceed 10,000 square feet even when the plumbing is confined to an area of less than 10,000 square feet. 1988 Op. Att'y Gen. No. 88-25.

Examination of applicants. — Since former paragraph (a)(1) of O.C.G.A. § 43-14-6 specifically required the State Construction Industry Licensing Board, Division of Master Plumbers and Journeyman Plumbers, to examine applicants based on the "applicable state minimum standards codes" and, as of October 1, 1991, both the Georgia State Plumbing Code and the Standard Plumbing Code were the applicable state standard codes, it appeared to be the legislative intent for prospective licensees to be tested on both codes by the division. 1990 Op. Att'y Gen. No. 90-9 (decided prior to 1993 amendment).

43-14-7. Powers and duties of division director.

(a) All orders and processes of the board and the divisions of the board shall be signed and attested by the division director; and any notice or legal process necessary to be served upon the board or the divisions may be served upon the division director.

(b) The division director or his designee is vested with the power and authority to make such investigations in connection with the enforcement of this chapter and the rules and regulations of the board as he, the board, the divisions of the board, or any district attorney may deem necessary or advisable.

History.
Ga. L. 1980, p. 1299, § 5; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 2000, p. 1706, § 19.

43-14-8. Licensing required for electrical, plumbing, or conditioned air contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications; review courses.

(a)(1) No person shall engage in the electrical contracting business as an electrical contractor unless such person has a valid license from the Division of Electrical Contractors and a certificate of competency, if such certificates are issued by the division pursuant to subsection (b) of Code Section 43-14-6.

(2) A person who is not licensed as an electrical contractor or who does not have a certificate of competency, if such certificates are issued by the division pursuant to subsection (b) of Code Section 43-14-6, or both as may be applicable, shall be prohibited from advertising in any manner that such person is in the business or profession of electrical contracting unless the work is performed by a licensed electrical contractor.

(b)(1) No person shall engage in the business of plumbing as a master plumber unless such person has a valid license from the Division of Master Plumbers and Journeyman Plumbers.

(2) No person shall engage in the business of plumbing as a journeyman plumber unless such person has a valid license from the Division of Master Plumbers and Journeyman Plumbers.

(3) A person who does not have a valid license from the Division of Master Plumbers and Journeyman Plumbers shall be prohibited from advertising in any manner that such person is in the business or profession of plumbing as a master plumber or journeyman plumber unless such person is licensed by the Division of Master Plumbers and Journeyman Plumbers and unless the work is performed by a licensed plumber.

(c)(1) No person shall engage in the business of conditioned air contracting as a conditioned air contractor unless such person has a valid license from the Division of Conditioned Air Contractors.

(2) A person who is not licensed as a conditioned air contractor shall be prohibited from advertising in any manner that such person is in the business or profession of a conditioned air contractor unless the work is performed by a licensed conditioned air contractor.

(d) Notwithstanding any other provision of this chapter, prior to and including September 30, 1983, the following persons, desiring to qualify under the provisions stated in this subsection, shall be issued a state-wide license without restriction by the appropriate division of the State Construction Industry Licensing Board, provided that such individual submits proper application and pays or has paid the required fees and is not otherwise in violation of this chapter:

(1) Any individual holding a license issued by the State Construction Industry Licensing Board, prior to the effective date of this chapter;

(2) Any individual holding a license issued by the State Board of Electrical Contractors, the State Board of Examiners of Plumbing Contractors, or the State Board of Warm Air Heating Contractors;

(3) Any individual holding a license to engage in such vocation issued to him or her by any governing authority of any political subdivision; and

(4) Any individual who has successfully and efficiently engaged in such vocation in a local jurisdiction, which did not issue local licenses, for a period of at least two consecutive years immediately prior to the time of application. To prove that he or she has successfully engaged in said vocation, the individual shall only be required to give evidence

of three successful jobs completed over such period. Such applicant shall swear before a notary public that such evidence is true and accurate prior to its submission to the division.

(e) The decision of the division as to the necessity of taking the examination or as to the qualifications of applicants taking the required examination shall, in the absence of fraud, be conclusive. All individuals, partnerships, limited liability companies, or corporations desiring to engage in such vocation after September 30, 1983, shall take the examination and qualify under this chapter before engaging in such vocation or business, including such vocation at the local level.

(f) No partnership, limited liability company, or corporation shall have the right to engage in the business of electrical contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses issued to them as provided for in this chapter.

(g) No partnership, limited liability company, or corporation shall have the right to engage in the business of plumbing unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses for master plumbers issued to them as provided in this chapter.

(h) No partnership, limited liability company, or corporation shall have the right to engage in the business of conditioned air contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses issued to them as provided for in this chapter; provided, however, that partners, officers, and employees of the individual who fulfilled the licensing requirements shall continue to be authorized to engage in the business of conditioned air contracting under a license which was valid at the time of the licensee's death for a period of 90 days following the date of such death.

(i) It shall be the duty of all partnerships, limited liability companies, and corporations qualified under this chapter to notify the appropriate division immediately of the severance of connection with such partnership, limited liability company, or corporation of any person or persons upon whom such qualification rested.

(j) All applicants for examinations and licenses provided for by this chapter and all applicants for renewal of licenses under this chapter shall be required to fill out a form which shall be provided by each division, showing whether or not the applicant is an individual, partnership, limited liability company, or corporation and, if a partner-

ship, limited liability company, or corporation, the names and addresses of the partners or members or the names and addresses of the officers, when and where formed or incorporated, and such other information as the board or each division may require. All forms of applications for renewal of licenses shall also show whether or not the applicant, if it is a partnership, limited liability company, or corporation, still has connected with it a duly qualified person holding a license issued by the division.

(k) The board shall notify each local governing authority of the provisions of this chapter relating to licensure, especially the provisions of subsection (d) of this Code section. The board shall notify such governing authorities that after September 30, 1983, any person desiring a license to engage in a profession covered by this chapter shall be required to pass an examination as provided in this chapter.

(l) Any applicant for licensure standing the examination on and after July 1, 1989, who fails the examination for licensure twice after such date shall be required to present satisfactory evidence to the appropriate division that the applicant has completed a board approved review course before such applicant will be admitted to a third examination. If such applicant fails the examination a third time, the applicant shall not be required to complete additional board approved review courses prior to taking subsequent examinations.

History.

Ga. L. 1949, p. 1622, §§ 4-6; Ga. L. 1968, p. 308, §§ 4-6; Ga. L. 1971, p. 583, § 10; Ga. L. 1980, p. 1299, § 9; Ga. L. 1981, p. 1703, § 3; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1989, p. 1617, § 1; Ga. L. 1993, p. 123, § 29; Ga. L. 2001, p. 883, § 1; Ga. L. 2003, p. 419, § 2; Ga. L. 2019, p. 462, § 4-2/SB 214; Ga. L. 2021, p. 922, § 43/HB 497; Ga. L. 2022, p. 766, § 1/HB 342.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "showing" for "which form shall show" in the middle of the first sentence of subsection (j).

The 2022 amendment, effective July 1, 2022, added paragraph (b)(3).

JUDICIAL DECISIONS

Constitutionality. — Former subparagraph (e)(2)(A) of O.C.G.A. § 43-14-8 was unconstitutional insofar as it denied to formerly locally licensed plumbers the rights extended to formerly state-licensed plumbers. Waller v. State Constr. Indus. Licensing Bd., 250 Ga. 529, 299 S.E.2d 554, 1983 Ga. LEXIS 557 (1983) (decided prior to 1983 amendment).

Electrical work performed as personal favor at homeowners' request and on temporary basis did not come within the meaning of "electrical contracting" in O.C.G.A. § 43-14-2(6) so as to require a license under O.C.G.A. § 43-14-8(a). Echols v. Quality Mechanical, Inc., 177 Ga. App. 870, 341 S.E.2d 328, 1986 Ga. App. LEXIS 1546 (1986).

No subcontractor's lien permitted. — Because a subcontractor did not actually comply with O.C.G.A. § 43-14-8(f) as the evidence indicated that a Georgia-licensed electrician with whom the subcontractor affiliated itself through an al-

leged joint venture only presented electrical contracting licenses when permits for the work were applied for and took no action to inspect others' electrical work or to verify that the work complied with the applicable codes, the subcontractor could not enforce the subcontract with the contractor, could not recover in quantum meruit under O.C.G.A. § 9-2-7 as the express contract violated public policy, and could not file a subcontractor's lien under O.C.G.A. §§ 44-14-361.1 and 44-14-367. JR Construction/Electric, LLC v. Ordner Constr. Co., 294 Ga. App. 453, 669 S.E.2d 224, 2008 Ga. App. LEXIS 1214 (2008).

Unlicensed contractor could not recover against homeowner. — Contractor's suit against a homeowner seeking over $33,000 for remodeling services was subject to summary judgment; the contract was void and unenforceable under O.C.G.A. § 43-41-17(b) because the contract provided for electrical and plumbing work and the contractor did not have licenses for electrical and plumbing work as required by O.C.G.A. § 43-14-8. Restor-It, Inc. v. Beck, 352 Ga. App. 613, 835 S.E.2d 398, 2019 Ga. App. LEXIS 605 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Qualification for license under grandfather clause. — Person must have submitted a completed application by September 30, 1983, in order to qualify for a license under the grandfather clause found in O.C.G.A. § 43-14-8(d), and the submission of an application not evidencing the right to be "grandfathered" would not indefinitely preserve the right for licensure under such clause. 1992 Op. Att'y Gen. No. U92-12.

No exemptions for liquefied petroleum licenses. — Persons licensed pursuant to the Liquefied Petroleum Safety Act of Georgia, O.C.G.A. § 10-1-260 et seq., who install, repair, or service conditioned air equipment are not exempt from the requirement of holding a license as a conditioned air contractor under O.C.G.A. § 43-14-8. 1994 Op. Att'y Gen. No. 94-2.

Persons licensed as water well contractors by the Water Well Standards Advisory Council are not required to hold licenses as electrical or plumbing contractors when, in the course of constructing water wells, the people make certain electrical and plumbing connections at the well site which are incidental to the trade for which the people have been licensed. 1981 Op. Att'y Gen. No. U81-45.

Licensed individual may not qualify more than one partnership company or corporation. 1963-65 Ga. Op. Att'y Gen. 775.

Utility not subjected to licensure requirements. — Electric utility's installation of outside electrical lighting fixtures which are attached to or incorporated into non-exempt buildings or structures and which are an integral part of the electrical system of such utility would not subject the utility to the licensure requirements of O.C.G.A. § 43-14-8(f). 1992 Op. Att'y Gen. No. 92-29.

43-14-8.1. License requirement for low-voltage electrical contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications.

(a) For purposes of this Code section only, "division" means the "Division of Low-voltage Contractors."

(b) No person shall engage in alarm system, general system, or

telecommunication system low-voltage contracting unless such person has a valid license therefor from the Division of Low-voltage Contracting.

(c) Any person desiring to qualify under the provisions of this subsection who meets the requirements of this subsection, submits proper application prior to and including December 31, 1984, and pays or has paid the required fees and is not otherwise in violation of this chapter shall be issued a state-wide Low-voltage Contractor Class LV-A, LV-G, LV-U, or LV-T license without examination. An individual desiring to obtain Low-voltage Contractor Class LV-T shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to telecommunication systems. An individual desiring to obtain a Low-voltage Contractor Class LV-A license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to alarm systems. An individual desiring to obtain a Low-voltage Contractor Class LV-G license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to general systems. Each such affidavit for licensure shall describe in detail the installation of at least three complete low-voltage wiring jobs which shall demonstrate that the individual has successfully performed low-voltage wiring in the area of licensure requested for a period of at least one year immediately prior to the time of application. An individual desiring to obtain a Low-voltage Contractor Class LV-U license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to alarm and telecommunication systems and which describes in detail the installation of at least six complete low-voltage wiring jobs, three in alarm and three in telecommunication systems, which shall demonstrate that the individual has successfully performed low-voltage wiring in those areas for a period of at least one year immediately prior to the time of application.

(d) The decision of the division as to the necessity of taking the examination or as to the qualifications of applicants taking the required examination shall, in the absence of fraud, be conclusive. All individuals, partnerships, limited liability companies, or corporations desiring to engage in the vocation of low-voltage contracting after December 31, 1984, shall take the examination and qualify under this Code section before engaging in such vocation.

(e) No partnership, limited liability company, or corporation shall have the right to engage in the business of low-voltage contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons, actually engaged in the performance of such business on a full-time basis and supervising

the low-voltage systems installation, repair, alteration, and service work of all employees of such partnership, limited liability company, or corporation, who have valid licenses issued to them as provided in this chapter. In cases where a partnership, limited liability company, or corporation has more than one office location from which low-voltage contracting is performed, at least one person stationed in each branch office of such partnership, limited liability company, or corporation, engaged in the performance of low-voltage contracting on a full-time basis and supervising the low-voltage wiring systems installation, repair, alteration, and service work of all employees of such branch office locations, shall have a valid license issued as provided in this Code section.

(f) It shall be the duty of all partnerships, limited liability companies, and corporations qualified under this Code section to notify the division, in accordance with board rules, of severance of connection with such partnership, limited liability company, or corporation of any person or persons upon whom the qualification of any such partnership, limited liability company, or corporation rested.

(g) All applicants for examinations and licenses provided for by this Code section and all applicants for renewal of licenses under this Code section shall be required to fill out a form which shall be provided by the division, which form shall show whether or not the applicant is an individual, partnership, limited liability company, or corporation and, if a partnership, limited liability company, or corporation, the names and addresses of the partners or members or the names and addresses of the officers, when and where formed or incorporated, and such other information as the division in its discretion may require. All forms of application for renewal of licenses shall also show whether or not the applicant, if it is a partnership, limited liability company, or corporation, still has connected with it a duly qualified person holding a license issued by the division.

(h) The division shall notify each local governing authority of the provisions of this chapter relating to licensure, especially the provisions of subsection (b) of this Code section. The division shall notify such governing authorities that after December 31, 1984, any person desiring a license to engage in the vocation of low-voltage contracting shall be required to pass an examination as provided in this chapter.

History.
Code 1981, § 43-14-8.1, enacted by Ga. L. 1984, p. 1129, § 7; Ga. L. 1993, p. 123, § 30; Ga. L. 2002, p. 415, § 43; Ga. L. 2010, p. 266, § 20/SB 195.

OPINIONS OF THE ATTORNEY GENERAL

License required for low-voltage contracting. — Licensed electrical contractors desiring to engage in low-voltage contracting must obtain a license from the

Low-Voltage Division of the State Construction Industry Licensing Board. 1984 Op. Att'y Gen. No. 84-74.

Basis for issuing license. — Presently licensed electrical contractors must either submit the evidence required by O.C.G.A. § 43-14-8.1(c) prior to the date specified in the statute (December 31, 1984), or thereafter pass the examination to qualify to receive a low-voltage contracting license. 1984 Op. Att'y Gen. No. 84-74.

43-14-8.2. Utility contractor license; utility manager; business entities; severance of connection with utility manager; unlawful contracts.

(a) For purposes of this Code section only, "division" means the "Division of Utility Contractors."

(b)(1) After June 30, 1994, no sole proprietorship, partnership, or corporation shall have the right to engage in the business of utility contracting unless such business holds a utility contractor license and there is regularly connected with such business a person or persons who holds a valid utility manager certificate issued under this chapter. Such utility manager must be actually engaged in the performance of such business on a full-time basis and oversee the utility contracting work of all employees of the business. In cases where a sole proprietorship, partnership, or corporation has more than one permanent office, then each permanent office shall be registered with the division and at least one person who holds a valid utility manager certificate issued under this chapter shall be stationed in each office on a full-time basis and shall oversee the utility contracting work of all employees of that office.

(2) The requirements of this Code section shall not prevent any person holding a valid license issued by the State Construction Industry Licensing Board, or any division thereof, pursuant to this chapter, from performing any work defined in the Code section or sections under which the license held by said person was issued.

(c) Any corporation, partnership, or sole proprietorship desiring to qualify and be issued a utility contractor license under the provisions of this subsection shall:

(1) Submit a completed application to the division on the form provided indicating:

(A) The names and addresses of proprietor, partners, or officers of such applicant;

(B) The place and date such partnership was formed or such corporation was incorporated; and

(C) The name of the qualifying utility manager holding a current certificate who is employed for each permanent office location of the business from which utility contracting is performed;

(2) Submit its safety policy which must meet the minimum standards established by the board;

(3) Pay or have paid the required fees; and

(4) Not be otherwise in violation of this chapter.

(d) The decision of the division as to the qualifications of applicants shall, in the absence of fraud, be conclusive.

(e) It shall be the duty of the utility manager certificate holders and the licensed utility contractor to notify the division, in accordance with board rules, of severance of connection between such utility contractor and the utility manager certificate holder or holders upon whom the qualification of the utility contractor rested.

(f) In the event that a licensed utility contractor temporarily does not have employed a utility manager certificate holder to oversee its utility contracting work, upon notice by such utility contractor to the division within five days following the last day of employment of the utility manager certificate holder, the division shall grant the utility contractor a 90 day grace period in which to employ a utility manager certificate holder to oversee its utility contracting work before any action may be taken by the division to revoke the utility contractor's license. The division may, at its discretion, upon application by the utility contractor showing good cause grant one additional 90 day grace period. Grace periods totaling not more than 180 days may be granted during any two-year period. Failure to have employed a utility manager certificate holder to oversee the utility contracting work of the utility contractor shall be grounds for the revocation or suspension of the utility contractor license after a notice of hearing.

(g) All applicants for renewal of utility contractor licenses provided for by this Code section shall be required to submit with the required fee a completed application on a form provided by the division.

(h) It shall be unlawful for any person to contract with any other person for the performance of utility contracting work who is known by such person not to have a current, valid license as a utility contractor pursuant to this chapter.

History.

Code 1981, § 43-14-8.2, enacted by Ga. L. 1989, p. 1756, § 7; Ga. L. 1993, p. 123, § 31; Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 1; Ga. L. 1994, p. 383, § 4; Ga. L. 2004, p. 390, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, "under which the" was substituted for "under the" near the end of paragraph (b)(2).

Editor's notes.

Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7, are repealed in their

entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1, was effective February 4, 1994, to March 29, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, not codified by the General Assembly, effective March 29, 1994.

JUDICIAL DECISIONS

Interpretation. — Language of O.C.G.A. § 43-14-8.2 is perfectly plain, and the statute's meaning is neither absurd, impossible of enforcement, or unreasonable. Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458, 2012 Ga. App. LEXIS 532 (2012).

License not required. — Trial court properly denied the contractor's motion for partial summary judgment on the developers' counterclaim that the parties' contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A. § 43-14-8.2 to perform work under its agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in connection with the developers' properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers' properties was done at a depth of five feet or deeper below the surface. Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458, 2012 Ga. App. LEXIS 532 (2012).

43-14-8.3. Utility manager certificate.

(a) After June 30, 1994, no person may be employed as a utility manager unless that person holds a current utility manager certificate issued by the Division of Utility Contractors.

(b) The division shall certify all applicants for certification under this chapter who satisfy the requirements of this chapter and the rules and regulations promulgated under this chapter. Persons wishing to qualify for utility manager certification shall submit a completed application form documenting required experience and other qualifications as prescribed by the board with the required fees and shall pass an examination. In order to obtain a utility manager certificate, an applicant must submit proof of completion of a course of safety training in utility contracting approved by the division. In order to continue to hold such certificate, the certificate holder must present proof to the division of completion of a safety training course approved by the division at least every two years from the date of the completion of the initial safety training course.

(c) An applicant may request an oral administration of the examination.

History.

Code 1981, § 43-14-8.3, enacted by Ga. L. 1989, p. 1756, § 7; Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 2; Ga. L. 1994, p. 383, § 5; Ga. L. 2004, p. 390, § 4.

Editor's notes.

Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7, are repealed in their

entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1 was effective from February 4, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, not codified by the General Assembly, effective March 29, 1994.

43-14-8.4. Utility foreman certificate; presence of certified utility manager or certified utility foreman required.

(a) After June 30, 1994, no person may be employed as a utility foreman unless that person holds a current utility foreman certificate issued by the Division of Utility Contractors.

(b) The division shall certify all applicants for certification under this chapter who satisfy the requirements of this chapter and the rules and regulations promulgated under this chapter. One requirement for such certification shall be the successful completion of a course of safety training in utility contracting approved by the division. In order to continue to hold such certificate, the certificate holder must submit proof to the division of completion of a safety training course approved by the division at least every two years from the date of the completion of the initial safety training course. In lieu of safety training any person desiring to be issued a utility foreman certificate may submit a completed application on or before December 31, 1994, which documents to the satisfaction of the division at least two years of experience as a utility foreman during the period between January 1, 1984, and June 30, 1994. Any person who does not submit a completed application for certification on or before December 31, 1994, must complete the required safety training in order to be certified.

(c) After June 30, 1994, no utility system shall be constructed, erected, altered, or repaired unless a certified utility manager or certified utility foreman who holds a current certification is present at the job site of such construction, erection, alteration, or repair of the utility system.

History.

Code 1981, § 43-14-8.4, enacted by Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 3; Ga. L. 1994, p. 383, § 6; Ga. L. 2004, p. 390, § 5.

Editor's notes.

Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7, are repealed in their entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1 was effective from February 4, 1994, to March 29, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, effective March 29, 1994.

43-14-9. Display of license and registration number.

(a) Every person holding a license issued by a division of the board shall display it in a conspicuous manner at his place of business.

(b) All commercial vehicles used by licensees and certificate holders exclusively in the daily operation of their business shall have prominently displayed thereon the company or business registration number issued by the Secretary of State's office. Such registration number shall also be prominently displayed on any advertising in telephone yellow pages and newspapers relating to work which a licensee or certificate holder purports to have the capacity to perform. Said registration number shall also be printed on all invoices and proposal forms.

History.
Ga. L. 1971, p. 583, § 15; Ga. L. 1980, p. 1299, § 10; Ga. L. 1983, p. 424, § 1; Ga. L. 1991, p. 1581, § 2; Ga. L. 1993, p. 1339, § 8.

43-14-10. Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

This chapter shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Ga. L. 1980, p. 1299, § 6; Ga. L. 1983, p. 424, § 1.

43-14-11. Injunction for violation of chapter.

Whenever it shall appear to a division of the board or to the executive director or to a county or municipal inspection authority that any person is or has been violating this chapter or any of the lawful rules, regulations, or orders of the board, the division of the board, the local inspection authority, or the appropriate prosecuting attorney may file a petition for an injunction in the proper superior court of this state against such person for the purpose of enjoining any such violation. It shall not be necessary to allege or prove that there is no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other legal remedy which the board has and shall be in addition to any right of criminal prosecution provided for by law.

History.
Ga. L. 1971, p. 583, § 18; Ga. L. 1980, p. 1299, § 12; Ga. L. 1981, p. 1703, § 4; Ga. L. 1983, p. 424, § 1; Ga. L. 1994, p. 97, § 43.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Injunctions, § 145.
C.J.S.
43A C.J.S., Injunctions, § 157.
ALR.
Validity of statutory or municipal regulation of heating contractors, 33 A.L.R. 146.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Right to enjoin business competitor

from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-14-12. Suspension of, or refusal to restore, licenses and certificates by municipal or county inspection authority; appeals; adoption and enforcement of codes at local level; bonds; fees or taxes.

(a) Any municipal or county inspection authority which meets the standards established by the board shall be authorized, after notice and hearing, to suspend the license or certificate of competency of, or refuse to restore a license or certificate of competency to, any person or licensee upon the grounds set out in paragraph (4) of subsection (a) of Code Section 43-14-6; provided, however, that such suspension of a license by a local inspection authority shall be applicable only within the jurisdiction of such local authority. Any person aggrieved by an action of a local authority shall be entitled to an appeal to the appropriate division of the board and shall be entitled to a hearing.

(b)(1) This chapter shall not be construed to prohibit the governing authority of any county or municipality in the state from adopting and enforcing codes at the local level; provided, however, that no county or municipality may require any licensed conditioned air contractor or licensed plumber who has executed and deposited a bond as authorized in paragraph (2) of this subsection to give or furnish or execute any code compliance bond or similar bond for the purpose of ensuring that all construction, installation, or modifications are made or completed in compliance with the county or municipal ordinances or building and construction codes.

(2) In order to protect the public from damages arising from any work by a licensed conditioned air contractor or licensed plumber, which work fails to comply with the ordinances or building and construction codes adopted by any county or municipal corporation, any such licensed conditioned air contractor or licensed plumber may execute and deposit with the judge of the probate court in the county of his or her principal place of business a bond in the sum of $10,000.00. Such bond shall be a cash bond of $10,000.00 or executed by a surety authorized and qualified to write surety bonds in the State of Georgia and shall be approved by the judge of the probate court. Such bond shall be conditioned upon all work done or supervised by such licensee complying with the provisions of any ordinances or building and construction codes of any county or municipal corporation wherein the work is performed. Action on such bond may

be brought against the principal and surety thereon in the name of and for the benefit of any person who suffers damages as a consequence of said licensee's work not conforming to the requirements of any ordinances or building and construction codes; provided, however, that the aggregate liability of the surety to all persons so damaged shall in no event exceed the sum of such bond.

(3) In any case where a bond is required under this subsection, the conditioned air contractor or plumber shall file a copy of the bond with the building official in the political subdivision wherein the work is being performed.

(4) The provisions of this subsection shall not apply to or affect any bonding requirements involving contracts for public works as provided in Chapter 10 of Title 13.

(c) No provision of this chapter shall be construed as prohibiting or preventing a municipality or county from fixing, charging, assessing, or collecting any license fee, registration fee, tax, or gross receipt tax on any related business or on anyone engaged in any related business governed by this chapter.

History.
Ga. L. 1981, p. 1703, § 5; Ga. L. 1983, p. 424, § 1; Ga. L. 1993, p. 1339, § 9; Ga. L. 1994, p. 662, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Local fees for licensing journeymen electricians prohibited. — O.C.G.A. Ch. 14, T. 43 prohibits a municipality or county from establishing licensing requirements for journeyman electricians or collecting fees for such licenses. 1987 Op. Att'y Gen. No. 87-3 (rendered prior to 1993 amendment).

Although O.C.G.A. § 43-14-12 allows a municipality or county to charge a "license fee, registration fee, tax, or gross receipt tax on any related business or on anyone engaged in any related business governed by this chapter," such "revenue" measures have been struck down when their underlying intent was to create a licensing requirement as a precondition for engaging in the occupation as opposed to creating a tax on an otherwise-licensed occupation. 1987 Op. Att'y Gen. No. 87-3 (rendered prior to 1993 amendment).

Authority to require liability insurance compliance bonds. — County and municipal governments are prohibited from requiring contractors licensed under O.C.G.A. Ch. 14, T. 43 to obtain liability insurance in order to perform work covered by the license; however, county and municipal governments may require contractors to obtain code compliance bonds in order to perform work covered by the contractor's license, provided that the local government may not require such a bond from conditioned air contractors and plumbers who have executed and deposited a bond under O.C.G.A. § 43-14-12(b)(2), and provided that the local ordinance does not otherwise conflict with the general law. 1995 Op. Att'y Gen. No. 95-7.

43-14-12.1. Evidence of violation; cease and desist orders; fines; other penalties for violations.

(a) If a person is in violation of paragraph (1) or (2) of subsection (c) of Code Section 43-14-8, it shall not be necessary for an investigator to observe or witness the unlicensed person engaged illegally in the process of work or to show work in progress or work completed in order to prove the unlawful practice of conditioned air contracting by an unlicensed person.

(b) It shall be prima-facie evidence of a violation of this chapter if any person not licensed as a conditioned air contractor advertises that such person is in the business or profession of a conditioned air contractor or advertises in a manner such that the general public would believe that such person is a licensed conditioned air contractor or in the business or profession of a conditioned air contractor. Advertising under this subsection includes, but is not limited to, newspaper, television, radio, telephone directory, mailings, business cards, or sign at place of business or attached to a vehicle.

(c) Notwithstanding the provisions of Code Section 43-1-20.1, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the business or profession of a conditioned air contractor without a license as required under this chapter.

(d) The violation of any cease and desist order of the board issued under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed $500.00 for each violation thereof. Each day that a person practices in violation of this Code section and chapter shall constitute a separate violation.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

History. Code 1981, § 43-14-12.1, enacted by Ga. L. 1998, p. 1517, § 1; Ga. L. 2001, p. 883, § 2.

43-14-12.2. Proof of unlawful practice of utility contracting by unlicensed individual; cease and desist orders; penalty for violations.

(a) If a person is in violation of Code Section 43-14-8.2, 43-14-8.3, or 43-14-8.4, it shall not be necessary for an investigator to observe or witness the unlicensed person engaged illegally in the process of work

or to show work in progress or work completed in order to prove the unlawful practice of utility contracting by an unlicensed person.

(b) It shall be prima-facie evidence of a violation of this chapter if any person not licensed as a utility contractor advertises that such person is in the business or profession of a utility contractor or advertises in a manner such that the general public would believe that such person is a licensed utility contractor or in the business or profession of a utility contractor. Advertising under this subsection includes, but is not limited to, newspaper, television, or radio advertisements, telephone directory listings, mailings, business cards, or a sign or signs at a place of business or attached to a vehicle.

(c) Notwithstanding the provisions of Code Section 43-1-20.1, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the business or profession of a utility contractor without a license as required under this chapter or by constructing, erecting, altering, or repairing a utility system without a properly certified utility manager or properly certified utility foreman present at such job site.

(d) The violation of any cease and desist order of the board issued under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed $5,000.00 for each violation thereof. Each day that a person practices in violation of this Code section and chapter or constructs, erects, alters, or repairs a utility system without a properly certified utility manager or properly certified utility foreman present at such job site shall constitute a separate violation.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

History.
Code 1981, § 43-14-12.2, enacted by Ga. L. 2004, p. 390, § 6.

43-14-13. Applicability of chapter.

(a) This chapter shall apply to all installations, alterations, and repairs of plumbing, air-conditioning and heating, or electrical or low-voltage wiring or utility systems within or on public or private buildings, structures, or premises except as otherwise provided in this Code section.

(b) Any person who holds a license issued under this chapter may engage in the business of plumbing, electrical contracting, conditioned

air contracting, low-voltage contracting, or utility contracting but only as prescribed by the license, throughout the state; and except as provided in Code Section 43-14-12, no municipality or county may require such person to comply with any additional licensing requirements imposed by such municipality or county.

(c) This chapter shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, utility systems, or electrical services, except low-voltage wiring services, up to and including the meters where such work is performed by and is an integral part of the system owned or operated by a public service corporation, an electrical, water, or gas department of any municipality in this state, a railroad company, a pipeline company, or a mining company in the exercise of its normal function as such.

(d) This chapter shall not prohibit an individual from installing, altering, or repairing plumbing fixtures, air-conditioning and heating, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a residential dwelling owned or occupied by such individual; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and any applicable county or municipal resolutions, ordinances, codes, or inspection requirements.

(e) This chapter shall not prohibit an individual employed on the maintenance staff of a facility owned by the state or by a county, municipality, or other political subdivision from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services when such work is an integral part of the maintenance requirements of the facility; provided, however, that all such work must be done in conformity with all other provisions of this chapter and the orders, rules, and regulations of the board.

(f) This chapter shall not prohibit any person from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a farm or ranch service building or as an integral part of any irrigation system on a farm or ranch when such system is not located within 30 feet of any dwelling or any building devoted to animal husbandry. Nothing in this subsection shall be construed to limit the application of any resolution, ordinance, code, or inspection requirements of a county or municipality relating to such connections.

(g) This chapter shall not apply to low-voltage wiring performed by public utilities, except that such portion of the business of those public utilities which involves the installation, alteration, repair, or service of telecommunication systems for profit shall be covered under this chapter.

(h) This chapter shall not apply to the installation, construction, or maintenance of power systems or telecommunication systems for the generation or distribution of electric current constructed under the National Electrical Safety Code, which regulates the safety requirements of utilities; but the interior wiring regulated by the National Electrical Safety Code would not be exempt and must be done by an electrical contractor except as otherwise provided by law.

(i) This chapter shall not apply to any technician employed by a municipal or county-franchised community antenna television (CATV) system or a municipally owned community antenna television system in the performance of work on the system.

(j) This chapter shall not apply to regular full-time employees of an institution, manufacturer, or business who perform plumbing, electrical, low-voltage wiring, utility contracting, or conditioned air contracting when working on the premises of that employer.

(k) This chapter shall not apply to persons licensed as manufactured or mobile home installers by the state fire marshal when:

(1) Coupling the electrical connection from the service entrance panel outside the manufactured housing to the distribution panel board inside the manufactured housing;

(2) Connecting the exterior sewer outlets to the above-ground sewer system; or

(3) Connecting the exterior water line to the above-ground water system.

(l) Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for the department. Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for a county, municipality, authority, or other political subdivision when such work is of the same nature as that for which the person is qualified when performing department work; provided, however, that such work is not performed on a utility system as defined in paragraph (17) of Code Section 43-14-2 for which the person receives compensation.

(m) This chapter shall not prohibit any person from installing, altering, or repairing the plumbing component of a lawn sprinkler system from a backflow preventer which was installed by a licensed plumber; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and ordinances of the county or municipality.

(n) Any person who contracts with a licensed conditioned air contractor as part of a conditioned air contract to install, alter, or repair duct systems, control systems, or insulation is not required to hold a license from the Division of Conditioned Air Contractors. The conditioned air contractor must retain responsibility for completion of the contract, including any subcontracted work. Any person who contracts with a licensed conditioned air contractor to perform a complete installation, alteration, or repair of a conditioned air system must hold a valid license from the Division of Conditioned Air Contractors. Any person who contracts to perform for or on behalf of a conditioned air contractor to install, alter, or repair electrical, low-voltage, or plumbing components of a conditioned air system must hold a valid license from the appropriate division of the board.

(o) This chapter shall not prohibit any propane dealer who is properly insured as required by law and who holds a liquefied petroleum gas license issued by the Safety Fire Commissioner from installing, repairing, or servicing a propane system or the gas piping or components of such system; provided, however, that such propane dealers shall be prohibited from performing the installation of conditioned air systems or forced air heating systems unless licensed to do so under this chapter.

(p) This chapter shall not apply to any employee or authorized agent of a regulated gas utility or municipal owned gas utility while in the course and scope of such employment.

(q) Any utility contractor holding a valid utility contractor's license under this chapter shall be authorized to bid for and perform work on any utility system in this state without obtaining a license under Chapter 41 of this title. It shall be unlawful for the owner of a utility system or anyone soliciting work to be performed on a utility system to refuse to allow a utility contractor holding a valid utility contractor's license under this chapter to bid for or perform work on a utility system on the basis that such contractor does not hold a license under Chapter 41 of this title.

History.

Ga. L. 1980, p. 1299, § 16; Ga. L. 1981, p. 845, § 1; Ga. L. 1981, p. 1703, § 7; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 8; Ga. L. 1989, p. 1756, § 8; Ga. L. 1993, p. 1339, § 11; Ga. L. 1994, p. 383, § 7; Ga. L. 1994, p. 662, § 2; Ga. L. 2003, p. 419, § 3; Ga. L. 2010, p. 211, § 1/SB 339; Ga. L. 2015, p. 5, § 43/HB 90.

Editor's notes.

Former Code Section 43-14-13 was repealed by Ga. L. 1993, p. 1339, § 10, effective April 15, 1993, and was based on Ga. L. 1968, p. 308, § 22; Ga. L. 1980, p. 1299, § 14; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1983, p. 424, § 1.

Ga. L. 1993, p. 1339, § 11, effective April 15, 1993, renumbered former Code Section 43-14-15 as present Code Section 43-14-13.

JUDICIAL DECISIONS

Septic tank installation, maintenance, or repair is not included within the definition of "plumbing" in O.C.G.A. § 43-14-2 and, as a result, state law does not preempt counties from enacting regulations that specify the qualifications of persons who install septic tanks. DeKalb County Bd. of Health v. Lee, 266 Ga. 507, 467 S.E.2d 564, 1996 Ga. LEXIS 108 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1949, p. 1622 are included in the annotations for this Code section.

Employees of state and the state's political subdivisions are not required to be licensed as electrical contractors even though providing services similar to those otherwise provided by electrical contractors for the state or the state's political subdivisions. 1974 Op. Att'y Gen. No. 74-152 (decided under Ga. L. 1949, p. 1622).

Licensing exemption contained in O.C.G.A. § 43-14-13(d), while permitting individuals to install or repair plumbing, air conditioning, heating, electrical wiring or low voltage wiring on single-family dwellings which an individual owns or occupies, does not permit such owners or occupiers to employ unlicensed persons to perform these activities. Similarly, the exemption contained in O.C.G.A. § 43-14-16(d) [repealed] only allows the unlicensed employees of a general building contractor to perform work upon the business premises of the general contractor and not upon any other property the contractor may own. 1988 Op. Att'y Gen. 88-29.

Local licensing requirements for journeymen electricians prohibited. — O.C.G.A. Ch. 14, T. 43 prohibits a municipality or county from establishing licensing requirements for journeyman electricians or collecting fees for such licenses. 1987 Op. Att'y Gen. No. 87-3 (decided prior to 1993 amendment of O.C.G.A. § 43-14-12).

43-14-14. Penalty.

Any person violating this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.00 or imprisoned for not more than six months, or both.

History.

Ga. L. 1980, p. 1299, § 15; Ga. L. 1983, p. 424, § 1; Code 1981, § 43-14-17; Code 1981, § 43-14-14, as redesignated by Ga. L. 1993, p. 1339, § 13; Ga. L. 2001, p. 883, § 3.

Editor's notes.

Ga. L. 1993, p. 1339, § 13, effective April 15, 1993, redesignated former Code Section 43-14-17 as present Code Section 43-14-14.

Former Code Section 43-14-14, concerning the effect of this chapter on powers of state departments or agencies, was repealed by Ga. L. 1993, p. 1339, § 10, effective April 15, 1993, and was based on Ga. L. 1980, p. 1299, § 15; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1983, p. 424, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 43-

14-14. 2001 Op. Att'y Gen. No. 2001-11.

43-14-15. Certain military certifications entitle persons to obtain certain professional licenses.

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

(1) "Discharge" means an honorable discharge or a general discharge from active military service. Such term shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(2) "Military" means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) A committee composed of the division director, members of the Governor's Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license shall determine the military specialties or certifications the training or experience for which substantially meets or exceeds the requirements to obtain a license for Electrical Contractor Class I, Journeyman Plumber, Conditioned Air Contractor Class I, or Utility Foreman. The Governor shall designate a chairperson from among the members of the committee.

(c) Any current or former member of the military may apply to the licensing board for the immediate issuance of a license or certification based upon his or her having obtained a military specialty or certification, the training or experience for which substantially meets or exceeds the requirements to obtain a license or certification identified in subsection (b) of this Code section. In order to qualify under this subsection, an applicant shall make application not later than two years after his or her discharge. The licensing board, in its discretion, may by rule or regulation extend such two-year period for a license or certification, or class thereof, or may extend such two-year period for an individual applicant if certain circumstances, including, but not limited to, health, hospitalization, or other related emergencies or exigencies, prevented the member of the military from making an application. Such application shall be in such form and shall require such documentation as the division director shall determine. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the appropriate license, and the division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the

licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees.

History.

Code 1981, § 43-14-15, enacted by Ga. L. 2013, p. 26, § 1/HB 188; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2021, p. 440, § 1/SB 27.

The 2021 amendment, effective May 4, 2021, in subsection (c), inserted a comma following "specialty or certification" in the middle of the first sentence, substituted "two years" for "180 days" in the second sentence, and added the third sentence.

Editor's notes.

Former Code Section 43-14-15 was redesignated as Code Section 43-14-13, by Ga. L. 1993, p. 1339, § 11, effective April 15, 1993.

43-14-16. [Repealed] Limited reciprocal licensing of military spouses.

History.

Ga. L. 1968, p. 308, § 20; Ga. L. 1980, p. 1299, § 13; Ga. L. 1981, p. 844, § 1; Ga. L. 1981, p. 1703, § 6; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 9; Ga. L. 1989, p. 1600, § 1; Ga. L. 1989, p. 1756, § 9; Ga. L. 1990, p. 8, § 43; Ga. L. 1991, p. 1581, § 3, and was repealed by Ga. L. 1993, p. 1339, § 12, effective April 15, 1993; repealed by Ga. L. 2020, p. 909, § 4/HB 914, effective January 1, 2021.

Cross references.

Qualification for temporary certificates for military spouses, § 20-2-200.2.

Editor's notes.

This Code section was based on Ga. L. 2013, p. 26, § 1/HB 188.

Ga. L. 2021, p. 922, § 43(2)/HB 497, effective May 10, 2021, part of Act to revise, modernize, and correct the Code, deleted the reservation of this Code section.

43-14-17. Redesignated.

Editor's notes.

Ga. L. 1993, p. 1339, § 13, effective April 15, 1993, redesignated former Code Section 43-14-17 as present Code Section 43-14-14.

43-14-18. [Repealed] Termination.

History.

This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8); Ga. L. 1983, p. 424, § 1; Ga. L. 1989, p. 1617, § 2; repealed by Ga. L. 1992, p. 3137, § 13, effective July 1, 1992.

CHAPTER 15

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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43-15-28.	Applicability of the "Georgia Administrative Procedure Act."
43-15-29.	Exceptions to operation of chapter.
43-15-30.	Unlawful acts.
43-15-31.	[Repealed] Termination.

Cross references.

Appointment of state highway engineer, § 32-2-42.

Conducting surveys for determination of boundaries, § 44-4-20.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-1.

Rules of Professional Conduct, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-6.

Law reviews.

For article discussing site architect or engineer's duty of care to construction workers, see 28 Emory L.J. 291 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1945, p. 294 are included in the annotations for this chapter.

Licensing required when product of services will be used in another state. — Licensing is required for individuals performing professional engineering services even when the product of such services will be used in another state. 1980 Op. Att'y Gen. No. 80-69.

Engineer may engage in practice of architecture when incidental to engineering. — Engineer is authorized to engage in such practices as may be classified as practice of architecture, in addition to engineering practice, only to the extent that such practice is clearly incidental to practice of engineering; for example, it appears that an engineer may design, prepare plans for, and supervise construction of dams, sewage disposal plants, water pump stations, power stations, or other similar structures. 1967 Op. Att'y Gen. No. 67-144 (decided under Ga. L. 1945, p. 294, prior to revision by Ga. L. 1975, p. 1048).

License authorizing practice of professional engineering does not authorize land surveying, and vice versa. 1954-56 Ga. Op. Att'y Gen. 540 (decided under Ga. L. 1945, p. 294, prior to revision by Ga. L. 1975, p. 1048).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Constitutionality of statute regulating land surveyors or civil engineers, 55 A.L.R. 307.

Surveyor's liability for mistake in, or misrepresentation as to accuracy of, survey of real property, 35 A.L.R.3d 504.

Architect's or engineer's liability for injury or death of construction worker on construction site project, 56 A.L.R.7th 7.

43-15-1. Short title and purpose.

This chapter shall be known and may be cited as the "Professional Engineers and Land Surveyors Act of 2021" and is enacted to safeguard life, health, and property and to promote the public welfare.

History.

Ga. L. 1937, p. 294, § 1; Ga. L. 1945, p. 294, § 2; Code 1933, § 84-2101, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 1/HB 476.

The 2022 amendment, effective May 9, 2022, inserted "shall be known and may be cited as the 'Professional Engineers and Land Surveyors Act of 2021' and".

Editor's notes.

Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

JUDICIAL DECISIONS

Limitation of liability provision did not violate public policy. — Limitation of liability provision contained in a contract between a real estate developer and an engineering firm was enforceable because the provision represented a reasonable allocation of risks in an arms-length business transaction and did not violate the public policy underlying O.C.G.A. § 13-8-2(a) or the public policy for professional engineering practice set forth in O.C.G.A. § 43-15-1 et seq.; the limitation of liability provision did not release the firm from liability for the firm's engineering errors because the firm remained liable to the developer for the firm's errors up to $50,000, and although the provision capped the firm's liability, the firm remained substantially responsible for the firm's professional errors and retained the incentive to perform engineering services with due regard for the safety, health, and welfare of the public. RSN Props. v. Eng'g Consulting Servs., 301 Ga. App. 52, 686 S.E.2d 853, 2009 Ga. App. LEXIS 1314 (2009), cert. denied, No. S10C0519, 2010 Ga. LEXIS 249 (Ga. Mar. 15, 2010).

RESEARCH REFERENCES

ALR.

Constitutionality of statute regulating land surveyors or civil engineers, 55 A.L.R. 307.

43-15-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the Georgia Professional Engineers and Land Surveyors Board created in subsection (a) of Code Section 43-15-3.

(2) "Certificate" means any certificate issued under Code Section 43-15-8 or 43-15-12.

(3) "Certificate of registration" means any certificate issued under Code Section 43-15-9 or 43-15-16.

(4) "Current certificate of registration" means a certificate of registration which has not expired or been revoked and the rights under which have not been suspended or otherwise restricted by the board.

(4.1) "Current license" means a license issued under Code Section 43-15-13 which has not expired or been revoked and the rights under which have not been suspended or otherwise restricted by the board.

(5) "Engineer-in-training" means an individual who meets the qualifications for and to whom the board has duly issued an engineer-in-training certificate.

(5.1) "Executive Director" means the executive director appointed by the Georgia Professional Engineers and Land Surveyors Board pursuant to Code Section 43-15-3.

(6) "Land surveying" means any service, work, or practice, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the requirements of relevant law in the evaluation and location of property rights, as applied to:

(A) Measuring and locating lines, angles, elevations, natural and manmade features in the air, on the surface of the earth, in underground works, and on the beds of bodies of water, for the purpose of determining and reporting positions, topography, areas, and volumes;

(B) Establishing or reestablishing, locating or relocating, or setting or resetting of monumentation for any property, easement, or right of way boundaries, or the boundary of any estate or interest therein;

(C) The platting and layout of lands and subdivisions thereof, including alignment and grades of streets and roads, excluding thoroughfares;

(D) The design, platting, and layout, incidental to subdivisions of any tract of land by a land surveyor, of:

(i) Grading plans and site plans;

(ii) Erosion and sediment control plans, including detention ponds, provided that no impoundment shall be designed on a live (perennial) stream; provided, further, that such detention ponds:

(I) Contain no more than five acre-feet of water storage at maximum pool (top of dam) or are no more than ten feet in height for a dry storage pond;

(II) Are no more than six feet in height for a permanent (wet) storage pond; or

(III) Contain no more than three acre-feet of water storage at maximum pool (top of dam) if the height is more than ten feet but less than 13 feet for a dry storage pond;

(iii) Storm-water management plans and facilities, including hydrologic studies and temporary sediment basins, provided that the contributing drainage area shall not be larger than 100 acres; and

(iv) Extension of existing water distribution piping and gravity sewers, eight inches in diameter or smaller, provided that off-site length shall not exceed 1,000 feet, the design and construction of which shall conform to the local government ordinances and regulations, and such extensions shall be subjected to the review and approval of a local government which has been delegated approval authority by the Environmental Protection Division of the Department of Natural Resources,

provided that the design of any storm-water management plans, facilities, water distribution lines, and sanitary sewer collection systems shall be performed only by such professional land surveyors who are qualified to do so as provided in Code Section 43-15-13.1;

(E) Conducting horizontal and vertical control surveys, layout or stake-out of proposed construction, or the preparation of as-built surveys which relate to property, easement, or right of way boundaries;

(F) Utilization of measurement devices or systems, such as aerial photogrammetry, geodetic positioning systems, land information systems, or similar technology for evaluation or location of property, easement, or right of way boundaries; or

(G) The preparation and perpetuation of maps, record plats, drawings, exhibits, field notes, or property descriptions representing these services.

(7) "Land surveyor intern" means an individual who meets the qualifications for and to whom the board has duly issued a certificate as a land surveyor-in-training.

(8) "Person" means an individual or any legal or commercial entity, including, by way of illustration and not limitation, a partnership, corporation, association, or governmental agency.

(9) "Professional engineer" means an individual who is qualified, by reason of knowledge of mathematics, the physical sciences, and the principles by which mechanical properties of matter are made useful to mankind in structures and machines, acquired by professional education and practical experience, to engage in the practice of professional engineering and who possesses a current certificate of registration as a professional engineer issued by the board.

(10) "Professional engineering" means the practice of the arts and

sciences, known as engineering, by which mechanical properties of matter are made useful to mankind in structures and machines and shall include any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction or operation, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such professional service requires the application of engineering principles and data and training in the application of mathematical and physical sciences. An individual shall be construed to practice or offer to practice professional engineering, within the meaning of this chapter, who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents or holds himself or herself out as a professional engineer or engineer or as able or qualified to perform engineering services or who performs any of the services set out in this paragraph. Nothing contained in this chapter shall include the work ordinarily performed by individuals who operate or maintain machinery or equipment.

(11) "Professional land surveyor" or "registered land surveyor" or "land surveyor" means an individual who is qualified to engage in the practice of land surveying and who possesses a current license as a professional land surveyor issued by the board. An individual shall be construed to practice or offer to practice land surveying within the meaning of this chapter who by verbal claim, sign, advertisement, letterhead, cards, or in any other way represents or holds himself or herself out as able or qualified to perform or who does perform land surveying services.

(12) "Professional structural engineer" means a professional engineer with specialized knowledge and expertise in the practice of structural engineering. Such person shall be qualified by reason of knowledge of mathematics, physical sciences, and principles by which mechanical properties of matter are made useful to man in structures, acquired through professional education and practical experience, to engage in the practice of structural engineering. Such persons shall further possess a current certificate of registration as a professional structural engineer issued by the board.

(13) "Structural engineering" means the practice of a specialized branch of professional engineering involving the design or analysis of designated structures as defined by the board, and shall include any professional service, such as consultation, investigation, evaluation, planning, designing, analyzing, or responsible supervision of construction or operation, in connection with any public or private designated structures, wherein the public welfare or the safeguard-

ing of life, health, or property is concerned or involved, when such professional service requires the application of structural engineering principles and data and training in the application of mathematical and physical sciences. A person shall be construed to practice or offer to practice structural engineering, within the meaning of this chapter, who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents or holds himself or herself out as a professional structural engineer or as able or qualified to perform structural engineering services or who does perform any of the services set out in this paragraph.

History.

Ga. L. 1937, p. 294, § 2; Ga. L. 1945, p. 294, § 4; Code 1933, § 84-2103, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1991, p. 1133, § 1; Ga. L. 1992, p. 3297, § 1; Ga. L. 2003, p. 817, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2019, p. 1056, § 43/SB 52; Ga. L. 2020, p. 642, § 1/SB 310; Ga. L. 2022, p. 604, § 2/HB 476.

The 2020 amendment, effective January 1, 2021, added paragraphs (12) and (13).

The 2022 amendment, effective May 9, 2022, substituted "Georgia Professional Engineers and Land Surveyors Board" for "State Board of Registration for Professional Engineers and Land Surveyors" in paragraph (1); and added paragraph (5.1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "as-built" was substituted for "as built" in subparagraph (6)(E).

JUDICIAL DECISIONS

Activities set forth in the definition of "land surveying" are not reserved for performance exclusively by land surveyors and nothing in O.C.G.A. § 43-15-2 prohibits the performance of these activities by other qualified professionals who are lawfully authorized to undertake the activities. Cobb County v. Crusselle, 274 Ga. 78, 548 S.E.2d 306, 2001 Ga. LEXIS 419 (2001).

Surveyor/engineer may prepare topography map and plans and specifications for store. — Surveying and preparing of topography map of lot of prospective customer, and preparing plans and specifications for building to be placed on lot for purpose of selling ice cream and containing machinery, are services comprehended within those which may be performed by a licensed engineer and land surveyor. Flatauer Fixture & Sales Corp. v. Garcia & Assocs., 99 Ga. App. 685, 109 S.E.2d 818, 1959 Ga. App. LEXIS 933 (1959).

No city tax of engineer employee when principal is responsible for final design decisions. — City cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see now O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "professional engineering" found in Ga. L. 1975, p. 1048, § 1 (see now O.C.G.A. § 43-15-2(11)) includes all professional engineering services regardless of where the product of such services will be utilized. 1980 Op. Att'y Gen. No. 80-69.

Legislature did not intend engineers to plan buildings to same extent as architects. — Extent to which an

engineer may practice should not be determined solely by looking to provisions defining practice of engineering; the legislature did not intend that engineers should be permitted to plan, design, or supervise construction of structures and buildings to the same extent that an architect may do so. 1967 Op. Att'y Gen. No. 67-144.

RESEARCH REFERENCES

ALR.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

43-15-3. State Board of Registration for Professional Engineers; members; funding; employees.

(a) The State Board of Registration for Professional Engineers and Land Surveyors existing on June 30, 2021, is continued in existence thereafter as the Georgia Professional Engineers and Land Surveyors Board, and the members serving on the board on June 30, 2021, shall continue to serve out their respective terms of office on the Georgia Professional Engineers and Land Surveyors Board until their respective successors are appointed and qualified.

(b) The board shall consist of six professional engineers, two professional land surveyors, and a member appointed from the public at large who has no connection with the professions of engineering and land surveying, all of whom shall be appointed by the Governor and confirmed by the Senate for a term of five years. Of the professional engineers appointed to the board, one shall be a structural engineer, one shall be a mechanical engineer, one shall be an electrical engineer, two shall be civil or sanitary engineers, and one shall be from any discipline of engineering. Each member of the board shall be a citizen of the United States and a resident of this state.

(c) Each member shall hold office until his or her successor has been duly appointed and qualified. All successors shall be appointed in the same manner as the original appointment.

(d) A vacancy on the membership of the board shall be filled by appointment by the Governor, in the same manner as the original appointment to the position vacated, for the unexpired term.

(e) Professional engineers appointed to the board shall have been engaged in the practice of engineering in their respective disciplines for at least 12 years and shall have been in responsible charge of important engineering work in their respective disciplines for at least five years. Professional land surveyors appointed to the board shall have been engaged in the practice of land surveying for at least 12 years and shall have been in responsible charge of important land surveying work for at least five years. Responsible charge of engineering or land surveying

teaching may be construed as responsible charge of important engineering or land surveying work, respectively.

(f) The Governor may remove any member of the board for misconduct, incompetency, neglect of duty, or any other sufficient and just cause.

(g) On and after July 1, 2021, the board shall be a separate and distinct budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the board shall be an attached agency for administrative purposes only to the Secretary of State as provided in Code Section 50-4-3 and shall not be considered a division as that term is defined in Code Section 43-1-1. The board shall neither be under the jurisdiction of the Secretary of State nor be under the direction of the director of the professional licensing boards division of the Secretary of State. The board shall not be subject to the provisions of Chapter 1 of this title.

(h) The responsibility for enforcement of the provisions of this chapter shall be vested in the board, and the board shall have all of the duties, powers, and authority granted by or necessary for the administration and enforcement of this chapter.

(i) The board shall in its discretion appoint and fix the compensation of an executive director who shall be a full-time employee of the board and shall serve at the pleasure of the board. The executive director shall be charged with such other duties and powers as provided in Code Section 43-15-5 or as delegated by the board.

(j) The board members, executive director, and other employees of the board shall be allowed reimbursement for travel and other expenses incurred in the performance of their duties, the same as other state officers and employees.

(k) The venue of any action involving members of the board shall be the county in which is found the primary office of the board. Any notice or legal process necessary to be served upon the board may be served upon the executive director, but the executive director shall not be considered a member of the board in determining the venue of any such action, and no court shall have jurisdiction over any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

History.

Ga. L. 1937, p. 294, § 3; Ga. L. 1945, p. 294, § 5; Ga. L. 1972, p. 222, § 2; Code 1933, § 84-2104, enacted by Ga. L. 1975, p. 1048, § 1; Code 1933, § 84-2104.1, enacted by Ga. L. 1980, p. 968, § 1; Ga. L. 1988, p. 309, § 2; Ga. L. 1990, p. 1491, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 3/HB 476.

The 2022 amendment, effective May 9, 2022, rewrote subsection (a), which read: "A State Board of Registration for Professional Engineers and Land Survey-

ors is created whose duty it shall be to administer this chapter."; inserted "and confirmed by the Senate" following "Governor" in the first sentence in subsection (b); deleted former subsection (f), which read: "Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2."; redesignated former subsection (g) as present subsection (f); and added subsections (g) through (k).

43-15-4. Adoption of rules and regulations; meetings; seal; executive director as secretary of board; advisors.

(a) The board shall adopt all necessary rules, regulations, and bylaws, not inconsistent with this chapter and the Constitution and laws of this state or of the United States, to govern its times and place of meetings for organization and reorganization, for the holding of examinations, for fixing the length of terms of its officers, and for governing all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its businesses. The board shall adopt an official seal.

(b) The board shall meet at such times as the business of the board shall require, as the board or its chairperson may determine, but shall hold one annual meeting each year at which time the board shall elect a chairperson and a vice chairperson. The chairperson may delegate the responsibility of setting the location, date, and time of board meetings and providing notice of meetings to the executive director. Board meetings may be conducted by audio or video conference calls, and participation in such a conference call shall constitute attendance at the meeting so conducted. Any action that might have been taken at a meeting of the board may be taken by the unanimous written consent of all members of the board.

(c) A majority of the appointed members of the board shall constitute a quorum for the transaction of business by the board.

(d) The executive director shall serve as the secretary of the board ex officio but shall not be a voting member of the board or member for purposes of constituting a quorum.

(e) The board may appoint such committees or persons, who need not be members of the board, to advise or assist it in administration, investigation, and enforcement of the provisions of this chapter, as the board deems necessary, and shall be authorized to compensate any such members of committees or persons who are not members of the board in such amounts as it shall determine to be reasonable.

History.

Ga. L. 1937, p. 294, § 8; Ga. L. 1945, p. 294, § 11; Code 1933, § 84-2105, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 4/HB 476.

The 2022 amendment, effective May 9, 2022, rewrote subsections (b) and (c), which read: "(b) The board shall meet at

such times as the business of the board shall require, as the board or its chairman may determine, but shall hold one annual meeting each year at which time the board shall elect a chairman and a vice chairman.

"(c) The board shall be assigned to the office of the division director for those purposes described in Chapter 1 of this title."; and added subsections (d) and (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "vice chairman" was substituted for "vice-chairman" at the end of subsection (b).

43-15-5. Role of executive director.

The executive director shall:

(1) Be a full-time employee of the board and shall serve at the pleasure of the board;

(2) Keep all records related to the board and its proceedings;

(3) With the approval of the board, employ and fix the compensation of personnel as deemed necessary to assist the executive director in his or her duties or the duties of the board. Persons hired for the purpose of conducting investigations on behalf of the board shall have a level of experience or knowledge of the area of practice needing to be investigated, including, but not limited to, engineering or surveying, that is acceptable to the board;

(4) With the consent of the board, schedule the time and location for all examinations, meetings, and hearings and maintain a schedule of all examinations, meetings, and hearings that shall be available for public review;

(5) With the approval of the board, enter into such contracts, leases, agreements, or other transactions with any person or agency as are deemed necessary to carry out the provisions of this chapter or to provide the services required by the board;

(6) Prepare and deliver a written annual report to the Governor and the chairpersons of the House and Senate Appropriations Committees on or before the second Tuesday in January of each year covering the activities of the board for the previous calendar year, which shall also be made available to any member of the General Assembly upon request. The report shall include a summary of all actions taken by the board, a financial report of all income and disbursements, staff personnel, and number of persons licensed by the board. The Governor may request a preliminary financial report for budgetary purposes prior to such an annual report; and

(7) Prepare and maintain a roster containing the names of all current licensees for each type of license issued by the board. A copy of this roster shall be available to any person upon request at a fee prescribed by the executive director sufficient to cover the cost of

printing and distribution. The following shall be treated as confidential and need not be disclosed without the approval of the board:

(A) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(B) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(C) Examination questions and other examination materials, except to the staff and the board; and

(D) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes.

History.

Ga. L. 1937, p. 294, § 7; Ga. L. 1945, p. 294, § 10; Code 1933, § 84-2108, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 5/HB 476.

The 2022 amendment, effective May 9, 2022, rewrote this Code section, which read: "The board shall keep records of its proceedings."

Editor's notes.

Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-6. General powers of board; injunctions; continuing education.

(a) In carrying out this chapter, in addition to other powers conferred upon it under this chapter, the board shall have the power:

(1) To adopt and enforce regulations implementing this chapter, including regulations governing the professional conduct of those individuals registered by it;

(2) Under the hand of its chairperson or his or her delegate and the seal of the board, to subpoena witnesses and compel their attendance and to require thereby the production of books, papers, documents, and other things relevant to such investigation in order to investigate conduct subject to regulation by the board; the chairperson or the member of the board who is his or her delegate may administer oaths to witnesses appearing before the board; and the board may secure the enforcement of its subpoenas in the manner provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(3) To maintain in its name an action for injunctive or other appropriate legal or equitable relief to remedy violations of this chapter and, in pursuing equitable remedies, it shall not be necessary that the board allege or prove that it has no adequate remedy at law; and

(4) Through the executive director, to hire investigators for the purpose of conducting investigations. Any person so employed shall be considered to be a peace officer and shall have all powers, duties, and status of a peace officer of this state; provided, however, that, notwithstanding Code Sections 16-11-126 and 16-11-129, such investigators shall only be authorized to carry firearms in the performance of their duties upon written approval of the executive director.

(b) In addition to other powers conferred upon the board under this chapter, the board shall through rules and regulations require each individual seeking renewal of a certificate of registration as a professional engineer or a professional structural engineer or a license as a professional land surveyor to complete board approved continuing education of not more than 15 hours annually for professional engineers and professional structural engineers and not more than 7.5 hours annually for professional land surveyors. The board shall be authorized to approve courses offered by institutions of higher learning or offered by other institutions or organizations. The board shall randomly audit some applications for renewal of a certificate of registration or license to enforce compliance with this subsection. The continuing education requirements adopted by the board shall recognize the continuing education requirements imposed by other states to the extent that such continuing education courses meet the requirements imposed by the board. The board shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate. The board shall waive the continuing education requirement for individuals over the age of 65 who have retired from active practice and who apply for an inactive license and for individuals over the age of 65 who are engaged in the active practice of their profession who have had a valid active license for the previous 25 consecutive years. The requirement for continuing education including the exemptions provided for in this subsection shall apply to each licensing renewal cycle which begins after the 1996 renewal cycle.

History.

Ga. L. 1945, p. 294, § 12; Code 1933, § 84-2106, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1995, p. 860, § 1; Ga. L. 2001, p. 296, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 2/SB 310; Ga. L. 2022, p. 604, § 6/HB 476.

The 2020 amendment, effective January 1, 2021, in the first sentence of subsection (b), inserted "or a professional structural engineer" and "and professional structural engineers".

The 2022 amendment, effective May 9, 2022, in paragraph (a)(2), substituted "chairperson" for "chairman" twice and deleted "and" from the end, added "and" at the end of paragraph (a)(3), added paragraph (a)(4); and substituted "15 hours annually" for "30 hours biennially" and "7.5 hours annually" for "15 hours biennially" in the first sentence in subsection (b).

Administrative rules and regulations.

Rules of the professions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-1 et seq.

RESEARCH REFERENCES

ALR.
Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-15-6.1. Fees and funding.

(a) To pay the expenses of the board's office and operations and the enforcement of this chapter, the board by rule or regulation shall be authorized to charge an examination fee, license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged by rule or regulation. Fees shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the board shall approximate the total of the direct and indirect costs for the operation of the board. Fees may be refunded for good cause, as determined by the executive director.

(b) All fees collected pursuant to this chapter shall be deposited by the board into the state treasury. Out of the funds thus arising shall be paid the expenses contemplated in this chapter for the administration and enforcement of this chapter. All expenditures authorized by the board shall be paid from the funds received pursuant to this chapter. The expenses of the board must always be kept within the income collected and deposited in accordance with this chapter, and the expense thereof shall not be supported or paid from any other state fund.

History.
Code 1981, § 43-15-6.1, enacted by Ga. L. 2022, p. 604, § 7/HB 476.

Effective date.
This Code section became effective May 9, 2022.

43-15-7. Unlawful practice as a professional engineer or land surveyor.

(a) It shall be unlawful for any person other than a professional engineer to practice or to offer to practice professional engineering in this state.

(b) It shall be unlawful for any person other than a professional land surveyor to practice or to offer to practice land surveying in this state.

(c) It shall be unlawful for any person other than a professional structural engineer to practice or to offer to practice structural engineering in this state.

History.

Code 1933, § 84-2102, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 3/SB 310.

The 2020 amendment, effective January 1, 2021, added subsection (c).

JUDICIAL DECISIONS

Lawful for qualified architect to engage in engineering practices. — Although it is unlawful for anyone other than a professional engineer to practice professional engineering in Georgia, a qualified architect can engage in engineering practices when such practices are incident to the practice of architecture. Tomberlin Assocs., Architects, Inc. v. Free, 174 Ga. App. 167, 329 S.E.2d 296, 1985 Ga. App. LEXIS 1774 (1985).

Contracts by unauthorized persons are void. — Mandate of statute requiring license and registration prior to practice of trade or profession is equivalent to a prohibition to engage therein without first complying with the statute's provisions, whether expressly so stated or not, and whether or not a penalty for such violation is prescribed. A failure to comply with requirements of such statute renders contracts made by those unauthorized to practice such profession void and unenforceable. Flatauer Fixture & Sales Corp. v. Garcia & Assocs., 99 Ga. App. 685, 109 S.E.2d 818, 1959 Ga. App. LEXIS 933 (1959).

If plaintiff, suing for services rendered, is unlicensed, proof of nonlicensure is a defense to action. Flatauer Fixture & Sales Corp. v. Garcia & Assocs., 99 Ga. App. 685, 109 S.E.2d 818, 1959 Ga. App. LEXIS 933 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Construed with O.C.G.A. §§ 36-7-2 and 36-7-9. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

Limitations are imposed on right to secure free licenses to engage in business. 1954-56 Ga. Op. Att'y Gen. 909.

Government surveyors and engineers need not register. — Law does not apply to officers and employees of government of United States while engaged within this state in practice of professional engineering or surveying for government. 1962 Ga. Op. Att'y Gen. 386.

Affirmation by owner on existing property surveys permitted. — Person who, as part of a refinancing transaction, signs a land survey affidavit in which the person makes certain affirmations about an existing survey of property owned by that person in order to induce a title insurance company to issue a title insurance policy to the lender is not practicing as a land surveyor in violation of O.C.G.A. § 43-15-7(b). 1994 Op. Att'y Gen. No. 94-10.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-15-8. Engineer-in-training certificate; eligibility.

To be eligible for certification as an engineer-in-training, an applicant must meet the following minimum requirements:

(1)(A) Graduate in an engineering curriculum of not less than four years from a school or college approved by the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination);

(2)(A) Graduate in an engineering curriculum of not less than four years or in a curriculum of four or more years in engineering technology or related science, from a school or college approved by the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination); or

(3)(A) Acquire not less than eight years of experience in engineering work of a nature satisfactory to the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination).

History.
Code 1933, § 84-2110, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2002, p. 415, § 43; Ga. L. 2018, p. 583, § 1/SB 425.

Editor's notes.
Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-9. Professional engineer certificate of registration; eligibility.

To be eligible for a certificate of registration as a professional engineer, an applicant must meet the following minimum requirements:

(1)(A) Obtain certification by the board as an engineer-in-training under paragraph (1) of Code Section 43-15-8;

(B) Acquire a specific record of not less than four years' experience in engineering work of a character satisfactory to the board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination);

(2)(A) Obtain certification by the board as an engineer-in-training under paragraph (2) of Code Section 43-15-8;

(B) Acquire a specific record of not less than seven years' experience in engineering work of a character satisfactory to the

board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination);

(3)(A) Obtain certification by the board as an engineer-in-training under paragraph (3) of Code Section 43-15-8;

(B) Acquire a specific record of not less than seven years' experience in engineering work of a character satisfactory to the board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination); or

(4)(A) Graduate in an engineering or related science curriculum of not less than four academic years;

(B) Acquire a specific record of not less than 16 years' experience in engineering work, of which at least eight years have been in responsible charge of important engineering work of a character satisfactory to the board, which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination).

History.
Code 1933, § 84-2111, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 2; Ga. L. 1999, p. 81, § 43; Ga. L. 2002, p. 415, § 43; Ga. L. 2018, p. 583, § 1/SB 425.

Editor's notes.
Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-9.1. Minimum requirements for professional structural engineers.

To be eligible for a certificate of registration as a professional structural engineer, an applicant must meet the following minimum requirements:

(1)(A) Obtain certification by the board as an engineer-in-training under paragraph (1) of Code Section 43-15-8;

(B) Acquire a specific record of not less than four years' experience in structural engineering work of a character satisfactory to the board which indicates the applicant is competent to practice structural engineering; and

(C) Subsequently pass a written examination in the principles

and practice of structural engineering in the areas of which shall be determined by the board (structural engineering examination);

(2)(A) Obtain certification by the board as an engineer-in-training under paragraph (2) of Code Section 43-15-8;

(B) Acquire a specific record of not less than seven years' experience in structural engineering work of a character satisfactory to the board which indicates the applicant is competent to practice structural engineering; and

(C) Subsequently pass a written examination in the principles and practice of structural engineering in the areas of which shall be determined by the board (structural engineering examination); or

(3) Any applicant seeking a certificate of registration as a professional structural engineer prior to January 1, 2021, who already holds a valid certificate of registration as a professional engineer from the board, has a record of practice which is primarily in the practice of structural engineering, and is currently engaged in the practice of structural engineering may submit a signed affidavit on a form prescribed by the board stating as much. Based upon such affidavit and any other means the board may deem necessary to determine verification of practice in the area of structural engineering by an applicant, the board shall grant a certificate of registration as a professional structural engineer. On or after January 1, 2021, no certificate of registration as a professional structural engineer shall be issued unless the requirements of paragraph (1) or (2) of this Code section and Code Section 43-15-16 have been satisfied.

History.
Code 1981, § 43-15-9.1, enacted by Ga. L. 2020, p. 642, § 4/SB 310.

Effective date.
This Code section became effective January 1, 2021.

43-15-10. Evaluation of engineering experience.

(a) For the purpose of determining whether an applicant has acquired the experience required under Code Section 43-15-8, 43-15-9, or 43-15-9.1:

(1) Responsible charge of engineering teaching may, in the board's sole discretion, be considered as responsible charge of engineering work;

(2) The satisfactory completion of each academic year of an approved course in engineering or engineering technology in a school or

college approved by the board, without graduation, may be considered as equivalent to a year of engineering experience;

(3) Partial credit may be granted by the board for the successful completion of one or more scholastic years of a four-year engineering curriculum in a school or college not approved by the board or in a curriculum in related science in a school or college approved by the board. The degree of credit shall be determined by the board upon consideration of the mathematics, science, and engineering courses completed by the applicant;

(4) No applicant shall receive experience credit for more than four years of undergraduate education; and

(5) The satisfactory completion of graduate study in an approved engineering curriculum may, in the board's sole discretion, be credited for not more than one year's experience.

(b) The execution, as a contractor, of work designed by a professional engineer or the supervision of the construction of such work as foreman, inspector, or superintendent shall not be deemed to be engineering experience unless such work involves the application of engineering principles and the applicant presents evidence of additional engineering experience of a character satisfactory to the board and indicating the applicant is competent to be placed in responsible charge of engineering work.

History.

Ga. L. 1937, p. 294, § 13; Ga. L. 1945, p. 294, § 20; Code 1933, § 84-2112, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 5/SB 310.

The 2020 amendment, effective January 1, 2021, substituted "Code Section 43-15-8, 43-15-9, or 43-15-9.1" for "Code Section 43-15-8, or 43-15-9" at the end of the introductory language of subsection (a).

Editor's notes.

Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-11. Professional engineer's examination.

An applicant for the professional engineer's examination shall designate the special branch of engineering in which the applicant proposes to engage. The scope of the professional engineer's examination administered to him or her shall be prescribed by the board with respect to that branch of engineering, with special reference to the applicant's ability to design and supervise engineering work so as to ensure the safety of life, health, and property.

History.

Code 1933, § 84-2113, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-12. Surveyor intern certificate; eligibility.

(a) To be eligible for certification as a land surveyor intern, an applicant must meet the following minimum requirements:

(1)(A) Earn a bachelor's degree in a curriculum approved by the board;

(B) Earn an associate degree, or its equivalent, in a curriculum approved by the board and acquire not less than two years of combined office and field experience in land surveying of a nature satisfactory to the board; or

(C) Earn a high school diploma, or its equivalent, and acquire not less than four years' experience in land surveying of a nature satisfactory to the board;

(2) Acquire a minimum of 18 semester hours of credit, or its equivalent, in land surveying subjects in a course of study approved by the board; and

(3) Subsequently pass the board approved examination in the fundamentals of land surveying (land surveyor intern examination).

(b) Land surveyor intern applicants may apply prior to July 1, 2020, with 15 quarter hours of credit in land surveying subjects in a course of study approved by the board and five quarter hours in hydrology. Such applicants applying prior to July 1, 2020, who meet the requirements of this subsection shall be eligible for licensure without the hydrology exam.

History.
Code 1933, § 84-2114, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1981, p. 763, § 1; Ga. L. 1992, p. 3297, § 2; Ga. L. 2010, p. 266, § 21/SB 195; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-13. Professional land surveyor license; eligibility.

To be eligible for a license as a professional land surveyor, an applicant must meet the following minimum requirements:

(1)(A) Obtain certification as a land surveyor intern under subparagraph (A) of paragraph (1) and paragraph (3) of subsection (a) of Code Section 43-15-12;

(B) Acquire a specific record of the equivalent of not less than four years of combined office and field experience in land surveying with a minimum of three years' experience in responsible charge of land surveying projects under the supervision of a professional land surveyor or such other supervision deemed by the board to be the equivalent thereof; and

(C) Subsequently pass a written examination on the principles

and practices of land surveying and the laws of this state relating to land surveying (professional land surveyor examination);

(2)(A) Obtain certification as a land surveyor intern under subparagraph (B) of paragraph (1) and paragraph (3) of subsection (a) of Code Section 43-15-12;

(B) Acquire an additional specific record of the equivalent of not less than four years of combined office and field experience in land surveying which, together with the qualifying experience under subparagraph (B) of paragraph (1) of subsection (a) of Code Section 43-15-12, includes not less than four years' experience in responsible charge of land surveying projects under the supervision of a professional land surveyor or such other supervision deemed by the board to be the equivalent thereof; and

(C) Subsequently pass a written examination on the principles and practices of land surveying and the laws of Georgia relating to land surveying (professional land surveyor examination); or

(3)(A) Obtain certification as a land surveyor intern under subparagraph (C) of paragraph (1) and paragraph (3) of subsection (a) of Code Section 43-15-12;

(B) Acquire an additional specific record of not less than four years of experience in land surveying which, together with the qualifying experience under subparagraph (C) of paragraph (1) of subsection (a) of Code Section 43-15-12, includes not less than six years' experience in responsible charge of land surveying projects under the supervision of a professional land surveyor or such other supervision deemed by the board to be the equivalent thereof and of a grade and character satisfactory to the board indicating that the applicant is competent to practice land surveying; and

(C) Subsequently pass a written examination on the principles and practices of land surveying and laws of this state relating to land surveying (professional land surveyor examination).

History.

Code 1933, § 84-2115, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1981, p. 763, § 2; Ga. L. 1992, p. 3297, § 3; Ga. L. 2002, p. 415, § 43; Ga. L. 2018, p. 583, § 1/SB 425.

Cross references.

Performance of duties of county surveyor by person holding current and valid certificate of registration as a land surveyor, § 36-7-13.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "subparagraph (A) of paragraph (1)" was substituted for "subparagraph (A)(1)" in subparagraph (1)(A), "subparagraph (B) of paragraph (1)" was substituted for "subparagraph (B)(1)" in subparagraphs (2)(A) and (2)(B), and "subparagraph (C) of paragraph (1)" was substituted for "subparagraph (C)(1)" in subparagraphs (3)(A) and (3)(B).

43-15-13.1. Requirements for professional land surveyors engaged in design of storm-water management plans, facilities, water distribution lines, and sanitary sewer collection systems.

For an individual to be eligible to engage in the practices described in divisions (6)(D)(ii) through (6)(D)(iv) of Code Section 43-15-2, he or she shall:

(1) Obtain licensure as a professional land surveyor, registered land surveyor, or land surveyor under this chapter prior to July 1, 2018; or

(2) Complete an additional three semester hours of coursework in hydrology, possess the requisite required by the board, and pass the hydrology exam. The licensing record for such individual as available to the public shall be marked as "hydrology and design authorized."

History.
Code 1981, § 43-15-13.1, enacted by Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2019, p. 1056, § 43/SB 52.

43-15-14. Examinations.

Board approval of an applicant for examination entitles the applicant to admission to the next four consecutive examination offerings without reapplication. Following the first offering to which the applicant is entitled to admission, the applicant shall not be admitted to any of the succeeding three examination offerings except upon payment of a fee for each examination, to be determined by the board. Admission to any future examinations will be at the discretion of the board which may require the applicant to file a new application. An examination offering occurs regardless of whether the applicant attends.

History.
Ga. L. 1937, p. 294, § 15; Ga. L. 1945, p. 294, § 24; Ga. L. 1958, p. 358, § 1; Code 1933, § 84-2116, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425.

Editor's notes.
Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-15. Applications for certificates, certificates of registration, and licenses.

(a) Applications for certificates, certificates of registration, and licenses shall be made under oath to the board and shall contain such information in the form and manner as shall be prescribed by the board. The application shall be accompanied by a fee in an amount prescribed by the board.

(b) No individual shall be eligible for a certificate, a certificate of

registration, or a license under this chapter who is not of good character and reputation.

(c) If the board denies an application on the ground that the applicant lacks the requisite experience to admit him or her to the examination, the board may impose on the applicant a period of deferment on the filing of a new application, during which period the board shall not be required to accept for filing a new application by the applicant. The period of deferment shall not exceed the time reasonably required to acquire the requisite experience.

(d) An application shall contain the names of not less than five individuals, not related to the applicant by blood or marriage, of whom at least three shall be professional engineers or professional land surveyors having personal knowledge of the experience on which the applicant predicates his or her qualifications.

(e) Experience required under this chapter shall be of a character and nature approved by the board and consistent with the purposes of this chapter.

History.
Ga. L. 1937, p. 294, § 14; Ga. L. 1945, p. 294, § 22; Code 1933, § 84-2109, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 3; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-16. Registration and licensure by comity.

(a) The board may, in its discretion, upon application therefor and the payment of a fee prescribed by the board, issue a certificate of registration as a professional engineer or professional structural engineer to any individual who holds a certificate of qualification or registration issued to him or her by proper authority of the National Council of Examiners for Engineering and Surveying or of any state or territory or possession of the United States if the requirements of the registration of professional engineers or professional structural engineers under which the certificate of qualification or registration was issued do not conflict with this chapter and are of a standard not lower than that specified in this chapter or if the applicant held such certificate on or before July 1, 1956. The fact that the statute under which the individual was issued a certificate of qualification or registration in another state does not provide that the required written examination be passed subsequent to the acquisition of the required experience shall not be deemed as a conflict with, or lower than, the Georgia requirements, provided that the written examination and the amount of experience required for registration are substantially equivalent to the Georgia requirements.

(b) The board may, in its discretion, upon application therefor and the payment of a fee prescribed by the board, issue a license as a

professional land surveyor to any individual who holds a license to practice land surveying issued by a state or territory or possession of the United States obtained:

(1) By written examination of not less than eight hours in duration prior to July 1, 1968;

(2) By written examination of not less than 16 hours in duration prior to July 1, 1978; or

(3) Under qualifications comparable to those prescribed by this chapter; and

in addition passes a written examination on the laws of Georgia relating to land surveying (professional land surveyor examination).

History.

Code 1933, § 84-2117, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 4; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 6/SB 310.

The 2020 amendment, effective January 1, 2021, in the first sentence of subsection (a), inserted "or professional structural engineer", substituted "National Council of Examiners for Engineering and Surveying" for "National Council of Engineering Examiners", and inserted "or professional structural engineers".

Cross references.

Cooperation between Georgia and other states generally, T. 28, C. 6.

RESEARCH REFERENCES

ALR.

Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed, in the latter state, 32 A.L.R.3d 1151.

43-15-17. Issuance, expiration, and renewal of certificates and certificates of registration.

(a) Certificates, certificates of registration, or licenses shall be issued to applicants who successfully complete the respective requirements therefor upon the payment of fees prescribed by the board.

(b) Certificates of registration or licenses shall be renewable annually. Renewal may be effected for the succeeding year by the payment of the fee prescribed by the board. Certificates of registration or licenses may be renewed subsequent to their expiration upon the payment of accumulated unpaid fees and of a penalty in an amount to be determined by the board. A certificate of registration or license that has been expired for a period of greater than four years shall be automatically revoked.

(c) The executive director shall give notice to each individual holding a certificate of registration or license under this chapter of the date of the expiration of the certificate of registration or license and the amount of the fee required for renewal, at least one month prior to the

expiration date; but the failure to receive such notice shall not avoid the expiration of any certificate of registration or license not renewed in accordance with this Code section.

History.

Ga. L. 1937, p. 294, §§ 16, 17; Ga. L. 1945, p. 294, §§ 25, 27, 28; Ga. L. 1956, p. 691, § 1; Ga. L. 1958, p. 358, § 2; Ga. L. 1972, p. 222, § 9; Code 1933, § 84-2118, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 8/HB 476.

The 2022 amendment, effective May 9, 2022, in subsection (b), substituted "annually" for "biennially" at the end of the first sentence and "succeeding year" for "succeeding two years" in the second sentence; and substituted "The executive director shall give notice to each" for "The division director shall give notice by mail to each" at the beginning of subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Expiration of renewal right for licensees whose licenses expired December 31, 1976, is subject to this section. 1977 Op. Att'y Gen. No. 77-50.

All licenses which have been expired more than five years are irretrievably lost; those licenses which expired prior to July 1, 1975, but which have not been expired for five years, may be renewed by the holder by complying with provisions of this section as those licensees have a vested right to renew their licenses at any time within five years of the date of expiration, which right the licenses could not be deprived of by subsequent legislation, and rights of all other licensees are controlled by provisions of the statute. 1977 Op. Att'y Gen. No. 77-50.

Earliest dates for automatic revocation following renewal. — As the initial expiration date for any certificate of registration under registration law was December 31, 1976, and as this section provides that certificates of registration are to be automatically revoked when they have been expired for a period of greater than four years, the earliest date for automatic revocation of a certificate of registration would be January 1, 1981, in the event a person renewed a certificate of registration for the period January 1, 1977 through December 31, 1978, that certificate of registration could likewise not be automatically revoked prior to January 31, 1983. 1977 Op. Att'y Gen. No. 77-37.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-15-18. Effect of certificate of registration or license.

(a) In the case of a professional engineer, the certificate of registration shall authorize the practice of professional engineering. In the case of a professional land surveyor, the license shall authorize the practice of land surveying. In the case of a registered professional structural engineer, the certificate of registration shall authorize the practice of structural engineering. A certificate of registration or license shall show the full name of the registrant or licensee, shall have a serial number, and shall be signed by the chairperson of the board and the executive director under the seal of the board.

(b) The issuance of a certificate of registration or license by the board shall be evidence that the individual named therein is entitled to all the rights and privileges of a professional engineer or a professional land surveyor, as the case may be, as long as the certificate or license remains unrevoked, unexpired, or unaffected by other discipline imposed by the board.

History.

Code 1933, § 84-2120, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 7/SB 310; Ga. L. 2022, p. 604, § 9/HB 476.

The 2020 amendment, effective January 1, 2021, in subsection (a), added the third sentence and substituted "chairperson" for "chairman" in the fourth sentence.

The 2022 amendment, effective May 9, 2022, substituted "the executive director" for "the division director" near the end of subsection (a).

43-15-19. Revocation, suspension, or denial of certificates, certificates of registration, or licenses; reprimands.

(a) The board shall have the power, after notice and hearing, to deny any application made to it, to revoke or suspend any certificate, certificate of registration, or license issued by it, or to reprimand any individual holding a certificate, certificate of registration, or license issued by it, upon the following grounds:

(1) Commission of any fraud or deceit in obtaining a certificate, certificate of registration, or license;

(2) Any gross negligence, incompetency, or unprofessional conduct in the practice of professional engineering or land surveying as a professional engineer or a professional land surveyor, respectively;

(3) Affixing a seal to any plan, specification, plat, or report contrary to Code Section 43-15-22;

(4) Conviction of a felony or crime involving moral turpitude in the courts of this state, the United States, or any state or territory of the United States or the conviction of an offense in another jurisdiction which, if committed in this state, would be deemed a felony. "Conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to Article 3 of Chapter 8 of Title 42 or any comparable rule or statute; or

(5) Any violation of this chapter or any rule or regulation promulgated by the board pursuant to the powers conferred on it by this chapter.

(b) "Unprofessional conduct," as referred to in paragraph (2) of subsection (a) of this Code section, includes a violation of those

standards of professional conduct for professional engineers and professional land surveyors adopted by the board pursuant to the power conferred upon it to promulgate rules and regulations to effectuate the duties and powers conferred on it by this chapter.

History.
Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 34; Ga. L. 1972, p. 222, § 13; Code 1933, § 84-2126, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2018, p. 583, § 1/SB 425.

Law reviews.
For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.
Surveyor's liability for mistake in, or misrepresentation as to accuracy of, survey of real property, 35 A.L.R.3d 504.
Revocation or suspension of license of professional engineer, 64 A.L.R.3d 509.

43-15-20. Reissuance of certificates, certificates of registration, and licenses; fee.

(a) The board, in its sole discretion, may reissue a certificate, a certificate of registration, or a license to any individual whose certificate, certificate of registration, or license has been revoked or may terminate any suspension imposed by it upon the affirmative vote of a majority of the members of the board and upon the payment of a fee prescribed by the board.

(b) A new certificate, certificate of registration, or license to replace any certificate or license lost, destroyed, or mutilated may be issued subject to the rules of the board upon the payment of a fee prescribed by the board.

History.
Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 36; Code 1933, § 84-2128, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1992, p. 3297, § 4; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-21. Temporary permit.

(a) The board, or its delegate, in its sole discretion, may issue a temporary permit to an individual who is not a resident of and who has no established place of business in this state, or who has recently become a resident thereof, to permit him or her, in accordance with the conditions of the temporary permit, to practice or offer to practice engineering in this state if:

(1) An application for a certificate of registration has been filed with the board and the fee required by this chapter has been paid;

(2) The applicant is legally qualified to practice such profession in the state or country of the applicant's residence or former residence; and

(3) The requirements and qualifications for obtaining a certificate of registration in that jurisdiction are not lower than those specified in this chapter.

(b) An application under subsection (a) of this Code section shall be made to the board in writing, containing such information and in the form and manner as shall be prescribed by the board.

(c) The temporary permit shall continue only for such time as the board requires for the consideration of the application for registration. The temporary permit shall contain such conditions with respect to the scope of the permission granted as the board deems necessary or desirable.

(d) Plans, specifications, plats, and reports issued by an individual holding a temporary permit shall bear his or her signature and a stamp containing his or her name, business address, and "Georgia Professional Engineer Temporary Permit No. ____." The signature and stamp shall be affixed only in accordance with the requirements of subsection (b) of Code Section 43-15-22.

(e) An individual who has obtained a temporary permit and practices in accordance therewith is deemed to be a professional engineer for purposes of this chapter, but a temporary permit shall not be deemed to be a registration under any provision of this chapter, including, by way of illustration and not limitation, Code Section 43-15-23.

History. Code 1933, § 84-2122, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, §§ 5, 6; Ga. L. 2018, p. 583, § 1/SB 425.

RESEARCH REFERENCES

ALR. Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-15-22. Registrant or licensee required to obtain seal; inscription; purpose; fraudulent use of seal.

(a) Every professional engineer and professional land surveyor registered or licensed, as applicable, under this chapter shall, upon receipt of a certificate of registration or license, obtain a seal of the design authorized by the board, bearing the registrant's or licensee's name, certificate or license number, and the legend "Professional Engineer," "Registered Professional Structural Engineer," or "Professional Land Surveyor," in accordance with the certificate of registration or license.

(b) Plans, specifications, plats, and reports issued by a registrant or licensee shall be stamped or sealed and countersigned by the registrant or licensee; but it shall be unlawful for the registrant or licensee or any other person to stamp or seal any document with such seal after the certificate of the registrant or license of the licensee named thereon has expired, or has been revoked, or during the period of any suspension imposed by the board. No plans, specifications, plats, or reports shall be stamped with the seal of a registrant or a licensee unless such registrant or licensee has personally performed the engineering or land surveying work involved or, when the registrant or licensee has not personally performed the engineering or land surveying work reflected in any plan, specification, plat, or report, such registrant or licensee has affixed his or her seal thereto only if such document has been prepared by an employee or employees under the registrant's or licensee's direct supervisory control on a daily basis and after the registrant or licensee has thoroughly reviewed the work embodied in such document and has satisfied himself or herself completely that such work is adequate.

(c) No registrant or licensee shall affix his or her seal to any plan, specification, plat, or report unless he or she has assumed the responsibility for the accuracy and adequacy of the work involved.

(d) Any registrant or licensee who has affixed his or her seal to any plan, specification, plat, or report prepared by another individual not under the registrant's or licensee's direct supervisory control on a daily basis, and without having thoroughly reviewed such work, shall be deemed to have committed a fraudulent act of misconduct in the practice of professional engineering or land surveying.

History.

Ga. L. 1937, p. 294, § 16; Ga. L. 1945, p. 294, § 26; Ga. L. 1972, p. 222, § 8; Code 1933, § 84-2121, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1992, p. 3297, § 5; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 8/SB 310.

The 2020 amendment, effective January 1, 2021, inserted "'Registered Professional Structural Engineer,' " near the end of subsection (a).

Law reviews.

For article surveying real property, see 34 Mercer L. Rev. 255 (1982).

JUDICIAL DECISIONS

Liability of surveyor. — Surveyor is responsible to the public for the accuracy of the surveying work reflected therein, and the surveyor may accordingly be held liable to purchasers damaged by reasonable reliance upon the plat. Hutchinson v. Dubeau, 161 Ga. App. 65, 289 S.E.2d 4, 1982 Ga. App. LEXIS 1761 (1982).

Plat not a "sealed instrument". — Plat signed by the surveyor with a seal attached did not qualify as an "instrument under seal" governed by the 20-year statute of limitation. Landmark Eng'g, Inc. v. Cooper, 222 Ga. App. 752, 476 S.E.2d 63, 1996 Ga. App. LEXIS 991 (1996).

RESEARCH REFERENCES

C.J.S.
78A C.J.S., Seals, § 2.

43-15-23. Practice of professional engineering by or through firm, corporation, or other entity.

(a) The practice of or offer to practice professional engineering, as defined in this chapter, by individual professional engineers registered under this chapter through a firm, corporation, professional corporation, partnership, association, or other entity offering engineering services to the public or by a firm, corporation, professional corporation, partnership, association, or other entity offering engineering services to the public through individual professional engineers as agents, employees, officers, members, or partners is permitted subject to the provisions of this chapter; provided, however, that one or more of the principals, officers, members, or partners of said firm, corporation, professional corporation, partnership, association, or other entity and all personnel of such firm, corporation, partnership, association, or entity who act in its behalf as professional engineers in this state shall be registered as provided in this chapter; and further provided that said firm, corporation, professional corporation, partnership, association, or entity has been issued a certificate of authorization by the board as provided in this chapter.

(b) A firm, corporation, professional corporation, partnership, association, or other entity desiring a certificate of authorization shall file with the board an application upon a form to be prescribed by the board and accompanied by the registration fee prescribed by the board.

(c)(1) A corporation or professional corporation shall file with the board, using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice professional engineering in this state and of an individual or individuals duly registered to practice professional engineering within this state who shall be in responsible charge of the practice of professional engineering in this state by said corporation.

(2) A partnership shall file with the board, using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice professional engineering in this state and of an individual or individuals duly registered to practice professional engineering in this state who shall be in responsible charge of the practice of professional engineering in this state by said partnership.

(3) Any firm, limited liability company, association, or entity which

is not a corporation, professional corporation, or partnership shall file with the board, using a form provided by the board, the names and addresses of all principals or members of the firm, association, or entity duly registered to practice professional engineering in this state who shall be in responsible charge of the practice of professional engineering in this state by said firm, association, or other entity.

(4) The forms provided in paragraphs (1) through (3) of this subsection must accompany a biennial renewal fee prescribed by the board. In the event there shall be a change in any of these persons, such change shall be designated on the same form and filed with the board by the firm, corporation, professional corporation, partnership, association, or entity within 30 days after the effective date of the change.

(d)(1) After all of the requirements of this Code section have been complied with, the board shall issue to such firm, corporation, professional corporation, partnership, association, or other entity a certificate of authorization.

(2) The board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate or if the board shall determine that any of the officers, directors, principals, members, agents, or employees of the entity to be licensed are not individuals of good character.

History.

Ga. L. 1937, p. 294, § 19; Ga. L. 1945, p. 294, § 29; Ga. L. 1972, p. 222, § 10; Code 1933, § 84-2123, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2269, § 1; Ga. L. 1990, p. 1491, § 2; Ga. L. 1993, p. 123, § 32; Ga. L. 2018, p. 583, § 1/SB 425.

Cross references.

Professional associations generally, T. 14, C. 10.

43-15-23.1. Land surveying firms, corporations, or other entities; application; fee; certificate of authorization.

(a) The practice of or offer to practice land surveying, as defined in this chapter, by individual professional land surveyors licensed under this chapter through a firm, corporation, professional corporation, partnership, association, or other entity offering land surveying services to the public or by a firm, corporation, professional corporation, partnership, association, or other entity offering land surveying services to the public through individual professional land surveyors as agents, employees, officers, members, or partners is permitted subject to the provisions of this chapter; provided, however, that one or more of the principals, officers, members, or partners of said firm, corporation, professional corporation, partnership, association, or other entity and all personnel of such firm, corporation, professional corporation, partnership, association, or entity who act in its behalf as professional land surveyors in this state shall be licensed as provided in this chapter; and

further provided that said firm, corporation, professional corporation, partnership, association, or entity has been issued a certificate of authorization by the board as provided in this chapter.

(b) A firm, corporation, professional corporation, partnership, association, or other entity desiring a certificate of authorization shall file with the board an application upon a form to be prescribed by the board and accompanied by the registration fee prescribed by the board.

(c)(1) A corporation or professional corporation shall file with the board, using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly licensed to practice land surveying in this state and of an individual or individuals duly licensed to practice land surveying within this state who shall be in responsible charge of the practice of land surveying in this state by said corporation.

(2) A partnership shall file with the board, using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly licensed to practice land surveying in this state and of an individual or individuals duly licensed to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said partnership.

(3) Any firm, limited liability company, association, or entity which is not a corporation, professional corporation, or partnership shall file with the board, using a form provided by the board, the names and addresses of all principals or members of the firm, association, or entity duly licensed to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said firm, association, or other entity.

(4) The forms provided in paragraphs (1) through (3) of this subsection must accompany a biennial renewal fee prescribed by the board. In the event there shall be a change in any of these persons, such change shall be designated on the same form and filed with the board by the firm, corporation, professional corporation, partnership, association, or entity within 30 days after the effective date of the change.

(d)(1) After all of the requirements of this Code section have been complied with, the board shall issue to such firm, corporation, professional corporation, partnership, association, or other entity a certificate of authorization.

(2) The board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate of authorization or if the board shall determine that any of

the officers, directors, principals, members, agents, or employees of the entity to be licensed are not individuals of good character.

(3) Every firm, partnership, corporation, or other entity which performs or offers to perform land surveying services shall have a resident professional land surveyor in responsible charge in each separate branch office in which land surveying services are performed or offered to be performed. As used in this Code section, the term "resident" means a registrant who spends the majority of his or her normal working time at his or her place of business. The registrant can be the resident licensee at only one place of business at one time.

History.
Code 1981, § 43-15-23.1, enacted by Ga. L. 1990, p. 1491, § 3; Ga. L. 1992, p. 3297, § 6; Ga. L. 1993, p. 123, § 33; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-24. Construction of structures jeopardizing health, safety, or welfare; exceptions; record of building permits.

(a) It shall be unlawful for this state or any of its political subdivisions such as a county, municipality, or school district, or agencies thereof, or for any private or commercial entity to engage in the construction of any work or structures involving professional engineering or structural engineering which by the nature of their function or existence could adversely affect or jeopardize the health, safety, or welfare of the public unless the plans and specifications have been prepared under the direct supervision or review of and bear the seal of, and the construction is executed under the direct supervision of or review by, a professional engineer or architect or professional structural engineer.

(b) Nothing in this Code section shall be held to apply to any construction, including alterations, of which the completed cost is less than $100,000.00 or which is used exclusively for private or noncommercial purposes, or to private residences, or to noncommercial farm buildings, or to residence buildings not exceeding two stories in height, excluding basements.

(c) Any county, municipality, or other governing body in this state that issues building permits is required to maintain a permanent record of the permit application and issuance thereon indicating the name of the professional engineer or architect or professional structural engineer, if any, who has sealed the plans, specifications, plats, or reports pursuant to which said building permit is issued. Such record shall include details on the size, type of building or structure, use for said building or structure, and estimated cost of construction.

History.

Ga. L. 1937, p. 294, § 19; Ga. L. 1945, p. 294, § 30; Ga. L. 1972, p. 222, § 11; Code 1933, § 84-2124, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2483, §§ 1, 2; Ga. L. 1994, p. 97, § 43; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 9/SB 310.

The 2020 amendment, effective January 1, 2021, inserted "or structural engineering" in subsection (a) and added "or professional structural engineer" at the end of subsection (a) and in the middle of the first sentence of subsection (c).

Cross references.

Provisions regarding approval of plans and specifications by registered architects, §§ 43-4-14, 43-4-15.

JUDICIAL DECISIONS

Relationship between engineering and architecture professions. — Statute is a tacit recognition of the inherent overlap between professions of engineering and architecture. Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142, 1977 Ga. LEXIS 1516 (1977).

Expiration of warranty period did not impact claim. — Portion of the trial court's order holding that the statute of limitation had run on the plaintiff's claim for breach of contract under the express one-year warranty was reversed because although the express warranty expired in January 2003, that did not necessarily bar the plaintiff's claims as case law established that the expiration of the warranty period did not bar the filing of a claim for breach of warranty when it was undisputed that the defects occurred during the warranty period. Southern States Chemical v. Tampa Tank & Welding, 359 Ga. App. 731, 858 S.E.2d 72, 2021 Ga. App. LEXIS 169 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Seal of registered architect or engineer. — Public officials charged with the responsibility of issuing building permits and enforcing building codes must require that all plans and specifications bear the seal of a registered professional engineer or architect prior to the issuance of a building permit for construction of any structure, including alterations, of which the completed cost is more than $100,000.00, unless the structure is used exclusively for private or noncommercial purposes, is a private residence, is a noncommercial farm building for use by the farmer, is a residential building not exceeding two stories in height (excluding basements), or is a domestic out-building appurtenant to a one or two-family residence. 1987 Op. Att'y Gen. No. 87-31.

Schools, auditoriums, or other buildings intended for the mass assemblage of people or group housing projects are not exempt from the requirement of having the seal of a registered architect or professional engineer present on plans and drawings, regardless of the completed cost of construction. 1987 Op. Att'y Gen. No. 87-31.

43-15-25. Procedure for filing charges against holder of certificate, certificate of registration, or license.

(a) Any person may refer charges of fraud, deceit, gross negligence, incompetency, or unprofessional conduct against any individual holding a certificate, certificate of registration, or license. Such charges shall be in writing, shall be sworn to by the person making them, and shall be filed with the board.

(b) All such charges, unless dismissed by the board as unfounded or trivial, shall be acted upon by the board.

History.
Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 35; Code 1933, § 84-2127, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2022, p. 604, § 10/HB 476.

The 2022 amendment, effective May 9, 2022, substituted "may refer charges" for "may prefer charges" near the beginning of subsection (a).

RESEARCH REFERENCES

ALR.
Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 A.L.R.3d 455.

43-15-26. Cease and desist orders; civil penalties for violation of order.

(a) After notice and hearing, the board may issue an order prohibiting any person from violating Code Section 43-15-7 and may fine such person at least $100.00 but not more than $5,000.00 per violation.

(b) The violation of any order of the board issued under subsection (a) of this Code section shall subject the person violating the order to an additional civil penalty not in excess of $100.00 for each transaction constituting a violation of such order. The board may maintain an action in the superior courts of this state in its own name to recover the penalties provided for in this Code section.

History.
Code 1933, § 84-2107, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1997, p. 527, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2018, p. 583, § 1/SB 425.

Editor's notes.
Ga. L. 2018, p. 583, § 1/SB 425, effective July 1, 2018, reenacted this Code section without change.

43-15-27. Enforcement of chapter.

(a) It shall be the duty of all duly constituted law enforcement officers of this state and of the political subdivisions of this state to enforce this chapter and to prosecute any person violating this chapter.

(b) The Attorney General or his or her designated assistant shall act as legal adviser to the board and render such legal assistance as may be necessary in carrying out this chapter.

(c) Except as provided in Code Section 25-2-14, it shall be the duty of all public officials charged with the responsibility of enforcing codes related to construction to require compliance with Code Section 43-15-24 before engineering plans, drawings, and specifications are approved by construction. Except as provided in Code Section 25-2-14, no construction which is subject to Code Section 43-15-24 and which

requires the service of an engineer shall be built without such approval prior to construction.

History.
Ga. L. 1937, p. 294, § 23; Ga. L. 1945, p. 294, § 37; Code 1933, § 84-2129, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2271, § 1; Ga. L. 2018, p. 583, § 1/SB 425.

Administrative rules and regulations.
Compliance and enforcement, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-10.

43-15-28. Applicability of the "Georgia Administrative Procedure Act."

The board shall exercise the powers and duties conferred upon it in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1933, § 84-2130, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2018, p. 583, § 1/SB 425.

43-15-29. Exceptions to operation of chapter.

(a) Nothing in this chapter shall be construed as excluding a qualified architect registered in this state from such engineering practice as may be incident to the practice of his or her profession or as excluding a professional engineer from such architectural practice as may be incident to the practice of professional engineering.

(b) The following persons shall be exempt from this chapter:

(1) An individual working as an employee or a subordinate of an individual holding a certificate of registration or license under this chapter or an employee of an individual practicing lawfully under Code Section 43-15-21, provided that such work does not include final design decisions and is done under the supervision of, and responsibility therefor is assumed by, an individual holding a certificate of registration or license under this chapter or an individual practicing lawfully under Code Section 43-15-21;

(2) Officers and employees of the government of the United States while engaged within this state in the practice of professional engineering, structural engineering, or land surveying for such government;

(3) All elected officers of the political subdivisions of this state while in the practice of professional engineering, structural engineering, or land surveying in the performance of their official duties;

(4) Officers and employees of the Department of Transportation, except as required by Title 46, while engaged within this state in the

practice of professional engineering, structural engineering, or land surveying for such department;

(5) Any defense, aviation, space, or aerospace company. As used in this paragraph, the term "company" shall mean any sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity and any subsidiary or affiliate of such business entity;

(6) Any employee, contract worker, subcontractor, or independent contractor who works for a defense, aviation, space, or aerospace company that is not required to be licensed under the provisions of this chapter pursuant to paragraph (5) of this subsection and who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, missiles, rockets, or other defense, aviation, space, or aerospace related products or services, or any components thereof; and

(7) Any officer or employee of a state government agency or department, county or municipal government, regional commission, or utility authority who is engaged in the gathering, processing, managing, and sharing of geospatial and photogrammetric data for cataloging or mapping purposes for his or her respective agency.

(c) This chapter shall not be construed as requiring registration or licensing for the purpose of practicing professional engineering, structural engineering, or land surveying by an individual, firm, or corporation on property owned or leased by such individual, firm, or corporation unless the same involves the public safety or public health or for the performance of engineering which relates solely to the design or fabrication of manufactured products.

(d) This chapter shall not be construed to prevent or affect the practice of professional engineering, structural engineering, and land surveying with respect to utility facilities by any public utility subject to regulation by the Public Service Commission, the Federal Communications Commission, the Federal Power Commission, or like regulatory agencies, including its parents, affiliates, or subsidiaries; or by the officers and full-time permanent employees of any such public utility, including its parents, affiliates, or subsidiaries, except where such practice involves property lines of adjoining property owners, provided that this exception does not extend to any professional engineer, professional structural engineer, or professional land surveyor engaged in the practice of professional engineering, structural engineering, or land surveying whose compensation is based in whole or in part on a fee or to any engineering services performed by the utility companies referenced in this subsection not directly connected with work on their facilities.

(e) This chapter shall not be construed to affect the lawful practice of a person acting within the scope of a certificate of registration or license granted by the state under any other law.

(f) Nothing in this chapter shall be construed to require a contractor or an employee of a contractor that is performing layouts and measurements for a highway or construction project of such contractor to be licensed as a professional land surveyor; provided, however, that such individuals shall be prohibited from providing or offering to provide any other land surveying services and from performing a layout for a highway or construction project relative to a buffer, setback, or property line.

History.

Ga. L. 1937, p. 294, § 20; Ga. L. 1945, p. 294, § 32; Ga. L. 1972, p. 222, § 12; Code 1933, § 84-2125, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2015, p. 343, § 1/HB 18; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 10/SB 310.

The 2020 amendment, effective January 1, 2021, inserted ", structural engineering," near the end of paragraphs (b)(2) and (b)(4), near the middle of paragraph (b)(3) and near the beginning of subsection (c); and, in subsection (d), inserted ", structural engineering," twice and inserted ", professional structural engineer,".

JUDICIAL DECISIONS

County engineer may design firehouse. — Design and supervision of building of fire station by professional engineer employee of county did not constitute unlawful practice of architecture since building of fire station falls within legislative definitions of both professions and because the Code explicitly recognizes some overlap between the professions. Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142, 1977 Ga. LEXIS 1516 (1977).

Lawful for qualified architect to engage in engineering practices. — Although it is unlawful for anyone other than a professional engineer to practice professional engineering in Georgia, a qualified architect can engage in engineering practices when such practices are incident to the practice of architecture. Tomberlin Assocs., Architects, Inc. v. Free, 174 Ga. App. 167, 329 S.E.2d 296, 1985 Ga. App. LEXIS 1774 (1985).

Employee engineers not taxable if not making final design decisions. — City cannot tax engineers and architects pursuant to former Code 1933, § 92-307 (see now O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals responsible for final design decisions hold certificates. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964).

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By use of word "solely" in subsection (c) of this section, the legislature's intention was to strictly construe the exemption; an exemption contrary to the express intention of the statute should be given a narrow construction. 1980 Op. Att'y Gen. No. 80-69.

43-15-30. Unlawful acts.

(a) Any person that violates Code Section 43-15-7 shall be guilty of a misdemeanor.

(b) Any individual presenting or attempting to use as his or her own the certificate of registration or license or the seal of another obtained under this chapter shall be guilty of a misdemeanor.

(c) Any person that gives any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate, certificate of registration, or license shall be guilty of a misdemeanor.

(d) Any person that falsely impersonates any other registrant or licensee or any person that attempts to use an expired or revoked certificate of registration or license shall be guilty of a misdemeanor.

(e) Any person offering services to the public that uses by name, verbal claim, sign, advertisement, directory listing, letterhead, or otherwise the words "Engineer," "Engineers," "Professional Engineering," "Engineering," "Engineered," "Professional Structural Engineer," "Professional Structural Engineers," "Structural Engineer," "Structural Engineers," "Structural Engineering," or "Structurally Engineered" shall be guilty of a misdemeanor unless said person has complied with the provisions of this chapter.

(f) Any person offering services to the public that uses by name, verbal claim, sign, advertisement, directory listing, letterhead, or otherwise the words "Professional Land Surveyor," "Professional Land Surveyors," "Land Surveyor," or "Land Surveyors" shall be guilty of a misdemeanor unless such person has complied with the provisions of this chapter.

(g) Each day or occurrence in violation of any provision of this Code section shall be considered a separate offense.

History.

Ga. L. 1937, p. 294, § 23; Ga. L. 1945, p. 294, § 40; Code 1933, § 84-2131, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2271, § 2; Ga. L. 2018, p. 583, § 1/SB 425; Ga. L. 2020, p. 642, § 11/SB 310.

The 2020 amendment, effective January 1, 2021, substituted " 'Engineered,' 'Professional Structural Engineer,' 'Professional Structural Engineers,' 'Structural Engineer,' 'Structural Engineers,' 'Structural Engineering,' or 'Structurally Engineered' " for "or 'Engineered' " in the middle of subsection (e).

RESEARCH REFERENCES

ALR.

Validity and application of statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering, 13 A.L.R.4th 676.

43-15-31. [Repealed] Termination.

History.
Ga. L. 1982, p. 2308, §§ 1, 2; Ga. L. 1983, p. 3, § 32; Ga. L. 1988, p. 309, § 1; repealed by Ga. L. 1992, p. 3137, § 14, effective July 1, 1992.

CHAPTER 16

FIREARMS DEALERS

Sec.
43-16-1 through 43-16-12. [Reserved].

43-16-1 through 43-16-12. [Reserved]

History.

Ga. L. 1963, p. 652, §§ 1-9, 11; Ga. L. 1964, p. 177, §§ 1, 2; Code 1981, § 43-16-10.1, enacted by Ga. L. 1988, p. 690, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2010, p. 391, § 1/SB 162; repealed by Ga. L. 2014, p. 599, § 1-14/HB 60, effective July 1, 2014.

Editor's notes.

Ga. L. 2014, p. 599, § 1-14/HB 60 repealed and reserved this article, effective July 1, 2014.

Law reviews.

For article on the 2014 repeal of the Code sections in this chapter, see 31 Ga. St. U. L. Rev. 47 (2014).

CHAPTER 17

CHARITABLE SOLICITATIONS

Sec.	
43-17-1.	Short title.
43-17-2.	Definitions.
43-17-3.	Registration of paid solicitors; renewal; financial statements; denial of registration; amendments; contracts; solicitation notices; accounting; deposit of contributions; records.
43-17-3.1.	Registration as a solicitor agent; application; denial; renewal; amendments; fees.
43-17-4.	[Effective until July 1, 2023. See note.] Bonding requirements for registered paid solicitors; deposits in lieu of bond.
43-17-4.	[Effective July 1, 2023. See note.] Bonding requirements for registered paid solicitors; deposits in lieu of bond.
43-17-5.	Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; records.
43-17-6.	Agreement for charitable sales promotion; final accounting and records of promotions.
43-17-7.	Denial, suspension, or revocation of registration; other disciplinary actions; financial statements.
43-17-8.	Disclosures required.
43-17-8.1.	Requirements for use of collection receptacles for donations; penalty.
43-17-8.2.	Requirement for orderly, clean, and sanitary receptacles; notice; penalty for violations.
43-17-9.	Exemptions.
43-17-10.	Administration of chapter.
43-17-11.	Enforcement of chapter; investigations; subpoenas; cooperation with Attorney General, law enforcement, and regulatory agencies.
43-17-12.	Prohibited acts.
43-17-13.	Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.
43-17-14.	Recovery of damages; class actions.
43-17-15.	Venue.
43-17-16.	Hearings; notice; powers and orders of the Secretary of State.
43-17-17.	[Effective until July 1, 2023. See note.] Appeals.
43-17-17.	[Effective July 1, 2023. See note.] Appeals by petition for review.
43-17-18.	Service of process.
43-17-19.	Applicability of "Fair Business Practices Act of 1975."
43-17-20.	Immunity.
43-17-21.	Burden of proof on persons claiming exemption or exception; certified copies; certificate of compliance or noncompliance.
43-17-22.	Provisions of chapter govern criminal or civil proceedings.
43-17-23.	Violations of chapter.

Cross references.

Criminal penalty for false statements by telephone solicitors, § 16-9-54.

Editor's notes.

Ga. L. 1988, p. 490, § 1, effective July 1, 1988, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 43-17-1 through 43-17-14, 43-17-14.1, and 43-17-15 through 43-17-19 and was based on Ga. L. 1962, p. 496, Ga. L. 1963, p. 482, Ga. L. 1980, p. 335, Ga. L. 1981, Ex. Sess., p. 8, Ga. L. 1982, p. 922, Ga. L. 1986, p. 1465,

Ga. L. 1987, p. 191, and Ga. L. 1987, p. 968.

Law reviews.

For survey article discussing developments in law of business associations for the period from June 1, 1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under prior law are included in the annotations for this chapter.

Legislature, in exempting educational institutions from the operation of these provisions, intended to exempt "schools" in the traditional sense of the word, that is, a grammar school, high school, college, or professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students. 1981 Op. Att'y Gen. No. 81-5 (decided under prior law).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Nonprofit charitable institutions as within operation of labor statutes, 26 A.L.R.2d 1020.

Criminal offenses under statutes and ordinances regulating charitable solicitations, 76 A.L.R.3d 924.

Enforceability of subscription under conditional charitable pledge, 97 A.L.R.3d 1054.

Lack of consideration as barring enforcement of promise to make charitable contribution or subscription—modern cases, 86 A.L.R.4th 241.

Validity, construction, and application of state statute or law pertaining to telephone solicitation, 44 A.L.R.5th 619.

43-17-1. Short title.

This chapter shall be known and may be cited as the "Georgia Charitable Solicitations Act of 1988."

History.

Code 1981, § 43-17-1, enacted by Ga. L. 1988, p. 490, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
15 Am. Jur. 2d., Charities, § 176 et seq.
60 Am. Jur. 2d., Peddlers, Solicitors, and Transient Dealers, § 76 et seq.

C.J.S.
14 C.J.S., Charities, § 91 et seq.

43-17-2. Definitions.

As used in this chapter, the term:

(1) "Attorney General" means the Attorney General or his or her designee.

(2) "Charitable organization" means any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by charity or alms) person, as that term is defined in this Code section, who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes; and any person who or which falsely represents himself, herself, or itself to be a charitable organization as defined by this paragraph. The term charitable organization shall not include a religious organization as defined in paragraph (12) of this Code section.

(3) "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest; and any purpose which is falsely represented to be a charitable purpose as defined by this paragraph.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

(4.1) "Collection receptacle" means an unattended container, located outdoors, for the purpose of collecting donations of clothing, books, personal or household items, or other goods. Such term shall not include containers used for the purpose of collecting monetary donations.

(5) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.

(6) "Contribution" means the promise or grant of any money or property of any kind or value.

(7) "Educational institution" means an entity organized and operated exclusively for educational purposes and which either:

(A) Maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on; or

(B) Is accredited by a nationally recognized, independent higher education accreditation body.

(8) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) "Fundraising counsel" means any person, other than a paid solicitor required to register under this chapter, who plans, advises, consults, or prepares material for a solicitation of charitable contributions within, into, or from this state and who does not either:

(A) Solicit such contributions or employ, procure, engage, direct, or supervise any compensated person to solicit such contributions; or

(B) Have custody or control of contributions.

A natural person who is a volunteer, employee, or salaried officer of a charitable organization is not a fundraising counsel with respect to the charitable organization of which he or she is a volunteer, individual, or officer. An attorney, accountant, investment counselor, or banker who, solely incidental to his or her profession, renders professional services to a charitable organization, paid solicitor, or fundraising counsel or advises a person to make a charitable contribution is not a fundraising counsel as a result of such advice.

(10) "General public" or "public," with respect to a charitable organization, means any person in the State of Georgia without a membership in or other bona fide relationship with such charitable organization.

(11) "Membership" or "member" means a status by which, for the payment of fees, dues, assessments, and other similar payments, an organization provides services to the payor and confers on the payor a bona fide right, privilege, professional standing, honor, or other direct benefit other than the right to vote, elect officers, or hold offices. The term "membership" or "member" shall not be construed to apply to a person on whom an organization confers a membership solely as a consideration for making a contribution.

(12)(A) "Paid solicitor" means a person:

(i) Other than a commercial coventurer who, for compensation, performs for a charitable organization any service in

connection with which contributions are, or will be, solicited within or from this state by such person or by any compensated person he or she employs, procures, engages, or contracts with, directly or indirectly, to so solicit;

(ii) Who would be a fundraising counsel but for the fact that such person at any time has custody of contributions from a solicitation as defined by this chapter; or

(iii) Who services a collection receptacle which purports, either through language appearing on the receptacle itself or otherwise, to be collecting items for the purpose of benefiting a charitable purpose or one or more entities espousing a charitable purpose.

(B) A "paid solicitor" shall not mean:

(i) A bona fide officer, employee, or volunteer of a charitable organization or commercial coventurer with respect to contributions solicited for that charitable organization;

(ii) An attorney, investment counselor, accountant, or banker who, solely incidental to his or her profession, advises a person to make a charitable contribution or who holds funds subject to an escrow or trust agreement;

(iii) A person who removes or delivers donations placed in a collection receptacle for a fixed fee and who does not otherwise directly or indirectly receive any of the proceeds of the sale of such donations or derive any other benefit from such activity; or

(iv) A charitable organization registered with the Secretary of State which operates collection receptacles or a religious organization which operates collection receptacles.

(13) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, or any unincorporated organization.

(14) "Religious organization" means an entity which:

(A) Conducts regular worship services; or

(B) Is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

(15) "Solicitation," "solicitation of funds," or "solicit" means the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for any charitable purpose; and such act shall be a consumer act or practice

or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(16) "Solicitor agent" means any person, other than a paid solicitor or commercial coventurer, who or which solicits charitable contributions for compensation. The term "solicitor agent" shall not include, with respect to a particular charitable organization which is either registered or exempt from registration under this chapter, any person who is a charitable organization itself or a bona fide officer, employee, or volunteer of such charitable organization which is either registered or exempt from registration under this chapter and who is neither supervised by, nor whose activities are directed by, any paid solicitor or its agent.

(17) "State" means any state, territory, or possession of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands.

History.
Code 1981, § 43-17-2, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 34; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1657, § 1; Ga. L. 2008, p. 683, § 1/HB 1104; Ga. L. 2010, p. 559, §§ 1, 2/HB 863; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1088, § 29/SB 148; Ga. L. 2018, p. 191, § 1/HB 475.

43-17-3. Registration of paid solicitors; renewal; financial statements; denial of registration; amendments; contracts; solicitation notices; accounting; deposit of contributions; records.

(a) No paid solicitor shall solicit contributions for a charitable purpose in or from this state or on behalf of a charitable organization, unless such paid solicitor is a registered paid solicitor pursuant to this Code section. No paid solicitor shall solicit contributions in person unless such paid solicitor has been qualified for such means of solicitation by the Secretary of State.

(b) A fundraising counsel who at any time has custody of contributions from a solicitation for a charitable purpose must be registered as a paid solicitor and comply with the provisions of this Code section.

(c)(1) A paid solicitor shall be registered with the Secretary of State prior to engaging in any solicitation. A registration shall expire on December 31 of the year in which the registration became effective and may be renewed for additional one-year periods upon application and the payment of the appropriate fee.

(2) An application for registration as a paid solicitor may be made by any person and shall be accompanied by the registration fee set forth in subsection (d) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall

be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state;

(C) The form of business organization; the date of organization of the applicant; and if the business entity is a corporation or limited partnership, the date it qualified to do business in Georgia;

(D) The names and business addresses of all general partners, limited partners, directors, affiliates, or executive officers of the applicant; if the applicant is a limited liability company, the names and business addresses of all members of the limited liability company; a statement of the limitations, if any, of the liability of any general partner, limited partner, director, member, affiliate, or executive officer; and a statement setting forth in chronological order the occupational activities of each such general partner, limited partner, director, member, affiliate, or executive officer during the preceding ten years;

(E) A brief description of the general character of the business conducted or proposed to be conducted by the applicant;

(F) A list of any other states in which the applicant is registered as a paid solicitor and, if registration of the applicant as a paid solicitor has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(G) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(H) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all

pertinent information with respect to such order or proceedings; and

(I) Written consent by each control person of the paid solicitor, as described by rule of the Secretary of State, to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) If the paid solicitor will have physical possession or legal control over any contributions collected by it in or from this state, the applicant shall attach to the application for registration as a paid solicitor a financial statement for the fiscal year of the applicant which ended within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the fiscal year preceding such last fiscal year. Such financial statement shall be prepared in accordance with generally accepted accounting principles.

(4) Within 15 business days after an applicant has fully complied with this subsection, the Secretary of State shall examine each paid solicitor's registration application, solicitation notice, and contract to determine whether the applicable requirements of this chapter relating to the same are satisfied and shall register such applicant as a paid solicitor unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a paid solicitor, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct himself or herself in a manner as if registered until and unless such applicant is so notified.

(5) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization who proposes to employ such applicant.

(6) Every registration under this Code section shall expire on December 31 of each year. The registration of a paid solicitor must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously

filed; by the payment of the proper registration fee; and, if it would be required in the event of an initial application, by the filing of a financial statement as of a date within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the preceding fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles.

(7) The registration of a paid solicitor shall be amended within 30 days to reflect a change of name, address, principals, state of incorporation, or other changes which materially affect the business of the paid solicitor. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(d) The fee for the initial registration of a paid solicitor shall be $250.00. The fee to amend the registration shall be $15.00. The annual renewal fee for a paid solicitor registration shall be $100.00.

(e)(1) There shall be a contract between a paid solicitor and a charitable organization which shall be in writing, shall clearly state the respective obligations of the paid solicitor and the charitable organization, and shall state the amount of compensation that the paid solicitor will receive. Such compensation shall be stated as a fixed amount, as an amount to be derived from a formula, or as a percentage of the gross revenue derived from the solicitation campaign, subject to and in accordance with the provisions of paragraphs (2), (3), and (4) of this subsection.

(2) If the compensation of the paid solicitor is contingent upon the number of contributions or the amount of revenue received from the solicitation campaign, the stated amount shall be expressed as a fixed percentage of the gross revenue.

(3) If the compensation of the paid solicitor is not contingent upon the number of contributions or the amount of revenue received, the stated amount shall be a reasonable estimate, expressed as a percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all the relevant facts known to the paid solicitor regarding the solicitation to be conducted as well as the past performance of solicitations conducted by the paid solicitor.

(4) The compensation description required by this subsection shall exclude any amount which the charitable organization is to pay as expenses of the solicitation campaign, including the cost of merchandise or services sold or events staged. The contract shall clearly describe who shall pay such expenses, how they will be paid, and whether such payment is contingent upon any event or fact, includ-

ing, but not limited to, the amount of funds raised through the solicitation campaign. If any portion of the expenses are paid separately by the charitable organization apart from the other fees paid to the paid solicitor, the contract shall include a reasonable estimate of such expenses.

(f) Prior to the commencement of each solicitation campaign the paid solicitor shall file with the Secretary of State a completed "solicitation notice" on forms prescribed by the Secretary of State. The Secretary of State may provide that said filing be made, in whole or in part, through electronic means. The solicitation notice shall include a copy of the contract described in subsection (e) of this Code section, the projected dates when soliciting will commence and terminate, the location and telephone number from which the solicitation will be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the paid solicitor will at any time have custody of contributions, and a full and fair description of the charitable program for which the solicitation campaign is being carried out.

(g) Within 90 days after a solicitation campaign has been completed, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the paid solicitor shall account to the charitable organization with whom it has contracted and to the Secretary of State for all contributions collected and expenses paid. The accounting shall be in the form of a written report, submitted to the charitable organization and to the Secretary of State, shall be retained by the charitable organization for three years, and shall contain the following information:

(1) The total gross receipts;

(2) A description of how the gross receipts were distributed, including an itemized list of all expenses, commissions, and other costs of the fundraising campaign and the net amount paid to the charitable organization for its charitable purposes after payment of all fundraising expenses, commissions, and other costs;

(3) The signature of the charitable organization acknowledging its agreement with the accuracy of the report, or a statement from the paid solicitor stating the reasons why such signature has not been obtained within the prescribed period, including a summary of any communications from the charitable organization contesting the accuracy of the report;

(4) With respect to any contributions other than monetary donations and securities, including, but not limited to, boats, motor vehicles, clothing, shoes, books, appliances, and other household items received as a result of solicitations by a paid solicitor:

(A) The names and addresses of any persons to whom such contributions were delivered by the paid solicitor, by the charitable organization whose name was used in connection with the solicitation, or by their agents; provided, however, that this subparagraph shall not require the names and addresses of donees or retail purchasers of consumer products which are delivered to a charitable organization to be given away or sold at retail by the charitable organization with the proceeds of such sales being used to further the stated charitable purpose of the organization;

(B) The total consideration, if any, received by the paid solicitor, by the charitable organization, or by their agents from such persons for such contributions; and

(C) The manner in which such consideration was calculated; and

(5) Such other information as the Secretary of State by rule may require.

(h) Each monetary contribution received by the paid solicitor shall, in its entirety and within three business days of its receipt, be deposited in an account at a federally insured financial institution. The account shall be in the name of the charitable organization with whom the paid solicitor has contracted and the charitable organization shall have sole control of all withdrawals from the account.

(i)(1) The paid solicitor shall maintain during each solicitation campaign and for not less than three years after its completion, the following records:

(A) The name and, if known to the paid solicitor, the address of each person pledging to contribute together with the date and amount of the pledge;

(B) The name and residence address of each employee, agent, or other person, however styled, involved in the solicitation;

(C) A record of all contributions at any time in the custody of the paid solicitor;

(D) A record of all expenses incurred by the paid solicitor for which the charitable organization is liable for payment;

(E) The location and account number of all accounts in which the paid solicitor has deposited revenue from the solicitation campaign; and

(F) Such other records as may be prescribed by the Secretary of State by rule and regulation.

(2) If the paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall also

maintain for the same period as specified in paragraph (1) of this subsection:

(A) The name and address of those contributors donating tickets and the number of tickets donated by each contributor; and

(B) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

(3) All records of such paid solicitor are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she reasonably deems necessary for investigative or law enforcement purposes.

(j) Not later than 90 days following the end of each solicitation campaign, the paid solicitor shall provide to the charitable organization, at no cost, a copy of all records described in subsection (i) of this Code section. In the event any such campaign exceeds six months in length, such records shall be provided, in addition, not less than 30 days following the end of each six-month period.

History.
Code 1981, § 43-17-3, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 35; Ga. L. 1996, p. 1261, §§ 1, 2; Ga. L. 2000, p. 1657, § 2; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2008, p. 683, § 2/HB 1104; Ga. L. 2010, p. 559, § 3/HB 863.

43-17-3.1. Registration as a solicitor agent; application; denial; renewal; amendments; fees.

(a) No solicitor agent shall solicit contributions on behalf of a charitable organization within or from this state, unless such solicitor agent is a registered solicitor agent pursuant to this Code section and is affiliated through employment or as an independent contractor pursuant to a written agreement with a paid solicitor or charitable organization which is either registered or exempt from registration. No solicitor agent shall solicit contributions in person unless such solicitor agent has been qualified for such means of solicitation by the Secretary of State.

(b)(1) A solicitor agent shall register with the Secretary of State prior to engaging in any solicitation. Each registration shall expire on December 31 of each year and may be renewed for additional one-year periods upon application and the payment of the fee.

(2) Applications for registration may be made by any person and shall be accompanied by the registration fee set forth in subsection (c)

of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of each place of business of the applicant;

(C) The name and address of the paid solicitor or charitable organization with which the solicitor agent will be affiliated by employment or as an independent contractor;

(D) If the solicitor agent is to be an independent contractor, a copy of the contract setting forth the terms and conditions thereof;

(E) A list of any other states in which the applicant is registered as a paid solicitor agent and, if any registration of the applicant under the charitable solicitation law of any state has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(F) Whether the applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(G) Whether the applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all pertinent information with respect to such order or proceedings;

(H) Whether the applicant seeks to be qualified to contact contributors and potential contributors in person, as distinguished from mail, telephonic, or electronic contact; and

(I) With respect to applicants who seek to be qualified to contact contributors or potential contributors in person, written consent to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) Except as provided in paragraph (7) of this subsection, within 15 business days after an applicant has fully complied with this

subsection, the Secretary of State shall register such applicant as a solicitor agent unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct itself in a manner as if registered until and unless it is so notified.

(4) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization or paid solicitor who proposes to employ such applicant.

(5) Every registration under this Code section shall expire on December 31 of each year. The registration of a solicitor agent must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously filed, and by the payment of the proper registration fee.

(6) The registration of a solicitor agent shall be promptly amended to reflect a change of name or address or other changes in the information previously provided to the Secretary of State. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(7) With respect to applicants for solicitor agent seeking to be qualified to solicit in person, the applicant shall not be qualified to so solicit until the Secretary of State affirmatively notifies the applicant that he or she has been so qualified.

(c) The fee for the initial registration of a solicitor agent shall be $50.00. The fee to amend the registration shall be $15.00. The annual renewal fee for a solicitor agent shall be $50.00.

History.

Code 1981, § 43-17-3.1, enacted by Ga. L. 2000, p. 1657, § 3; Ga. L. 2008, p. 683, § 3/HB 1104.

Cross references.

Solicitation permits for charitable organizations, § 40-6-97.1.

43-17-4. [Effective until July 1, 2023. See note.] Bonding requirements for registered paid solicitors; deposits in lieu of bond.

(a) An applicant for registration as a paid solicitor who will have physical possession or legal control over any contributions collected by it in or from this state on behalf of any charitable organizations shall file with the Secretary of State a bond satisfactory to the Secretary of State in the sum of $10,000.00 payable to the State of Georgia for the use of all interested persons and conditioned upon the faithful compliance by the principal with any and all provisions of this chapter and any regulations and orders issued by the Secretary of State. Such an applicant for renewal of registration as a paid solicitor shall also file such bond. Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall not register such an applicant or renew the registration of such an applicant until such bond is filed as provided in this subsection. Any such bond may be canceled by the principal or surety by giving notice to the Secretary of State, but such cancellation shall not affect any cause of action accruing thereon prior to cancellation and such cancellation shall result in automatic cancellation of the principal's registration until a new bond satisfactory to the Secretary of State is filed. Any action on such bond must be brought within two years after accrual of the cause of action. The amount prescribed in this subsection for the bond required of a paid solicitor shall be construed as being the aggregate liability recoverable against such bond, regardless of the number of claimants, and shall not be construed as individual liability.

(b) The requirement for filing of such bond by an applicant for registration or renewal of registration as a paid solicitor shall not be applicable if the applicant for registration or renewal of registration as a paid solicitor has deposited in trust with the Secretary of State:

(1) A certificate of deposit or letter of credit evidencing a deposit with a financial institution satisfactory to the Secretary of State in the amount of $10,000.00 payable to the applicant and assigned to the Secretary of State;

(2) An irrevocable letter of credit addressed to the Secretary of State in the amount of $10,000.00, issued by a bank which is a member of the Federal Reserve System and conditioned only upon the rendering of a judgment by a court of competent jurisdiction in which the applicant is found liable for damages under this chapter; or

(3) Obligations of the United States, an agency thereof, or the State of Georgia which mature in not more than two years and which have a market value as of the date of deposit of at least $10,000.00.

(c) Such deposits shall be held for the benefit of all persons to whom

the applicant is liable for damages under this chapter for a period of two years after such applicant's registration has expired or been revoked; provided, however, such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. Such deposits shall not be released except upon application to and the written order of the Secretary of State. The Secretary of State shall have no liability for any such release of any deposit or part thereof made by him in good faith. The Secretary of State may designate any regularly constituted state depository having trust powers domiciled in this state as a depository to receive and hold any such deposit. Any such deposit so held shall be at the expense of the applicant. Such depository shall give to the Secretary of State a proper trust and safekeeping receipt upon which the Secretary of State shall give an official receipt to the applicant. The State of Georgia shall be responsible for the safekeeping and return of all deposits made pursuant to this Code section. So long as the applicant complies with this chapter, the applicant may demand, receive, bring an action for, and recover the income from the securities deposited or may exchange and substitute for the letter of credit or securities deposited or a part thereof, with the approval of the Secretary of State, a letter of credit or securities of the kinds specified in subsection (b) of this Code section of equivalent or greater value. No judgment creditor or other claimant of the applicant shall levy upon any deposit held pursuant to this Code section or upon any part thereof, except as specified in this subsection. Whenever any person shall file an action in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, such person, in order to secure his recovery, may give notice to the Secretary of State of such alleged liability and of the amount of damages claimed, after which notice the Secretary of State shall be bound to retain, subject to the order of the Superior Court of Fulton County, as provided in subsection (d) of this Code section, a sufficient amount of the deposit to pay the judgment in the action.

(d) In the event that the applicant prevails in such action and in the event that such deposits have been held by the Secretary of State for a period of at least two years after the applicant's registration has expired or been revoked, then such deposits shall be released to the applicant; provided, however, such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable

for damages under this chapter. If a judgment is rendered in such action by which it is determined that the applicant is liable for damages under this chapter and the applicant has not paid the judgment within ten days of the date the judgment became final or if the applicant petitions the Supreme Court of the United States to take certiorari jurisdiction over such action and the applicant has not paid the judgment within ten days of the date the Supreme Court of the United States denies certiorari jurisdiction or within ten days of the date the Supreme Court of the United States affirms the judgment, then such person may petition the Superior Court of Fulton County for an order directing the Secretary of State to reduce such deposit or a portion thereof sufficient to pay the judgment to cash or its equivalent and to pay such judgment to the extent the judgment may be satisfied with the proceeds of the deposit. If there shall remain any residue from the deposit and if at least two years have passed since the expiration or revocation of the applicant's registration, the Secretary of State shall pay such residue to the applicant, taking his receipt for the residue, which shall be filed and recorded with the other papers of the case, unless there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, in which case the Secretary of State shall hold or dispose of such residue in accordance with the provisions of this subsection relating to the holding or disposing of the entire deposit. If more than one final judgment is rendered against the applicant for violation of this chapter, the judgment creditors shall be paid in full from such deposit or residue thereof, to the extent the deposit or residue is sufficient to pay the judgments, in the order in which the judgment creditors petitioned the Superior Court of Fulton County.

(e) Anything in this Code section to the contrary notwithstanding, the Secretary of State shall comply with any order of a Georgia or United States court of competent jurisdiction to turn over any deposit held by him pursuant to subsection (a) of this Code section or the proceeds from any bond held by him pursuant to subsection (a) of this Code section to a trustee or receiver for the use and sole benefit of persons on whose behalf the Secretary of State holds such deposit or proceeds.

History.

Code 1981, § 43-17-4, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 4.

Delayed effective date.

This Code section is effective until July 1, 2023. For version effective July 1, 2023, see the following version of this Code section.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, the word "judgment" was substituted for "judgement" near the beginning of the second sentence of subsection (d).

43-17-4. [Effective July 1, 2023. See note.] Bonding requirements for registered paid solicitors; deposits in lieu of bond.

(a) An applicant for registration as a paid solicitor who will have physical possession or legal control over any contributions collected by it in or from this state on behalf of any charitable organizations shall file with the Secretary of State a bond satisfactory to the Secretary of State in the sum of $10,000.00 payable to the State of Georgia for the use of all interested persons and conditioned upon the faithful compliance by the principal with any and all provisions of this chapter and any regulations and orders issued by the Secretary of State. Such an applicant for renewal of registration as a paid solicitor shall also file such bond. Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall not register such an applicant or renew the registration of such an applicant until such bond is filed as provided in this subsection. Any such bond may be canceled by the principal or surety by giving notice to the Secretary of State, but such cancellation shall not affect any cause of action accruing thereon prior to cancellation and such cancellation shall result in automatic cancellation of the principal's registration until a new bond satisfactory to the Secretary of State is filed. Any action on such bond must be brought within two years after accrual of the cause of action. The amount prescribed in this subsection for the bond required of a paid solicitor shall be construed as being the aggregate liability recoverable against such bond, regardless of the number of claimants, and shall not be construed as individual liability.

(b) The requirement for filing of such bond by an applicant for registration or renewal of registration as a paid solicitor shall not be applicable if the applicant for registration or renewal of registration as a paid solicitor has deposited in trust with the Secretary of State:

(1) A certificate of deposit or letter of credit evidencing a deposit with a financial institution satisfactory to the Secretary of State in the amount of $10,000.00 payable to the applicant and assigned to the Secretary of State;

(2) An irrevocable letter of credit addressed to the Secretary of State in the amount of $10,000.00, issued by a bank which is a member of the Federal Reserve System and conditioned only upon the rendering of a judgment by a court of competent jurisdiction in which the applicant is found liable for damages under this chapter; or

(3) Obligations of the United States, an agency thereof, or the State of Georgia which mature in not more than two years and which have a market value as of the date of deposit of at least $10,000.00.

(c) Such deposits shall be held for the benefit of all persons to whom

the applicant is liable for damages under this chapter for a period of two years after such applicant's registration has expired or been revoked; provided, however, that such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. Such deposits shall not be released except upon application to and the written order of the Secretary of State. The Secretary of State shall have no liability for any such release of any deposit or part thereof made by him or her in good faith. The Secretary of State may designate any regularly constituted state depository having trust powers domiciled in this state as a depository to receive and hold any such deposit. Any such deposit so held shall be at the expense of the applicant. Such depository shall give to the Secretary of State a proper trust and safekeeping receipt upon which the Secretary of State shall give an official receipt to the applicant. The State of Georgia shall be responsible for the safekeeping and return of all deposits made pursuant to this Code section. So long as the applicant complies with this chapter, the applicant may demand, receive, bring an action for, and recover the income from the securities deposited or may exchange and substitute for the letter of credit or securities deposited or a part thereof, with the approval of the Secretary of State, a letter of credit or securities of the kinds specified in subsection (b) of this Code section of equivalent or greater value. No judgment creditor or other claimant of the applicant shall levy upon any deposit held pursuant to this Code section or upon any part thereof, except as specified in this subsection. Whenever any person shall file an action in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, such person, in order to secure his or her recovery, may give notice to the Secretary of State of such alleged liability and of the amount of damages claimed, after which notice the Secretary of State shall be bound to retain, subject to the order of the Superior Court of Fulton County, as provided in subsection (d) of this Code section, a sufficient amount of the deposit to pay the judgment in the action.

(d) In the event that the applicant prevails in such action and in the event that such deposits have been held by the Secretary of State for a period of at least two years after the applicant's registration has expired or been revoked, then such deposits shall be released to the applicant; provided, however, that such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the

applicant is liable for damages under this chapter. If a judgment is rendered in such action by which it is determined that the applicant is liable for damages under this chapter and the applicant has not paid the judgment within ten days of the date the judgment became final or if the applicant petitions the Supreme Court of the United States to take certiorari jurisdiction over such action and the applicant has not paid the judgment within ten days of the date the Supreme Court of the United States denies certiorari jurisdiction or within ten days of the date the Supreme Court of the United States affirms the judgment, then such person may petition the Superior Court of Fulton County for an order directing the Secretary of State to reduce such deposit or a portion thereof sufficient to pay the judgment to cash or its equivalent and to pay such judgment to the extent the judgment may be satisfied with the proceeds of the deposit. If there shall remain any residue from the deposit and if at least two years have passed since the expiration or revocation of the applicant's registration, the Secretary of State shall pay such residue to the applicant, taking receipt for the residue, which shall be filed and recorded with the other papers of the case, unless there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, in which case the Secretary of State shall hold or dispose of such residue in accordance with the provisions of this subsection relating to the holding or disposing of the entire deposit. If more than one final judgment is rendered against the applicant for violation of this chapter, the judgment creditors shall be paid in full from such deposit or residue thereof, to the extent the deposit or residue is sufficient to pay the judgments, in the order in which the judgment creditors petitioned the Superior Court of Fulton County.

(e) Anything in this Code section to the contrary notwithstanding, the Secretary of State shall comply with any order of a Georgia or United States court of competent jurisdiction to turn over any deposit held by him pursuant to subsection (a) of this Code section or the proceeds from any bond held by him pursuant to subsection (a) of this Code section to a trustee or receiver for the use and sole benefit of persons on whose behalf the Secretary of State holds such deposit or proceeds.

History.

Code 1981, § 43-17-4, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 4; Ga. L. 2022, p. 767, § 2-33/HB 916.

Delayed effective date.

Code Section 43-17-4 is set out twice in this Code. This version is effective July 1, 2023. For version effective until July 1, 2023, see the preceding version.

The 2022 amendment, effective July 1, 2023, in subsection (c), in the first sentence substituted "provided, however, that" for "provided, however," and "such action, an appeal based on a petition for

certiorari jurisdiction, or a petition for review" for "such action or an appeal based on a petition for certiorari jurisdiction", and inserted "or her" in the third and last sentences; and in subsection (d), substituted "provided, however, that" for "provided, however," in the first sentence, substituted "such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review" for "such action or an appeal based on a petition for certiorari jurisdiction" in the first and third sentences, and substituted "taking receipt" for "taking his receipt" in the third sentence. For applicability, see Editor's notes.

Editor's notes.

Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

43-17-5. Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; records.

(a) It shall be unlawful for any person:

(1) Wherever located to solicit or accept charitable contributions from any person located in this state;

(2) While in this state to solicit or accept charitable contributions from any person, wherever located; or

(3) Wherever located to solicit or accept charitable contributions from any person, wherever located, on behalf of a charitable organization located in this state,

unless the charitable organization on whose behalf such contributions are being solicited or accepted is subject to an effective registration statement under this chapter or exempt from registration pursuant to Code Section 43-17-9.

(b)(1) Every charitable organization, except those exempt from registration pursuant to Code Section 43-17-9, which intends to solicit in this state or have contributions solicited in this state on its behalf by other charitable organizations, commercial coventurers, or paid solicitors shall, prior to any solicitation, file a registration statement with the Secretary of State upon a form prescribed by the Secretary of State. No charitable organization required to be registered under this Code section shall solicit prior to registration.

(2) A registration statement, which the Secretary of State may require to be in whole or in part an electronic filing, shall be signed by an authorized executive officer of the charitable organization and shall contain the following information:

(A) The name under which the charitable organization intends to solicit contributions;

(B) The names and addresses of officers, directors, trustees, and executive personnel and, in the case of a state-wide parent organi-

zation, the communities in which the chapters, branches, or affiliates are located and their directors;

(C) The names and addresses of any fundraising counsel or paid solicitor who acts or will act on behalf of the charitable organization, together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions, or other remuneration to be paid to the fundraising counsel or paid solicitor;

(D) The general purposes for which the charitable organization is organized;

(E) The purposes for which the contributions to be solicited will be used;

(F) The period of time during which the solicitation will be made;

(G) The method of solicitation; and

(H) Such other information as the Secretary of State may require.

(3) There shall be filed with such application an irrevocable written consent of the applicant to the service of process upon the Secretary of State in actions against such applicant in the manner and form provided in Code Section 43-17-18.

(4) There shall be filed with such application a financial statement of the charitable organization or a consolidated financial statement of the charitable organization and its subsidiaries as of a date within one year prior to the filing of the registration statement. If the charitable organization has received or collected more than $1 million during its preceding fiscal year, the financial statement shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing unless the last fiscal year of the charitable organization has ended within 90 days prior to the date of filing, in which case such certified financial statement may be as of the end of the fiscal year preceding such last fiscal year. If the charitable organization has received or collected more than $500,000.00 but not more than $1 million during its preceding fiscal year, the financial statement shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing, shall be filed with the financial statement. If the charitable organization has received or

collected any charitable contributions during its preceding fiscal year, the financial statement shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous taxable year pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially similar to that required to be provided on Form 990 or 990EZ.

(5) Every charitable organization registered with the Secretary of State shall file with the Secretary of State copies of any federal or state tax exemption determination letters received after the initial registration within 30 days after receipt and shall file any amendments to its organizational instrument within 30 days after adoption.

(6) The Secretary of State may waive or extend the time period for the furnishing of any information required by this subsection and may require such additional information as to the previous history, records, or association of the applicant, general partners, limited partners, directors, affiliates, or executive officers or members in the case of a limited liability company as he or she may deem necessary to establish whether or not the applicant should be registered as a charitable organization under this chapter.

(7) When an applicant has fully complied with this subsection, the Secretary of State shall register such applicant as a charitable organization unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a charitable organization, he or she shall immediately notify the applicant of such registration.

(8) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at its business address and to any paid solicitor who proposes to solicit contributions on behalf of the charitable organization.

(9) Every registration under this Code section shall be valid for a period of 24 months from its date of effectiveness. The registration must be renewed on or before the expiration date by the submission of a renewal application containing the information required in an application for registration, to the extent that such information has not previously been included in an application or renewal application

previously filed, by the payment of the proper fee, and by the filing of financial statements covering the periods since the most recent financial statement previously filed. If the charitable organization has received or collected more than $1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries. If the charitable organization has received or collected more than $500,000.00 but not more than $1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles. If the charitable organization has received or collected any charitable contributions during its preceding two fiscal years, the financial statements shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous two taxable years pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially similar to that required to be provided on Form 990 or 990EZ. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if required to be certified, shall be certified by an independent public accountant duly registered and in good standing as such under the laws of the place of his or her residence or principal office.

(10) The registration of a charitable organization shall be amended within 30 days to reflect a change of name, address, principals, state of incorporation, corporate forms (including a merger of two charitable organizations), or other changes which materially affect the business of the charitable organization. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(c) The fee for the initial registration of a charitable organization shall be $35.00. The fee for renewal of a charitable organization's registration shall be $20.00.

(d) A charitable organization shall maintain for not less than three years a record of all contributions including, but not limited to, the

name and address of each contributor giving $25.00 or more directly or indirectly to the charitable organization, the date and amount of the contribution, and the location and account number of all bank or other financial institution accounts in which the charitable organization has deposited contributions.

(e) All records of charitable organizations which relate to charitable solicitations or charitable contributions are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she deems reasonably necessary for investigative or law enforcement purposes.

(f) A charitable organization shall maintain for not less than three years at an office located in Georgia or, if it has no office in Georgia, its principal office all records provided to it by any paid solicitor relating to any solicitation campaign. The charitable organization shall notify the Secretary of State of the address of the office at which such records are kept.

History.

Code 1981, § 43-17-5, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1991, p. 789, § 1; Ga. L. 1993, p. 123, § 36; Ga. L. 1998, p. 543, § 1; Ga. L. 2000, p. 1657, §§ 5, 6; Ga. L. 2008, p. 683, § 4/HB 1104.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "principles" was substituted for "principals" in the third sentence of paragraph (b)(4) and in the fourth sentence of paragraph (b)(9).

Pursuant to Code Section 28-9-5, in 2008, "he" was deleted following "or she" in the second sentence of paragraph (b)(7).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of statutory provisions, opinions decided under Ga. L. 1962, p. 496, § 3 are included in the annotations for this Code section.

Nursing home operated by religious corporation need not register. — Religious corporation which operates two nursing homes being managed and directed entirely by a member of the Primitive Baptist Church is not required to register with the Secretary of State. 1962 Ga. Op. Att'y Gen. 41 (decided under Ga. L. 1962, p. 496, § 3).

Local or branch community fund organizations not required to register. — County united community fund organization is not required to register if it is part of a state-wide parent organization which has registered or if solicitation of contributions is confined to the county. 1962 Ga. Op. Att'y Gen. 387 (decided under Ga. L. 1962, p. 496, § 3).

43-17-6. Agreement for charitable sales promotion; final accounting and records of promotions.

(a) Every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain, prior to

the commencement of the charitable sales promotion within this state, a written agreement from the commercial coventurer which shall be available to the Secretary of State upon request. The agreement shall be signed by an authorized representative of the charitable organization and the commercial coventurer and it shall include, at a minimum, the following:

(1) The goods or services to be offered to the public;

(2) The geographic area where, and the starting and final date when, the offering will be made;

(3) The manner in which the charitable organization's name will be used, including the representation to be made to the public as to the actual or estimated dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization;

(4) If applicable, the maximum dollar amount that will benefit the charitable organization;

(5) The estimated number of units of goods or services to be sold or used;

(6) A provision for a final accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date by which it will be made;

(7) A statement that the charitable sales promotion is subject to the requirements of this chapter; and

(8) The date by when, and the manner in which, the benefit will be conferred on the charitable organization.

(b) The final accounting for the charitable sales promotion shall be kept by the commercial coventurer for three years after the final accounting date.

(c) All records of charitable organizations and commercial coventurers pertaining to such sales promotion are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

History.

Code 1981, § 43-17-6, enacted by Ga. L. 1988, p. 490, § 1.

Editor's notes.

Ga. L. 1987, p. 968, § 4, repealed a former Code Section 43-17-6 and enacted former Code Section 43-17-6. The pre-1987 Code section, concerning registration of professional solicitors, was based on Ga. L. 1962, p. 496, § 7; Ga. L. 1980, ch. 335, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 43-17-4 are included in the annotations for this Code section.

Independent member agencies of a centralized charitable fund-raising organization are not "affiliates" within the meaning of former O.C.G.A. § 43-17-4 and are therefore required to file separate reports with the Secretary of State verified by an independent certified public accountant. 1983 Op. Att'y Gen. No. 83-57 (decided under former § 43-17-4).

Reports may be performed by accountants employed by central agencies. — Verified reports for member agencies of a centralized fund-raising organization may be performed by independent certified public accountants employed by the central fund-raising organization as long as the audit and the auditor comply with principles normally accepted by the public accounting profession. 1983 Op. Att'y Gen. No. 83-57 (decided under former § 43-17-4).

43-17-7. Denial, suspension, or revocation of registration; other disciplinary actions; financial statements.

(a) The Secretary of State, by order, may deny, suspend, or revoke a registration, limit the fundraising activities that an applicant or registered person may perform in this state, bar an applicant or registered person from association with a paid solicitor or charitable organization, or bar a person who is a partner, officer, director, or employee of, or a member of a limited liability company which is, an applicant or registered person from employment with a paid solicitor or charitable organization if the Secretary of State finds that the order is in the public interest and that the applicant, registered person, or such other person:

(1) Has filed an application for registration with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) Has willfully violated or failed to comply with this chapter, a prior enactment, or a rule promulgated by the Secretary of State under this chapter or a prior enactment;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by a state or federal agency or a court of competent jurisdiction that the person has violated the charitable organizations regulatory act or the unfair and deceptive acts and practices law of any state, but only if the acts

constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Within the last ten years has been convicted of a felony or misdemeanor which the Secretary of State finds:

(A) Involves the solicitation or acceptance of charitable contributions or the making of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of solicitation of contributions for a charitable organization;

(C) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(D) Involves murder or rape; or

(E) Involves assault or battery if such person proposes to be engaged in counseling, advising, housing, or sheltering individuals;

(5) Is permanently or temporarily enjoined by a court of competent jurisdiction from acting as a charitable organization, paid solicitor, or as an affiliated person or employee of such;

(6) Is the subject of an order of the Secretary of State denying, suspending, or revoking the person's registration as a charitable organization or paid solicitor;

(7) Has violated a law or any rule or regulation of this state, any other state, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which law or rule or regulation relates to or in part regulates charitable organizations or paid solicitors regulated under this chapter, when the charitable organization or paid solicitor knows or should know that such action is in violation of such law, rule, or regulation;

(8) Has failed to pay the proper filing fee within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State may provide for the reinstatement of the registration or the suspension of a fine or penalty at such time as the deficiency is corrected; or

(9) Has failed to comply with a subpoena or order issued by the Secretary of State.

(b) The Secretary of State may not begin a proceeding solely on the basis of a fact or transaction known to the Secretary of State when the registration became effective unless the proceeding is begun within 90 days after effectiveness of the registration.

(c) If the Secretary of State finds that an applicant or registered person is no longer in existence; has ceased to do business as a paid solicitor or charitable organization; is adjudicated mentally incompetent or subjected to the control of a committee, conservator, or guardian; or cannot be located after reasonable search, the Secretary of State, by order, may deny the application or revoke the registration.

(d) The Secretary of State may at any time require a charitable organization or paid solicitor to file with him a financial statement showing its financial condition as of the most recent practicable date, but such financial statement need not be certified.

History.

Code 1981, § 43-17-7, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 37; Ga. L. 2000, p. 1657, § 7; Ga. L. 2008, p. 683, § 5/HB 1104.

Editor's notes.

Former Code Section 43-17-7, which related to charitable expenditures, and which was based on Ga. L. 1980, p. 335, § 1, was repealed by Ga. L. 1987, p. 968, § 5, effective July 1, 1987.

43-17-8. Disclosures required.

(a) Every charitable organization, paid solicitor, or solicitor agent required to be registered under this Code section, at the time of any solicitation that occurs in or from this state, shall include the following disclosures:

(1) The name and location of the paid solicitor and solicitor agent, if any;

(2) The name and location of the charitable organization for which the solicitation is being made;

(3) That the following information will be sent upon request:

(A) A full and fair description of the charitable program for which the solicitation campaign is being carried out and, if different, a full and fair description of the programs and activities of the charitable organization on whose behalf the solicitation is being carried out; and

(B) A financial statement or summary which shall be consistent with the financial statement required to be filed with the Secretary of State pursuant to Code Section 43-17-5; and

(4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a paid solicitor on behalf of the charitable organization and not by a volunteer and inform the person being solicited that the contract disclosing the financial arrangements between the paid solicitor and the charity is on file with and available from the Secretary of State.

(b) This Code section shall not apply to charitable solicitations subject to and in compliance with the provisions of Code Section 43-17-8.1.

History.
Code 1981, § 43-17-8, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 8; Ga. L. 2008, p. 683, § 6/HB 1104; Ga. L. 2010, p. 559, § 4/HB 863.

43-17-8.1. Requirements for use of collection receptacles for donations; penalty.

(a) When any person makes a solicitation to the public by encouraging donations into a collection receptacle, the provisions of this Code section shall apply to such solicitations.

(b) If the collection receptacle is owned or operated entirely by a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, the receptacle shall contain the following information in boldface letters at least two inches high on the front of the collection receptacle and directly underneath the deposit door stating:

(1) The name, address, website, if any, and telephone number of the charitable organization or religious organization that owns or operates the collection receptacle, from which persons may obtain additional information about the religious or charitable organization, including the address of its principal office and its telephone number; and

(2) Whether or not the charitable organization or religious organization is registered with the Secretary of State and, if it is registered, a statement that additional information may be obtained from the Secretary of State, including the charitable or religious purpose for which the charitable organization or religious organization exists.

(c) If the collection receptacle is owned or operated entirely or in part by any entity other than a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, then the following shall apply:

(1) In the case where any of the items collected are to be sold and none of the proceeds of such sale are to be paid over or otherwise given to a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in such collection receptacle unless the collection receptacle displays the following statement: "DONATIONS ARE NOT FOR THE BENEFIT OF ANY

CHARITABLE OR RELIGIOUS ORGANIZATION." The name, address, website, if any, and telephone number of the operator of the collection receptacle shall also be provided; and

(2) In the case where any of the items collected are to be sold and some or all of the proceeds from such sale are to be paid over or otherwise given to one or more charitable organizations exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in a collection receptacle unless the collection receptacle displays the following statement: "THIS COLLECTION BOX IS OPERATED BY [NAME OF OPERATOR]. THE ITEMS DEPOSITED IN THIS BOX WILL BE SOLD, AND A PORTION OF THE PROCEEDS WILL BE PAID TO [NAME OF CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION]. FURTHER INFORMATION ABOUT THESE PAYMENTS CAN BE OBTAINED FROM [NAME OF OPERATOR] AT [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE OPERATOR] AND [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION]. IN ADDITION, FURTHER INFORMATION ABOUT THE CHARITABLE ORGANIZATION MAY BE OBTAINED FROM THE SECRETARY OF STATE."

The statements and all information required by paragraphs (1) and (2) of this subsection shall be prominently displayed in boldface letters at least two inches high located on the front of the collection receptacle and directly underneath the deposit door.

(d) The Secretary of State may by rule specify additional contact information required to be disclosed pursuant to subsections (b) and (c) of this Code section.

(e)(1) A person placing and operating any collection receptacle on property in which such person has no ownership or leasehold interest shall, prior to such placement and operation, obtain notarized, written permission from all owners of such property, a property management service, or all holders of a leasehold interest in such property to place and operate such collection receptacle on such property. Copies of such notarized, written permission shall be maintained by the person placing and operating such collection receptacle and provided to every owner or leaseholder of such property at any time upon request by any such owner or leaseholder. If such permission is obtained from such property owner or owners, the person placing and operating the collection receptacle shall provide written notification to any leaseholders, tenants, or other occupants of such property of the consent of such property owner or

owners to such placement and operation. The notarized, written permission required by this subsection shall include the signature of the person placing and operating the collection receptacle, or such person's authorized agent, and of all owners or leaseholders of the property, as applicable.

(2) A person with an existing collection receptacle located on property in which such person has no ownership or leasehold interest shall have until December 31, 2018, to comply with the requirements of this subsection.

(f)(1) Any owner or leaseholder of property on which a collection receptacle is placed and operated in conformance with subsection (e) of this Code section may demand removal of such collection receptacle in writing by United States mail, return receipt requested, or statutory overnight delivery to the address listed on the collection receptacle pursuant to this Code section. Such owner or leaseholder shall also send a copy of any such demand to the office of the Secretary of State. The person placing the collection receptacle shall remove the collection receptacle as well as any contents left in and around the collection receptacle within 30 days of the date such demand is either deposited in the United States mail, return receipt requested, or received by statutory overnight delivery.

(2) If the person placing and operating the collection receptacle on another's property fails to remove such collection receptacle as required by paragraph (1) of this subsection, any owner or any leaseholder of such property shall have the immediate right to take possession of, remove, and dispose of such collection receptacle and its contents without incurring any civil or criminal liability for such actions. Any expenses incurred in such removal and disposal by such owner or leaseholder shall be invoiced to, and paid by, the person who placed and operated such collection receptacle on such property. The owner or leaseholder may also request that law enforcement personnel take possession of, remove, and dispose of such collection receptacle and the contents thereof. If law enforcement personnel, in their discretion, honor such request, they will be immune from any civil or criminal liability for such actions.

(g) Any owner or any leaseholder of the property may demand immediate removal of a collection receptacle if the person who placed and operated the collection receptacle on the property fails to comply with subsection (e) of this Code section.

(h) The person placing and operating the collection receptacle shall maintain such receptacle in a structurally sound, clean, and sanitary condition and regularly empty such receptacle at least every two weeks. Such person shall also be responsible for ensuring that no donations are

present on the ground area surrounding the collection receptacle for a time period exceeding 48 hours.

(i) Any owner or leaseholder of property who incurs expenses in removing or disposing of any collection receptacle or its contents following the expiration of the period referred to in paragraph (1) of subsection (f) of this Code section, or as a result of any violation of this Code section, may bring a civil action to recover actual damages. The action shall be brought in a court of competent jurisdiction in the county in which the collection receptacle was located, in the county in which the person who placed and operated the collection receptacle conducts, transacts, or has transacted business, or, if such person cannot be found in any of the foregoing locations, in the county in which such receptacle is located.

(j) Any violation of this Code section shall constitute a misdemeanor.

History. Code 1981, § 43-17-8.1, enacted by Ga. L. 2010, p. 559, § 5/HB 863; Ga. L. 2018, p. 191, § 2/HB 475.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 43-17-8.1 do not, at this time, appear to be offenses for which fingerprinting is required. 2018 Op. Att'y Gen. No. 18-3.

43-17-8.2. Requirement for orderly, clean, and sanitary receptacles; notice; penalty for violations.

(a) Notwithstanding any other provision of law to the contrary, any local governing authority which has collection receptacles located within its geographical boundaries shall be authorized to issue written notices of violations to both the property owner and the paid solicitor responsible for each collection receptacle at any time the immediate area surrounding such collection receptacle is not maintained in an orderly, clean, and sanitary manner. Notice shall be promptly sent to the property owner and the paid solicitor, with a copy to the charitable organization. The notice shall provide for a ten-day period from the date of the notice to remediate the violation and clean and maintain the area around such collection receptacle.

(b)(1) If the property owner, paid solicitor, or charitable organization responsible for the operation of a collection receptacle fails to comply with the notice in accordance with subsection (a) of this Code section three times in any calendar year, or, if the governing authority finds that the area surrounding such collection receptacle is a nuisance, the local governing authority shall be authorized to petition the superior court to issue an order requiring the removal of such

collection receptacle from the geographical boundaries of the jurisdiction for a period of not less than three years.

(2) The relief imposed by the superior court shall require the immediate removal of such collection receptacle at the cost of the property owner or paid solicitor responsible for it, or, alternatively, the charitable organization for which such collection receptacle was placed and the imposition of court costs.

(3) If a collection receptacle is not removed within 30 days of the superior court's order, the local governing authority shall be authorized to remove such collection receptacle and seek reimbursement from the property owner, paid solicitor, or charitable organization for court costs and fees related to the removal of such collection receptacle.

History.
Code 1981, § 43-17-8.2, enacted by Ga. L. 2018, p. 191, § 3/HB 475.

43-17-9. Exemptions.

(a) The following persons are exempt from the provisions of Code Sections 43-17-5, 43-17-6, and 43-17-8:

(1) Educational institutions and those organizations, foundations, associations, corporations, charities, and agencies operated, supervised, or controlled by or in connection with a nonprofit educational institution, provided that any such institution or organization is qualified under Section 501(c) of the Internal Revenue Code of 1986, as amended;

(2) Business, professional, and trade associations and federations which do not solicit members or funds from the general public;

(3) Fraternal, civic, benevolent, patriotic, and social organizations, when solicitation of contributions is carried on by persons without any form of compensation and which solicitation is confined to their membership;

(4) Persons requesting any contributions for the relief of any other individual who is specified by name at the time of the solicitation if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary; provided, however, that any such person who collects contributions in excess of $5,000.00 in order to claim benefit of this exemption shall file with the Secretary of State a written accounting of funds so collected on forms prescribed by the Secretary of State at the end of the first 90 days of solicitation and, thereafter, at the end of every subsequent 90 day period until said solicitation is concluded;

(5) Any charitable organization which does not have any agreement with a paid solicitor and whose total revenue from contributions has been less than $25,000.00 for both the immediately preceding and current calendar years;

(6) Any local or state-wide organization of hunters, fishermen, and target shooters which has been recognized as an organization described in Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, as amended, or the corresponding provisions of any future federal revenue law;

(7) Any volunteer fire department or rescue service operating in conjunction with a city or county government in this state and which has received less than $25,000.00 in both the immediately preceding and current calendar years;

(8) Religious organizations; or

(9) Political parties, candidates for federal or state office, and political action committees required to file financial information with federal or state elections commissions.

(b) Local community and state-wide organizations affiliated with or acting on behalf of a registered or exempt state-wide or national parent organization by contract or agreement need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The single registration of the state-wide or national parent organization shall be considered all inclusive of all of its chapters, branches, or affiliates and individuals, which will be identified by listing the communities in which they are located and their directors, as provided in Code Section 43-17-5.

(c) National charitable organizations having a Georgia affiliate registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such national organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(d) Charitable organizations which do not solicit or receive contributions from the general public other than through affiliated organiza-

tions registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(e) The Secretary of State is authorized to exempt, by rule, regulation, or order, such entities and organizations from the registration provisions of Code Section 43-17-5 as he deems necessary and appropriate in the public interest.

History.

Code 1981, § 43-17-9, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 319, § 1; Ga. L. 1996, p. 1261, § 3; Ga. L. 2000, p. 1657, § 9; Ga. L. 2008, p. 683, § 7/HB 1104.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1962, p. 496, § 3, former Code 1933, § 35-1003, and former Code Section 43-17-18 are included in the annotations for this Code section.

Church nursing homes need not register. — Religious corporation which operates two nursing homes being managed and directed entirely by members of the Primitive Baptist Church is not required to register with the Secretary of State. 1962 Ga. Op. Att'y Gen. 41 (decided under Ga. L. 1962, p. 496, § 3).

Chapter does not include fund raising by politicians. — Candidates for public office who solicit contributions in furtherance of their political campaigns are not within the purview of chapter. 1962 Ga. Op. Att'y Gen. 210 (decided under Ga. L. 1962, p. 496, § 3).

Legislature, in exempting educational institutions from the operation of O.C.G.A. Ch. 17, T. 43, intended to exempt "schools" in the traditional sense of the word, that is, a grammar school, high school, college, or professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Legislature intended that an organization, otherwise subject to O.C.G.A. Ch. 17, T. 43, would share the exempt status of an educational institution with which it is under common control if the purpose and activities of such organization relate or pertain to those of the educational institution. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Legislature did not intend to exempt an organization, otherwise subject to O.C.G.A. Ch. 17, T. 43, by virtue of the fact that the organization was connected with an educational organization in a casual, unusual, or otherwise unanticipated manner. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Phrase "operated, supervised, or controlled by or in connection with," as used in O.C.G.A. § 43-17-9, means more than under common control; the connection must be one which the legislature could reasonably foresee or contemplate. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

American National Red Cross, as an instrumentality of the United States, is not subject to regulation. 1980 Op.

Att'y Gen. No. 80-133 (decided under former Code 1933, § 35-1003).

Southern Christian Leadership Conference, Inc. is not exempt from provisions of O.C.G.A. Ch. 17, T. 43. 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

Southern Christian Leadership Conference, Inc., while conducting activities pursuant to religious principles, is not organized for the purpose of worship and thus does not meet the common and generic understanding which must be accorded the term "religious organization." 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

Social and civic purposes of the Southern Christian Leadership Conference, Inc., even though pursuant to Christian principles, appear to be distinct from the purpose which must have been intended by the legislature in the legislature's "religious organization" exemption. 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

RESEARCH REFERENCES

ALR.

Rights and remedies in respect of membership in, or establishment and maintenance of local post of, American Legion or other veterans' organization, 147 A.L.R. 590.

43-17-10. Administration of chapter.

(a) The administration of this chapter shall be vested in the Secretary of State.

(b) The Secretary of State is authorized to administer oaths in and to prescribe forms for all matters arising under this chapter. The Secretary of State shall cooperate with the administrators of the charitable solicitation laws of other states with a view to assisting those administrators in the enforcement of such laws and to achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such laws.

(c) The Secretary of State is authorized to employ examiners, clerks, stenographers, and other employees as the administration of that portion of this chapter vested in him may require. The Secretary of State is also authorized to appoint and employ investigators who shall have, in any case that there is reason to believe a violation of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants.

(d) The Secretary of State may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, necessary for the administration and enforcement of this chapter. Such rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(e) The Secretary of State or any persons employed by him shall be paid, in addition to their regular compensation, the transportation fare, board, lodging, and other traveling expenses necessary and actually

incurred by each of them in the performance of their duties under this chapter.

(f) The Secretary of State may delegate such of his or her powers and duties under this chapter as he or she desires to a division director in his or her office. Such division director, when duly appointed, shall be the ultimate decision maker in all contested case hearings held pursuant to Code Section 43-17-16 and the "Georgia Administrative Procedure Act."

(g) The Secretary of State may designate filing depositories for all records required to be filed and maintained under this chapter. Such records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization, or other acceptable reproductive methods.

(h) Except as provided in subsection (i) of this Code section, information and documents filed with or obtained by the Secretary of State are public information and are available for public examination.

(i) The following information and documents do not constitute public information under subsection (h) of this Code section and shall be confidential:

(1) Information or documents obtained by the Secretary of State in connection with an investigation under Code Section 43-17-11; and

(2) Any document or record specifically designated as confidential in accordance with this chapter or the rules and regulations promulgated under this chapter.

History. Code 1981, § 43-17-10, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 4.

43-17-11. Enforcement of chapter; investigations; subpoenas; cooperation with Attorney General, law enforcement, and regulatory agencies.

(a) The Secretary of State, in enforcing this chapter, may:

(1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter or to aid in the enforcement of this chapter;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish in print or electronically information concerning any violation of this chapter or any rule, regulation, or order under this chapter.

(b)(1) For the purpose of conducting any investigation as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such investigation, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses. For such purposes the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for the production of documentary evidence. Such subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(2) The Secretary of State may issue and apply to enforce subpoenas in this state at the request of the administrator of the charitable solicitation laws of another state if the activities constituting an alleged violation for which the information is sought would be a violation of this chapter if the activities had occurred in this state.

(c) In case of refusal to obey a subpoena issued under any Code section of this chapter to any person, a superior court of appropriate jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(d) In addition to any other hearings and investigations which the Secretary of State is authorized or required by this chapter to hold, the Secretary of State is also authorized to hold general investigative hearings on his own motion with respect to any matter under this chapter. A general investigative hearing as provided for in this subsection may be conducted by a person designated by the Secretary of State for that purpose and may, but need not be, transcribed by the Secretary of State or by any other interested party. No formal action may be taken as a result of such investigative hearings, but the Secretary of State may take such action as he deems appropriate, based on the information developed in the hearing and on any other information which he may have.

(e) The Secretary of State may cooperate with the Attorney General in enforcing the provisions of this chapter. Said cooperation includes, but is not limited to, making a joint examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging information and documents; and disclosing information and documents obtained in connection with an investigation. When the Attorney General has initiated a civil or administrative proceeding in connection with a joint investigation under this subsection he or she may publish in print or electronically information concerning any violation of this chapter or Part 2 of Article 15 of Chapter 1 of Title 10, known as the "Fair Business Practices Act of 1975."

(f) To encourage uniform interpretation and administration of this chapter and effective regulation and enforcement, the Secretary of State may cooperate with state law enforcement or regulatory agencies and agencies or administrators of one or more states, Canadian provinces or territories, another country, appropriate federal agencies, any national or international organization of officials or agencies, and any governmental law enforcement or regulatory agency. Such cooperation includes, but is not limited to, making a joint registration examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging personnel; sharing and exchanging information and documents; and disclosing information obtained in connection with an investigation under this Code section to the extent provided in this Code section and if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding by a local, state, or federal law enforcement or regulatory agency and the receiving agency presents that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information.

History.

Code 1981, § 43-17-11, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2015, p. 1088, § 30/SB 148.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (b)(1) is applicable with respect to notices delivered on or after July 1, 2000.

43-17-12. Prohibited acts.

(a) It shall be unlawful for any person to violate any provision of this chapter or any rule, regulation, subpoena, or order promulgated or issued by the Secretary of State under this chapter.

(b) It shall be unlawful for any person who is registered as, or making application for registration as, a solicitor agent or paid solicitor or charitable organization or is an affiliate of such registrant or

applicant knowingly to make or cause to be made to the Secretary of State or anyone acting on his or her behalf any written or oral statement or statements which the person knows to contain any untrue statement of material fact or to omit to state a material fact that is necessary in order to make any statement or statements made, in light of the circumstances under which they were made, not misleading.

(c) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

(1) To utilize any representation that implies the contribution is for or on behalf of a charitable organization or to utilize any emblem, device, or printed matter belonging to or associated with a charitable organization, without first being authorized in writing to do so by the charitable organization;

(2) To utilize a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use thereof would tend to confuse or mislead a solicited person;

(3) To misrepresent to or mislead anyone in any manner to believe that any other person sponsors, endorses, or approves such solicitation or charitable sales promotion when such other person has not given consent in writing to the use of his or her name for these purposes;

(4) To utilize or exploit the fact of registration so as to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state;

(5) To represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Secretary of State pursuant to this chapter;

(6) To represent that tickets to events will be donated for use by another, unless the paid solicitor shall have commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept;

(7) To represent that any part of the contributions received will be given or donated to any other charitable organization unless such organization has consented in writing to the use of its name prior to the solicitation; or

(8) To fail to provide to a person who has been solicited for a contribution the information described in Code Section 43-17-8.

(d) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

(1) To employ a device, scheme, or artifice to defraud;

(2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person;

(3) To misrepresent or mislead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of such solicitation or charitable sales promotion will be used for charitable purposes if such is not the fact; or

(4) To misappropriate, convert, illegally withhold, or fail to account for any charitable contributions solicited by, or on behalf of, any charitable organization required to be registered pursuant to this chapter.

(e) It shall be unlawful for any paid solicitor to have physical possession or legal control of a contribution collected by it in or from this state on behalf of any charitable organization without having complied with the requirements of paragraph (3) or (6) of subsection (c) of Code Section 43-17-3, as applicable, and Code Section 43-17-4.

History.
Code 1981, § 43-17-12, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 5; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1657, § 10; Ga. L. 2008, p. 683, § 8/HB 1104.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, "chapter" was substituted for "Code section" at the end of paragraph (c)(5).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1962, p. 496, § 10 are included in the annotations for this Code section.

Permission would be required before Joint Tech-Georgia Fund could publish names of contributors. 1962 Ga. Op. Att'y Gen. 581 (decided under Ga. L. 1962, p. 496, § 10).

43-17-13. Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.

(a) Whenever it may appear to the Secretary of State, either upon complaint or otherwise, that any person has engaged in or is engaging in or is about to engage in any act, practice, or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may, at his discretion, act under any or all of the following paragraphs and may:

(1) Impose administrative sanctions as provided in this paragraph:

(A) Subject to notice and opportunity for hearing in accordance with Code Section 43-17-16, unless the right to notice is waived by the person against whom the sanction is imposed, the Secretary of State may:

(i) Issue a cease and desist order against any person;

(ii) Censure the person if the person is registered as a paid solicitor;

(iii) Bar or suspend the person from association with a paid solicitor or charitable organization;

(iv) Issue an order against a paid solicitor who willfully violates this chapter, imposing a civil penalty up to a maximum of $2,500.00 for a single violation or up to $5,000.00 for multiple violations in a single proceeding or a series of related proceedings; or

(v) Regarding any willful act, practice, or transaction, issue an order imposing a civil penalty up to a maximum of $250.00 against any person for a single violation or $500.00 for multiple violations in a single proceeding or a series of related proceedings;

(B) Imposition of the sanctions under this paragraph is limited as follows:

(i) If the Secretary of State revokes the registration of a charitable organization or paid solicitor or bars a person from association with a charitable organization or paid solicitor under subparagraph (A) of this paragraph, the imposition of that sanction precludes imposition of the sanctions specified in divisions (iv) and (v) of subparagraph (A) of this paragraph; and

(ii) The imposition by the Secretary of State of one or more sanctions under this paragraph with respect to a specific violation precludes the Secretary of State from later imposing any other sanctions under this paragraph with respect to the violation; or

(C) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (A) of this paragraph, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated under this chapter or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;

(2) Seek civil sanctions by applying to any superior court of competent jurisdiction in this state, which court:

(A) Upon a showing by the Secretary of State that a person has violated this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, may enter or grant:

(i) A temporary restraining order, permanent or temporary injunction, or a writ of prohibition or mandamus;

(ii) A civil penalty up to a maximum of $2,500.00 for a single violation or up to $25,000.00 for multiple violations in a single proceeding or a series of related proceedings;

(iii) A declaratory judgment;

(iv) Restitution to contributors;

(v) An order of disgorgement;

(vi) The appointment of a receiver, auditor, or conservator for the defendant or the defendant's assets; or

(vii) Other relief as the court deems just and equitable;

(B) May, upon a showing by the Secretary of State that the defendant is about to violate this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, issue:

(i) A temporary restraining order;

(ii) A temporary or permanent injunction;

(iii) A writ of prohibition or mandamus; or

(iv) Such other relief as the court deems just and equitable; or

(C) In determining the appropriate relief to grant, shall consider enforcement action taken and sanctions imposed by the Secretary of State under paragraph (1) of this subsection in connection with the transaction or transactions constituting a violation of this chapter, a rule promulgated under this chapter, or an order of the Secretary of State; or

(3) Transmit such evidence as may be available concerning such act, practice, or transaction to any district attorney or to the Attorney General, who may, at his individual discretion, institute the necessary criminal proceedings.

(b) In any proceedings for an injunction, the Secretary of State may apply for and be entitled to have issued the court's subpoena requiring:

(1) The appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and

(2) The production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction.

(c) In any action brought under subsection (a) of this Code section, the court, upon application of the state, may appoint a receiver for the assets of the defendant where it has been established:

(1) That the defendant has engaged in a pattern of willful violations of this chapter which has resulted in substantial actual damage to citizens of this state;

(2) That the defendant is outside this state or is actually removing or about to remove himself or his property outside the limits of this state or conceals himself or his property; or

(3) That the appointment of the receiver is necessary to preserve the assets of the defendant for the benefit of citizens of the state damaged by the defendant's violations of this chapter.

(d) When a receiver is appointed by the court pursuant to this chapter, he shall have the power to bring an action for, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by any means in violation of this chapter, including property with which such property has been mingled. He shall have the power to sell, convey, and assign the same and to hold and dispose of the proceeds thereof under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(e) In any criminal proceeding either the district attorney or the Attorney General or both may apply for and be entitled to have issued the court's subpoena requiring:

(1) The appearance forthwith of any defendant or the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and

(2) The production of such documents, books, and records as may appear necessary for the prosecution of such criminal proceedings.

History.
Code 1981, § 43-17-13, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 38; Ga. L. 2018, p. 191, § 4/HB 475; Ga. L. 2019, p. 1056, § 43/SB 52.

43-17-14. Recovery of damages; class actions.

(a) Any person who suffers injury or damages as a result of acts or practices in violation of this chapter may bring an action against the charitable organization or paid solicitor engaged in such acts or practices. The person may recover such general damages sustained as

a result of such acts or practices. Exemplary damages and attorney's fees may be awarded in cases of intentional violations of this chapter.

(b) Any person entitled to bring an action under this chapter may institute a class action pursuant to Code Section 9-11-23 for the recovery of damages.

History.
Code 1981, § 43-17-14, enacted by Ga. L. 1988, p. 490, § 1.

43-17-15. Venue.

For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated under this chapter shall be considered to have been committed in any county in which any act was performed in furtherance of the transaction which violated this chapter, in the county of any violator's principal place of business in this state, in the county of the charitable organization's principal place of business in this state, and in any county in which any violator had control or possession of any proceeds of the violation or any books, records, documents, or other material or objects which were used in furtherance of the violation.

History.
Code 1981, § 43-17-15, enacted by Ga. L. 1988, p. 490, § 1.

43-17-16. Hearings; notice; powers and orders of the Secretary of State.

(a) Where the Secretary of State has issued any order forbidding the solicitation or acceptance of contributions under Code Section 43-17-7, he or she shall promptly send to the charitable organization a notice of opportunity for hearing. Before entering an order refusing to register any person under Code Section 43-17-3 or 43-17-5 and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person and if such person is a paid solicitor to the charitable organization who employs or proposes to employ such person, a notice of opportunity for hearing. Hearings shall be conducted pursuant to this Code section by the Secretary of State or a person designated by the Secretary of State.

(b) Notices of opportunity for hearing shall be served by investigators appointed by the Secretary of State or sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or directed for

service to the sheriff of the county where such person resides or is found. Such notice shall state:

(1) The order which has been issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order; and

(3) That the person to whom such notice is sent will be afforded a hearing upon request if such request is made within ten days after receipt of the notice.

(c) Whenever a person requests a hearing in accordance with this Code section, there shall immediately be set a date, time, and place for such hearing and the person requesting such hearing shall forthwith be notified thereof. Except as provided in subsection (b) of Code Section 43-17-7, the date set for such hearing shall be within 30 days, but not earlier than five days after the request for hearing has been made, unless otherwise agreed to by the charitable organization and the persons requesting the hearing.

(d) For the purpose of conducting any hearing as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such hearing, to require the attendance of witnesses and the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the Secretary of State is authorized, at the request of the person requesting the hearing or upon his or her own initiative, to issue a subpoena for any witness or a subpoena for production of documentary evidence to compel the production of any books, records, or papers. The subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(e)(1) At any hearing conducted under this Code section, a party or any affected person may appear in his or her own behalf or may be represented by an attorney.

(2) A stenographic record of the testimony and other evidence submitted shall be taken unless the Secretary of State and the persons requesting the hearing shall agree that such a stenographic record of the testimony shall not be taken.

(3) The Secretary of State shall pass upon the admissibility of such evidence, but a party may at any time make objections to any such rulings thereon; and, if the Secretary of State refuses to admit evidence, the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of the hearing.

(f)(1) In the case of any hearing conducted under this Code section, the Secretary of State may conduct the hearing or may appoint a referee to conduct the hearing who shall have the same powers and authority in conducting the hearing as are granted in this Code section to the Secretary of State.

(2) The referee shall have been admitted to the practice of law in this state and possess such additional qualifications as the Secretary of State may require.

(3) In any case where a hearing is conducted by a referee, the referee shall submit to the Secretary of State a written report including the transcript of the testimony and evidence (if such transcript is requested by the Secretary of State), the findings of fact and conclusions of law, and a recommendation of action to be taken by the Secretary of State. Within five days of the time of submission thereof to the Secretary of State, a copy of such written report and recommendations shall be served upon the person who requested the hearing or his or her attorney or other representative of record by registered or certified mail or statutory overnight delivery. That person or his or her attorney, within ten days of service of the copy of such written report and recommendations, may file with the Secretary of State written objections to the report and recommendations which shall be considered by the Secretary of State before a final order is entered.

(4) No recommendation of the referee shall be approved, modified, or disapproved by the Secretary of State until after ten days after service of such report and recommendations as provided in this subsection.

(5) The recommendations of the referee may be approved, modified, or disapproved by the Secretary of State. The Secretary of State may direct his or her referee to take additional testimony or to permit the introduction of further documentary evidence.

(6) In any hearing conducted by a referee, a transcript of testimony, evidence, and objections, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the Secretary of State.

(7) All recommendations of the referee shall be advisory only and shall not have the effect of an order of the Secretary of State.

(g) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall:

(1) Set forth his or her findings with respect to the matters involved; and

(2) Enter an order in accordance with his or her findings.

(h) All orders entered pursuant to Code Sections 43-17-3, 43-17-5, 43-17-7, and 43-17-13 shall be entered pursuant to this Code section, except where:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, in which case the order may be effective immediately pending proceedings, which proceedings shall be promptly instituted and determined; or

(2) The order is expressly required by a court order, to be made without the right to a hearing or continuance of any type.

History.
Code 1981, § 43-17-16, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2008, p. 683, § 9/HB 1104.
Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

43-17-17. [Effective until July 1, 2023. See note.] Appeals.

(a) An appeal may be taken from any order of the Secretary of State resulting from a hearing held in accordance with Code Section 43-17-16 by any person adversely affected thereby to the Superior Court of Fulton County by serving the Secretary of State, within 20 days after the date of entry of such order, a written notice of appeal, signed by the appellant, stating:

(1) The order from which the appeal is taken;

(2) The ground upon which a reversal or modification of the order is sought; and

(3) A demand for a certified transcript of the record of the order.

(b) Upon receipt of the notice of appeal, the Secretary of State shall, within ten days thereafter, make, certify, and deliver to the appellant a transcript of the record of the order from which the appeal is taken, provided that the appellant shall pay the reasonable costs of such transcript. The appellant, within five days after receipt of the tran-

script, shall file such transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal and transcript of the record shall constitute appellant's complaint. The complaint shall thereupon be entered on the trial calendar of the court.

(c) If the order of the Secretary of State shall be reversed, the court shall by its mandate specifically direct the Secretary of State as to his further action in the matter, including the making and entering of an order or orders in connection therewith and the conditions, limitations, or restrictions to be therein contained.

History.
Code 1981, § 43-17-17, enacted by Ga. L. 1988, p. 490, § 1.
Delayed effective date.
This Code section is effective until July 1, 2023. For version effective July 1, 2023, see the following version of this Code section.

43-17-17. [Effective July 1, 2023. See note.] Appeals by petition for review.

(a) An appeal may be taken from any order of the Secretary of State resulting from a hearing held in accordance with Code Section 43-17-16 by any person adversely affected thereby to the Superior Court of Fulton County by serving the Secretary of State, within 20 days after the date of entry of such order, a copy of the petition for review filed in the Superior Court of Fulton County and signed by the petitioner, stating:

(1) The order from which the appeal is taken;

(2) The ground upon which a reversal or modification of the order is sought; and

(3) A demand for a certified transcript of the record of the order.

(b) Upon receipt of the petition for review, the Secretary of State shall, within ten days thereafter, make, certify, and deliver to the Superior Court of Fulton County a transcript of the record of the order from which the appeal is taken, provided that the appellant shall pay the reasonable costs of such transcript. The petition for review and transcript of the record shall constitute appellant's complaint. The complaint shall thereupon be entered on the trial calendar of the court.

(c) If the order of the Secretary of State shall be reversed, the reviewing court shall by its mandate specifically direct the Secretary of State as to any further action to be taken by the Secretary of State in the matter, including the making and entering of an order or orders in connection therewith and the conditions, limitations, or restrictions to be therein contained.

History.

Code 1981, § 43-17-17, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2022, p. 767, § 2-34/HB 916.

Delayed effective date.

Code Section 43-17-17 is set out twice in this Code. This version is effective July 1, 2023. For version effective until July 1, 2023, see the preceding version.

The 2022 amendment, effective July 1, 2023, substituted "copy of the petition for review filed in the Superior Court of Fulton County and signed by the petitioner" for "written notice of appeal, signed by the appellant" in the introductory language of subsection (a); rewrote subsection (b), which read: "Upon receipt of the notice of appeal, the Secretary of State shall, within ten days thereafter, make, certify, and deliver to the appellant a transcript of the record of the order from which the appeal is taken, provided that the appellant shall pay the reasonable costs of such transcript. The appellant, within five days after receipt of the transcript, shall file such transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal and transcript of the record shall constitute appellant's complaint. The complaint shall thereupon be entered on the trial calendar of the court."; and in subsection (c), substituted "the reviewing court" for "the court" and "any further action to be taken by the Secretary of State" for "his further action". For applicability, see Editor's notes.

Editor's notes.

Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

43-17-18. Service of process.

Where a consent to service of process is required under this chapter, such consent to service of process shall be in the form prescribed by the Secretary of State, shall be irrevocable, and shall provide that actions arising out of or founded upon the solicitation of charitable contributions in violation of this chapter may be commenced against the person executing such consent in any court of competent jurisdiction and proper venue within this state by the service of process or pleadings upon the Secretary of State. Service of any such process or pleadings in any such action against a person who has filed a consent to service with the Secretary of State shall, if made on the Secretary of State, be by duplicate copies, one of which shall be filed in the office of the Secretary of State and the other shall immediately be forwarded by the Secretary of State by registered or certified mail or statutory overnight delivery to the persons against whom such process or pleadings are directed at his latest address on file in the office of the Secretary of State.

History.

Code 1981, § 43-17-18, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

43-17-19. Applicability of "Fair Business Practices Act of 1975."

Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices

Act of 1975." Nothing contained in this chapter shall be construed to limit the authority of the Attorney General to take any action under the "Fair Business Practices Act of 1975" regarding unfair and deceptive acts or practices in a solicitation or in solicitations.

History.
Code 1981, § 43-17-19, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2015, p. 1088, § 31/SB 148.

43-17-20. Immunity.

For any action taken or any proceeding had under this chapter or under color of law, the Secretary of State shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

History.
Code 1981, § 43-17-20, enacted by Ga. L. 1988, p. 490, § 1.

43-17-21. Burden of proof on persons claiming exemption or exception; certified copies; certificate of compliance or noncompliance.

(a) In a civil or administrative proceeding under this chapter, a person claiming an exemption or an exception from a definition has the burden of proving this exemption or exception.

(b) In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception from a definition is on the person claiming the exemption or exception.

(c) In any action, civil or criminal, copies, photostatic or otherwise, certified by the Secretary of State of any documents filed in his office and of any of his records shall be admissible with the same effect as the original of such documents or records would have if actually produced.

(d) In any action, civil or criminal, a certificate signed and sealed by the Secretary of State, stating compliance or noncompliance with this chapter, shall constitute prima-facie evidence of such compliance or noncompliance with this chapter and shall be admissible in any such action.

History.
Code 1981, § 43-17-21, enacted by Ga. L. 1988, p. 490, § 1.

43-17-22. Provisions of chapter govern criminal or civil proceedings.

Any criminal proceeding or civil proceeding, including but not limited

to judicial review of all administrative orders, instituted under this chapter shall be governed by the provisions of this chapter as such provisions existed in full force and effect on the date of the alleged commission of the underlying facts or circumstances which constitute evidence of the commission of a crime or violation of this chapter, notwithstanding any subsequent amendment to this chapter, unless the General Assembly shall specifically declare otherwise, except that no civil or criminal proceeding shall be instituted after the lapse of the appropriate period of limitations which was in effect at the time the cause of action arose or the alleged commission of the crime occurred.

History.
Code 1981, § 43-17-22, enacted by Ga. L. 1988, p. 490, § 1.

43-17-23. Violations of chapter.

(a) Except as provided in subsection (b) of this Code section, any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.

(b) Any person who shall willfully violate subsection (d) of Code Section 43-17-12 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not less than one nor more than five years, or both.

(c) Nothing in this chapter shall limit any statutory or common-law right of the state to punish any person for violation of any law.

History.
Code 1981, § 43-17-23, enacted by Ga. L. 1988, p. 490, § 1.

CHAPTER 18

FUNERAL DIRECTORS AND ESTABLISHMENTS, EMBALMERS, AND CREMATORIES

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Funeral Directors and Establishments, Embalmers, and Crematories

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Cross references.

Prohibition against certain contracts and activities by insurers relating to provision of funeral services for insureds, § 33-1-10 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 A.L.R. 827.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Validity and construction of conditions

in title to burial lot or regulations by cemetery company as regards monuments, vaults, and the like, 174 A.L.R. 977.

Validity of statutes regulating preneed contracts for the sale or furnishing of burial services and merchandise, 68 A.L.R.2d 1251.

Validity and construction of statute, ordinance, or other regulation in relation to funeral directors and embalmers, 89 A.L.R.2d 1338.

Civil liability of undertaker for acts or omissions relating to corpse, 48 A.L.R.3d 240; 18 A.L.R.4th 858; 53 A.L.R.4th 360.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract, 54 A.L.R.4th 901.

ARTICLE 1

FUNERAL DIRECTORS AND ESTABLISHMENTS, EMBALMERS, AND CREMATORIES

Cross references.

Disposition of dead bodies generally, T. 31, C. 21.

Editor's notes.

Ga. L. 1990, effective April 11, 1990, repealed the Code sections formerly codified at this article and enacted the current article. The former article, pertaining to funeral directors, embalmers, and operators of funeral establishments, consisted of Code Sections 43-18-1 through 43-18-8 (Part 1 of Article 1), 43-18-20 through 43-18-23 (Part 2 of Article 1), 43-18-40 through 43-18-50 (Part 3 of Article 1), and 43-18-70 through 43-18-77 (Part 4 of Article 1). These Code sections were based on Ga. L. 1899, p. 70, §§ 1-9; Civil Code 1910, §§ 1712-1720; Penal Code 1910, § 411; Ga. L. 1916, p. 77, §§ 1, 3; Ga. L. 1925, p. 188, § 2; Ga. L. 1933, p. 132, §§ 1, 2, 5, 6, 9; Code 1933, §§ 84-801 — 84-812, 84-816, 84-819 — 84-823, 84-827 — 84-829, 84-9912, 84-9913; Ga. L. 1935, p. 485, §§ 1-3; Ga. L. 1943, p. 307, §§ 1, 2; Ga. L. 1950, p. 238, §§ 1-14, 17-20, 24-29; Ga. L. 1959, p. 359, § 1; Ga. L. 1960, p. 806, §§ 1-10; Ga. L. 1966, p. 377, § 1; Ga. L. 1967, p. 811, § 1; Ga. L. 1975, p. 1152, § 1; Ga. L. 1976, p. 233, §§ 1, 2; Ga. L. 1978, p. 1002, § 1; Ga. L. 1978, p. 1359, §§ 1-4; Ga. L. 1980, p. 1097, §§ 2-6; Code 1981, § 43-18-8; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 511, §§ 1-3.

Ga. L. 1990, p. 1372, § 2, not codified by the General Assembly, provides that: "nothing in this Act shall prohibit any funeral home director to conduct business outside of his or her county of residence."

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-1.

PART 1

GENERAL PROVISIONS

43-18-1. Definitions.

As used in this article, the term:

(1) "Alternative container" means any receptacle or enclosure which is of sufficient strength to be used to hold and to transport a dead human body.

(2) "Apprentice" means a person who practices embalming, funeral directing, or both, under the direct supervision of a funeral director, embalmer, or both, in this state.

(3) "Board" means the State Board of Funeral Service.

(4) "Casket" means a container which is designed for the encasement and viewing of a dead human body.

(5) "Cremation" means the reduction of the dead human body to residue by intense heat or any mechanical, chemical, thermal, or other professionally accepted process. Cremation also includes any other mechanical, chemical, thermal, or other professionally accepted process whereby human remains are pulverized, burned, recremated, or otherwise further reduced in size or quantity.

(5.1) "Cremation device" means a retort, vat, or container in which dead human bodies are cremated by traditional flame, alkaline hydrolysis, or other means approved by the board.

(6) "Crematory" means any place where cremation is performed, other than a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health for such purposes.

(7) "Direct supervision" means that the embalmer, funeral director, or both, are present overseeing the activities of the apprentice.

(8) "Embalmer" means a person who practices embalming or uses in connection with that person's name the words "embalmer," "licensed embalmer," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(9) "Final disposition" means the final disposal of a dead human body whether it is by, but not limited to, earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.

(10) "Funeral" or "funeral services" means the observances, services, or ceremonies held for dead human bodies and includes any service relating to the transportation, embalming, cremation, and interment of a dead human body.

(11) "Funeral director" means a person who practices funeral directing or uses in connection with that person's name or with a picture of that person the words "funeral director," "licensed funeral director," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(12) "Funeral director in full and continuous charge" means a funeral director who is approved by the board to assume full responsibility for the operations of a particular funeral establishment and who shall ensure that said establishment complies with this article and with all rules promulgated pursuant thereto.

(13) "Funeral establishment" means a place where embalming or funeral directing is practiced and which is open to the public and transacting business relating to funeral services.

(14) "Funeral merchandise" means the goods that may only be sold or offered for sale by a funeral director working in a funeral establishment and includes, but is not limited to, a casket or alternative container, but does not include an outer burial container or cemetery marker.

(15) "Funeral service contract" means a written or oral agreement between a funeral director or funeral establishment and a legally authorized person for the embalming, funeral, or final disposition of a dead human body.

(16) "Legally authorized person" means the deceased's surviving spouse, a son or daughter who is 18 years of age or older; the deceased's parent, a brother or sister who is 18 years of age or older; any other person who is 18 years of age or older and who is in the next degree of kinship to the deceased; the deceased's guardian or personal representative; or a public health officer.

(17) "Outer burial container" means an enclosure into which a casket is placed, including, but not limited to, a vault made of concrete, steel, fiberglass, or copper, a sectional concrete enclosure, a crypt, or a wooden enclosure.

(18) "Practice of embalming" means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(19) "Practice of funeral directing" means making or directing, at need or preneed, arrangements for the preparation and transportation of dead human bodies for final disposition and the supervision and direction of all funeral services.

(20) "Retort" means a furnace where dead human bodies are cremated.

(21) "Soliciting" means the making of any uninvited contact with another person by a funeral director or by a funeral director's agent, assistant, employer, or employee for the purpose of the sale of funeral services or merchandise but shall not mean any advertising which is directed to the public in general.

History.

Code 1981, § 43-18-1, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 1; Ga. L. 2002, p. 641, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2012, p. 625, § 3/HB 933; Ga. L. 2021, p. 342, § 1/HB 124.

The 2021 amendment, effective May 4, 2021, added paragraph (5.1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, a period was substituted for a semicolon at the end of paragraph (18).

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 200 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1950, pp. 238 and 240 are included in the annotations for this Code section.

Jurisdiction to perform services on hair of deceased persons is shared between funeral directors and cosmetologists. — Effect of 1966 amendments to the former Barbers' and Cosmetologists' Acts was to confer as between barbers and cosmetologists extra jurisdiction upon cosmetologists in regard to services performed upon hair of deceased persons; the extra jurisdiction conferred upon cosmetologists, however, is not absolute but must be considered as being shared with that of funeral directors. 1965-66 Op. Att'y Gen. No. 66-180 (decided under prior law).

Persons in business or profession of cremating dead human bodies are "funeral directors" and are engaged in "funeral directing" within the meaning of Ga. L. 1950, pp. 238, 240 (see now O.C.G.A. § 43-18-1). The places of business where persons engage in the business or profession of cremating dead human bodies are "funeral establishments". 1981 Op. Att'y Gen. No. 81-45.

Crematories are clearly subject to regulation under Ga. L. 1950, p. 238 et seq. (see now O.C.G.A. T. 43, C. 18). 1981 Op. Att'y Gen. No. 81-45.

RESEARCH REFERENCES

Am. Jur. 2d.

38 Am. Jur. 2d., Funeral Directors and Embalmers, § 1 et seq.

ALR.

Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 A.L.R. 827.

Construction and application of zoning regulations in connection with funeral homes, 92 A.L.R.3d 328.

43-18-2. Declaration of policy.

It is declared that this article shall be deemed an exercise of the health powers of the state for the prevention of the spread of infectious, communicable, and contagious diseases and for the protection of the sanitation, health, and welfare of the people of this state; and that all of this article and the regulations authorized to be made pursuant to it are necessary to effectuate its purpose.

History.

Code 1981, § 43-18-2, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-3. Practicing without complying with article.

(a) It shall be unlawful for any person to engage in the practice of embalming or to represent to the public that such person is an

embalmer, mortician, or undertaker without first complying with this article.

(b) It shall be unlawful for any person to engage in the business or profession of funeral directing or to represent to the public that such person is a funeral director, undertaker, or mortician without first complying with this article.

(c) Any person who actively engages or participates in any way in the business or profession of funeral directing shall be considered to be practicing as a funeral director and must be a licensed funeral director under the terms of this article.

History.
Code 1981, § 43-18-3, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-4. Unlicensed practice as constituting public nuisance; injunctions.

The practice of embalming or funeral directing, as defined in this article, is declared to be a business or profession affecting the public interest and involving the health and safety of the public. Such practice by a person who is not licensed to practice in this state is declared to be a public nuisance; and any citizen of this state, the board, or the appropriate prosecuting attorney where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action in the superior court of the county where such nuisance exists or is carried on to restrain and abate the same. On satisfactory proof to the judge of the superior court that such illegal practice or business of funeral directing or embalming is being carried on, the judge shall issue a temporary injunction against the party or parties operating such practice or business until they have qualified and been licensed under the terms of this article.

History.
Code 1981, § 43-18-4, enacted by Ga. L. 1990, p. 1372, § 1.

RESEARCH REFERENCES

ALR.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.
Funeral home as private nuisance, 8 A.L.R.4th 324.

43-18-5. Unlawful acts; exemption.

(a) It shall be unlawful for any person, firm, or corporation or any

officer, agent, or employee of such person, firm, or corporation to practice or hold out to the public that such person, firm, or corporation as practicing embalming or funeral directing, or to act as an embalmer or funeral director, or to assist in so doing as an apprentice, without having complied with this article, or to practice embalming or funeral directing without having paid the fee for license renewal prior to the expiration of that license as provided for in this article.

(b) Any person, firm, or corporation who has control of a funeral establishment or crematory and fails to obtain licensure as required by this article, upon conviction thereof, may be fined not less than $100.00 nor more than $500.00 for each violation. Each day that the funeral establishment or crematory is operated in violation of this article shall be deemed to be a separate and distinct offense.

(c) Any persons representing themselves as an embalmer or funeral director without having first complied with this article shall be deemed and considered guilty of practicing without a license and the use of these terms shall be prima-facie evidence of guilt.

(d) It shall be unlawful for any person, firm, or corporation or any officer, agent, or employee of such person, firm, or corporation engaged in the funeral or crematory business to give, or contract to give, either directly or indirectly, any reward, commission, compensation, or anything of value to any person, firm, or corporation for the purpose of, or as an inducement to, such person, firm, or corporation to persuade or induce any person to use or employ such funeral director or embalmer in or about the preparation for burial or conducting the burial of any deceased person.

(e) It shall be unlawful for any funeral director, embalmer, firm, or corporation, or any officer, agent, or employee of such person, firm, or corporation engaged in the funeral business for compensation or otherwise to influence, or attempt to influence, by persuasion, argument, or suggestion, the family or friends of any deceased person as to where the body should or should not be buried.

(f) It shall be unlawful for any funeral establishment, funeral director, or embalmer to refuse to release a dead human body to a legally authorized person upon request of that person, but the release of such body shall not constitute a release of any indebtedness or other claim owed for any services performed on that body by the person or entity releasing that body.

(g) Accredited colleges of funeral service and those otherwise approved by the board are authorized to perform on-campus embalming operations subject to satisfying inspection standards as established by the board. Nothing in this article shall require any person who is currently enrolled full time or part time in a program at an accredited

college of funeral service or such other college as provided by rule to be licensed or registered as provided in this article when obtaining practical training in embalming or funeral directing under the supervision of a licensed embalmer, funeral director, or both, at such college or at a funeral establishment; provided, however, that any licensed embalmer, funeral director, or both, who supervise such student shall be responsible for the acts of such student.

History.
Code 1981, § 43-18-5, enacted by Ga. L. 1990, p. 1372, § 1.
Cross references.
False or fraudulent advertising, § 10-1-420 et seq.
Requirements regarding disposition of dead bodies generally, T. 31, C. 21.

43-18-6. Penalty.

Any person, firm, or corporation or any officer, agent, or employee of such person, firm, or corporation who violates this article shall be guilty of a misdemeanor.

History.
Code 1981, § 43-18-6, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-7. [Reserved] Termination.

History.
Ga. L. 1990, p. 1372, § 1; repealed by Ga. L. 1992, p. 3137, § 15, effective July 1, 1992.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.
Editor's notes.
Ga. L. 1992, p. 3137, § 15 repealed and reserved this Code section, effective July 1, 1992.

43-18-8. Identification of body or remains of deceased; affidavit required for cremated remains.

(a)(1) The funeral director or person in charge of final disposition of a dead body shall, prior to the interment or cremation of such dead body, affix on the ankle or wrist of the deceased a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the serial number of any prosthesis removed from the dead body by the funeral establishment or crematory.

(2) No funeral director in charge of a crematory shall permit any dead body to be on the premises of the crematory without the dead body being identified as provided by this subsection, except when the body is placed in a cremation device; and the tag shall be removed

from the body and kept in a regular location near the cremation device during cremation and thereafter placed atop the cremated remains on the inside of the vessel and any liner therein. The vessel containing cremated remains shall be plainly labeled on the outside so as to identify the deceased with the same information, excluding social security number, as is required to be on the tag inside the vessel and so as to identify the name of the person or firm to which such remains are to be delivered or released.

(3) Tags and labels used for purposes of this subsection shall be in such standard forms as prescribed by the board. If the religious faith of the deceased prohibits such means of identification, alternative means of identification of the body may be used.

(b) A crematory may deliver or release cremated remains to a funeral establishment or a legally authorized person. The funeral director in charge of a crematory shall provide to the funeral establishment or legally authorized person to whom cremated remains are delivered or released, at the time of such delivery or release, a written statement, on such standard form as prescribed by the board, signed and verified by such funeral director before a person authorized to administer oaths and attesting that the vessel contains substantially the remains of the deceased identified in accordance with subsection (a) of this Code section.

(c) No funeral establishment shall accept or take delivery of any cremated remains from any crematory unless the vessel containing such remains is labeled as required by paragraph (2) of subsection (a) of this Code section and is accompanied by the affidavit required by subsection (b) of this Code section, which vessel and affidavit shall be provided by the funeral establishment to a legally authorized person upon delivery or release of the cremated remains.

History.

Code 1981, § 43-18-8, enacted by Ga. L. 1995, p. 839, § 1; Ga. L. 2002, p. 641, § 4; Ga. L. 2021, p. 342, § 2/HB 124.

The 2021 amendment, effective May 4, 2021, in the first sentence of paragraph (a)(2), substituted "a cremation device" for "the retort" in the middle and substituted "cremation device" for "retort" near the end.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, "the" was inserted preceding "person" near the end of paragraph (a)(2).

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 200 (2002).

For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

43-18-9. Disposition of veterans' cremated remains.

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

(1) "Veteran" means a resident of this state who qualifies as a veteran under the rules of the United States Department of Veterans

Affairs and who was discharged under conditions other than dishonorable.

(2) "Veterans' organization" means the Department of Veterans Service, the National Cemetery Administration's National Cemetery Scheduling Office, or any association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States Congress, such as the American Legion, the Legion of Honor, the Patriot Guard, the Missing in America Project, and the Vietnam Veterans of America.

(b) The funeral director shall make a reasonable effort to determine whether any dead body submitted for final disposition by cremation is that of a deceased veteran.

(c) The funeral director shall, at the time the cremation authorization form is signed:

(1) Inquire as to whether the legally authorized person has information or belief as to whether the deceased is a veteran; and

(2) Notify the legally authorized person of the responsibilities of the funeral director under this Code section.

(d) If the funeral director is unable to determine with certainty whether the deceased was a veteran through an inquiry with the legally authorized agent, then any veterans' organization shall be allowed access to all information available from the United States Department of Veterans Affairs regarding the deceased in the possession of the funeral director in charge of the crematory so that any veterans' organization may attempt to determine whether the deceased is a veteran. If any veterans' organization that is allowed access to information pursuant to this Code section discovers that the deceased is a veteran, the veterans' organization shall notify the funeral director.

(e)(1) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, then such funeral director shall immediately notify the legally authorized person of such finding and shall advise that the deceased person may be eligible to be interred at an appropriate veterans' cemetery.

(2) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, and the cremated remains are not claimed by a legally authorized person, then the funeral director shall hold any such cremated remains for at least 60 days. After 60 days, the funeral director shall send written notice to the legally authorized person who signed the cremation authorization form requesting disposition instructions. If the funeral director does

not receive a written response from the legally authorized person within 30 days of sending a written notice, then the funeral director shall contact a veterans' organization so that arrangements for the disposition of the cremated remains of the veteran may be made in a state or national veterans' cemetery.

(f) Nothing in this Code section shall delay the authorized cremation of a deceased's remains.

(g)(1) A funeral director complying with this Code section shall be immune from any criminal or civil liability regarding:

(A) The determination of a deceased's status as a veteran;

(B) The release of information relating to the determination of a deceased's status as a veteran;

(C) The availability of interment or inurnment for a deceased veteran; or

(D) The release of cremated remains to a veterans' cemetery.

(2) A funeral director shall be immune from civil liability for any act or omission under this Code section except for willful or wanton misconduct.

(h) A veterans' organization shall be immune from civil liability for any act or omission related to the disposition of cremated remains under this Code section except for willful or wanton misconduct.

History.
Code 1981, § 43-18-9, enacted by Ga. L. 2012, p. 881, § 2/SB 372.
Editor's notes.
Ga. L. 2012, p. 881, § 1/SB 372, not codified by the General Assembly, provides: "This Act shall be known as and may be cited as the 'Disposition of Veterans' Cremated Remains Act.' "

43-18-10. Investigation of complaints; notice of potential illegalities to Attorney General and local sheriff; review by Attorney General.

Any complaints received by the board shall be investigated within 30 days of receipt. If such investigation shows that there may be a violation of Code Section 10-14-17 or 10-14-18 or any felony violation of state or federal criminal law, there shall be an affirmative obligation on behalf of the board to provide notice of such potential illegalities within seven days to the Attorney General's office and to the sheriff's office in the county in which any of the illegalities are believed to have occurred in whole or in part. Upon receiving such notification, the Attorney General shall within a reasonable time period not to exceed 60 days conduct a review of such complaint and provide the appropriate prosecuting attorney within any jurisdiction in which any illegalities are believed to have occurred, in whole or in part, with relevant

information uncovered during the course of the investigation that the prosecuting attorney requests.

History.
Code 1981, § 43-18-10, enacted by Ga. L. 2021, p. 382, § 3/HB 354.

Effective date.
This Code section became effective May 4, 2021.

Part 2

State Board of Funeral Service

43-18-20. Continuation of board.

The State Board of Funeral Service existing immediately prior to April 11, 1990, is continued in existence and shall be constituted as provided in this article with the powers, duties, and authority vested in such board by this article.

History.
Code 1981, § 43-18-20, enacted by Ga. L. 1990, p. 1372, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "April 11, 1990," was substituted for "the effective date of this article".

43-18-21. Composition of board; qualifications of members; vacancies; removal of members.

(a) The board shall consist of six members who shall be licensed and practicing funeral directors and embalmers with a minimum of five years as such in this state immediately preceding their appointment and one member who shall have no connection whatsoever with the funeral service industry but who shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) The members of the board shall be appointed by the Governor for terms of office of six years and all vacancies occurring on the board shall be filled by the Governor. When an appointment is made to fill a vacancy caused by death or resignation of a member, such appointment shall be for the remainder of the unexpired term of the member whose death or resignation caused the vacancy so filled.

(c) A majority of the members of the board may remove any member who misses three or more consecutive regular meetings of the board without a medical reason and may declare that position on the board to be vacant. A member so removed shall not be eligible for reappointment until the expiration of the term of office for which such person was serving. The Governor shall have the power to remove from office any

member of the board for willful neglect of duty or for conviction of a crime involving moral turpitude.

(d) Those persons serving as members of the board immediately prior to April 11, 1990, shall continue to serve out the respective terms of office for which they were appointed and until their respective successors are appointed and qualified.

History.
Code 1981, § 43-18-21, enacted by Ga. L. 1990, p. 1372, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "April 11, 1990," was substituted for "the effective date of this article" in subsection (d).

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Governor, § 4 et seq.

43-18-22. Election of president; meetings; reimbursement of members; conflict of interest.

(a) The board shall each year elect from its members a president whose term shall be one year and who shall serve during the period for which elected and until a successor shall be elected.

(b) The board shall meet at least once in each year and more often as the proper and efficient discharge of its duties may require.

(c) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) No board inspector shall own, operate, or be employed by any funeral establishment or crematory, or perform any services on behalf thereof without prior approval by the board and the division director. However, this shall not prohibit any board member from acting as an inspector as authorized in this article.

History.
Code 1981, § 43-18-22, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2000, p. 1706, § 19.

OPINIONS OF THE ATTORNEY GENERAL

Inspectors holding office in private associations. — State Board of Funeral Service Inspectors appointed pursuant to O.C.G.A. Ch. 18, T. 43 are not prohibited by state law from holding appointed or elected office in private associations of funeral service practitioners. However, serving as an officer in such private association could create an appearance of impropriety by competing loyalties which may be owed to the association and to the board. 1990 Op. Att'y Gen. No. 90-25.

43-18-23. Powers and duties; rules and regulations; seal.

For the purpose of better protection of life and health, preventing the spread of contagious, communicable, and infectious diseases, and regulating the practice of embalming and funeral directing and the care and disposition of dead human bodies, the board is authorized:

(1) To prescribe a standard of proficiency as to the qualifications and fitness of those engaged in and who may engage in the practice of embalming or funeral directing and the care and disposition of dead human bodies;

(2) To revoke the license of any embalmer or funeral director for incompetency, conviction of a crime involving moral turpitude, violation of this article, failure to observe the standards of proficiency or rules and regulations promulgated by the board, or any other cause as provided in this article;

(3) To fix and prescribe rules and regulations governing the business or profession of funeral directing and the business or profession of embalming;

(4) To fix and prescribe standards of sanitation to be observed in the embalming of dead human bodies or cremation of dead human bodies;

(5) To regulate and control the business or profession of funeral directing or embalming;

(6) To fix and prescribe minimum standards of general appearance of funeral establishments or crematories;

(7) To adopt a common seal; and

(8) To make and promulgate rules and regulations not inconsistent with the laws of this state for the regulation of such board and for the practice of embalming and funeral directing within this state. All rules and regulations of the board existing immediately prior to April 11, 1990, which are not inconsistent with this article shall continue in effect until repealed, amended, or otherwise changed by the board.

History.

Code 1981, § 43-18-23, enacted by Ga. L. 1990, p. 1372, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "April 11, 1990," was substituted for "the effective date of this article" in the second sentence of paragraph (8).

Administrative rules and regulations.

Rules for funeral service, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Funeral Service, Chapter 250-1 et seq.

RESEARCH REFERENCES

ALR.
Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

PART 3

LICENSES FOR FUNERAL DIRECTORS AND EMBALMERS

Administrative rules and regulations.
Establishment, crematory licensure and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-6.

43-18-40. Application for license; examination.

Any person desiring to engage in the practice of embalming or in the business or practice of funeral directing and who has not been licensed to do so shall make written application to the board through the division director for such license. Such application shall be upon such form and shall be submitted in such manner as shall be prescribed by the board and the applicant shall pay such fee as may be fixed by the board. Before being issued a license to practice funeral directing or embalming in this state, all applicants shall pass an examination approved by the board which tests their qualifications and skill in either funeral directing or embalming, or both, as the case may be; and such examination shall be made in the manner provided for in this article and by the board through rules and regulations.

History.
Code 1981, § 43-18-40, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2000, p. 1706, § 19.

43-18-41. Qualifications of embalmer or funeral director applicants.

(a) Each applicant for a license as either an embalmer or a funeral director shall:

(1) Be at least 18 years of age;

(2) Be of good moral character; and

(3) Have graduated from a high school or have earned a state approved high school equivalency (HSE) certificate.

(b) In addition to the qualifications set out in subsection (a) of this Code section, an applicant for an embalmer's license shall:

(1) Have graduated from a program at an accredited college of funeral service or such other college as provided by board rule; and

(2) Have completed a minimum of 3,120 hours, pursuant to rules

and regulations of the board, of service as an apprentice as provided in Code Sections 43-18-50 through 43-18-54.

(c) In addition to the qualifications set out in subsection (a) of this Code section, an applicant for a funeral director's license shall have, prior to the issuance of said license, a valid embalmer's license; shall furnish an affidavit which lists the names of the 50 funerals at which the apprentice assisted as provided in Code Section 43-18-50; and, effective January 1, 1991, must pass an examination approved by the board which tests knowledge of the law of this state relating to funeral directors.

(d) An individual who has met the educational requirement specified in paragraph (1) of subsection (b) of this Code section shall be eligible to take the section of the examination for embalmer relating directly to scholastic training without waiting until such individual meets the additional requirements for licensure specified in paragraph (2) of said subsection; provided, however, that such individual must submit a proper application and pay the required fees as determined by the board. An applicant for licensure as an embalmer who shall have successfully completed the section of the examination for embalmer relating directly to scholastic training shall have no status as an embalmer until such applicant meets all other requirements for licensure as outlined in this article and has received a license as an embalmer from the board.

History.

Code 1981, § 43-18-41, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 2762, § 2; Ga. L. 1998, p. 1322, § 1; Ga. L. 2010, p. 266, § 22/SB 195; Ga. L. 2022, p. 168, § 10(5)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general education development" in paragraph (a)(3).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-809, have been included in the annotations for this Code section.

Rationale behind former Code 1933, § 84-809 was that unless a human body was properly embalmed and buried or cremated, the body may become a health hazard. Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213, 1972 Ga. App. LEXIS 1009 (1972) (decided under former Code 1933, § 84-809).

Services involving handling of corpses cannot be delegated or contracted to unlicensed individual. Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213, 1972 Ga. App. LEXIS 1009 (1972) (decided under former Code 1933, § 84-809).

Distinction between delegable and nondelegable duties. — One must distinguish between portions of funeral director's work which are directly aligned with the director's statutory professional responsibility of embalming and burial and those responsibilities the director assumes because of social mores. The former is fixed by statute to avoid health hazards; the latter is decreed by society because of

culture and customs. Preparations made for relatives and friends to attend funeral services clearly fall under the latter category and no health hazard is involved. Therefore, an independent contractor may prepare a burial site including placement of artificial grass carpeting. Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213, 1972 Ga. App. LEXIS 1009 (1972) (decided under former Code 1933, § 84-809).

Preparation of burial site can be delegated. — Work of independent contractor of preparing burial site, including placing artificial grass, chairs, and normal burial equipment, does not come within professional category such as embalming and corpse preparations which must be performed by individual professional licensee. Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213, 1972 Ga. App. LEXIS 1009 (1972) (decided under former Code 1933, § 84-809).

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-18-42. Reciprocity; examination upon meeting qualifications.

(a) The board may, in its discretion and in accordance with regulations adopted by the board, grant to any person licensed in another state, territory, country, or District of Columbia full privileges to engage in equivalent practice authorized by this article without taking a national examination if:

(1)(A) On or after January 1, 1991, such person successfully passes an examination approved by the board which tests knowledge of the law of this state relating to funeral directors; and

(B) Such person satisfied in another state, territory, country, or District of Columbia the requirements for licensure which are:

(i) In effect in Georgia on the date of application; or

(ii) Substantially equal to the requirements for a similar license in Georgia; or

(2) Such person seeking a license pursuant to this Code section has engaged in the active practice of funeral service as a licensed funeral director and embalmer for three years immediately preceding his or her application for a license in Georgia.

(b) Nothing in this Code section shall be construed to prevent an applicant denied pursuant to this Code section from taking the examination for licensure pursuant to this article if that applicant otherwise meets the qualifications set out in Code Section 43-18-41.

History.

Code 1981, § 43-18-42, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2007, p. 552, § 1/HB 90; Ga. L. 2010, p. 266, § 23/SB 195.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

43-18-43. Biennial renewal of licenses.

(a) Each license issued by the board shall expire biennially.

(b) If the licensee desires a renewal of such license, the board shall grant and issue the same without further examination upon application therefor and upon the payment of a renewal fee to be fixed by the board.

History.
Code 1981, § 43-18-43, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-43.1. Application for reinstatement of licensure.

If a licensee who has passed the examination for licensure as a funeral director required under this part and who has not been subject to disciplinary action by the board allows his or her license to lapse for a period of not more than ten years, the board shall reinstate such funeral director's license upon such applicant for reinstatement:

(1) Paying the total amount of all renewal fees for the period during which the license was lapsed, plus a reinstatement fee not to exceed the amount of the biennial renewal fee; and

(2) Successfully completing continuing education hours as the board may require under Code Section 43-18-56, unless such continuing education hours would be waived under subsection (c) of Code Section 43-18-56, if such applicant for reinstatement had not let the license lapse.

History.
Code 1981, § 43-18-43.1, enacted by Ga. L. 2022, p. 650, § 1/HB 1193.

Effective date.
This Code section became effective May 9, 2022.

43-18-44. Display of renewal license, wall certificate, or apprentice registration in office or place of business.

Each person or establishment who receives a renewal license, wall certificate, or apprentice registration under this article shall display such renewal license, wall certificate, or apprentice registration in a conspicuous place in that person's or establishment's principal office or place of business.

History.
Code 1981, § 43-18-44, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-45. Transferability of licenses.

All funeral director and embalmer licenses and apprentice registrations issued under this article shall apply only to the person receiving same and shall not be transferred or assigned.

History.
Code 1981, § 43-18-45, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-46. Grounds for denial or revocation of license or registration; other discipline.

In addition to the authority provided in Code Section 43-1-19, the board may refuse to grant a license to operate a funeral establishment or to practice embalming or funeral directing, may refuse to grant a registration to serve as an apprentice, or may revoke, suspend, fine, or otherwise discipline a licensee or registrant upon any of the following grounds:

(1) The employment of fraud or deception in applying for a license or registration or in passing the examination provided for in this article;

(2) Issuance of a license or registration through error;

(3) Conviction of a crime involving moral turpitude;

(4) The practice of embalming or funeral directing under a false name or the impersonation of another embalmer, funeral director, or apprentice of a like or different name;

(5) The making of a false statement or representation regarding the qualifications, training, or experience of any applicant;

(6) The making of a misrepresentation of any kind regarding any funeral merchandise;

(7) Directly or indirectly, by gifts or otherwise, committing the offense of buying business or paying a commission or making gifts, directly or indirectly, for the purpose of securing business to any physician or hospital, or to any institution where death occurs, or to any hospital superintendent, nurse, intern, or employee of any hospital, nursing home, or other institution where death occurs; or to any coroner or other government official;

(8) Gross or willful malpractice or gross neglect in the practice of embalming, funeral directing, or cremating;

(9) Signing a death certificate as having embalmed or prepared a body for burial or preservation when in fact someone else performed such embalming or preparation;

(10) Interfering, either directly or indirectly, with a licensed embalmer or funeral director having legal charge of a dead human body;

(11) Using any statements that mislead or deceive the public including, but not limited to, false or misleading statements regarding a legal or cemetery requirement, funeral merchandise, funeral services, or in the operation of a funeral establishment;

(12) Failing to fulfill the terms of a funeral service contract;

(13) Disregarding a decedent's dignity, right to privacy, or right to confidentiality unless compelled by law to do otherwise;

(14) Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed;

(15) Failing to turn assigned benefits in excess of charges incurred over to the assignee of the deceased within ten working days of receipt of the assigned funds;

(16) Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody;

(17) Failing to have the charges rendered to be in compliance with those listed in the funeral establishment general price list, the casket price list, the outer burial container list, or the funeral service contract price list;

(18) Aiding or abetting an unlicensed person to practice under this article;

(19) Promoting or participating in a burial society, burial association, burial certificate plan, or burial membership plan;

(20) Soliciting, as defined in paragraph (21) of Code Section 43-18-1;

(21) Presenting a false certification of work done by an apprentice or as an apprentice;

(22) Willfully violating any state law or regulation; Federal Trade Commission law or regulation; Occupational Safety and Health Administration law or regulation; Department of Public Health law or regulation; Environmental Protection Agency law or regulation; or municipal or county ordinance or regulation that affects the han-

dling, custody, care, or transportation of dead human bodies, including, but not limited to, the disposal of equipment, residual fluids, or medical wastes;

(23) Knowingly making any misleading, deceptive, untrue, or fraudulent representation in the practice of funeral directing or embalming or in any document connected therewith;

(24) Discriminating in the provision of services because of race, creed, color, religion, gender, or national origin;

(25) Failing to safeguard all personal properties that were obtained from dead human remains and failing to dispose of same as directed by a legally authorized person;

(26) Failing to refund moneys due as a result of overpayment by an insurance company or other third party;

(27) Engaging in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or registrant to practice in the funeral business, or is of a nature likely to jeopardize the interest of the general public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of funeral directing or embalming but shows that the person has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from or failure to conform to the minimal reasonable standards of acceptable and prevailing practice of funeral services;

(28) Engaging in any practice whereby a person who is both a funeral director and a coroner or who is both a funeral director and a minister presents that person as a funeral director to a legally authorized person when death is imminent or after death occurs prior to when the legally authorized person selects a funeral director or funeral establishment which will handle the dead human body;

(29) Practicing embalming or funeral directing or operating a funeral establishment or crematory prior to the board's having approved an application for licensure; or

(30) Failing to satisfy the funeral director in full and continuous charge requirements as set out in Code Section 43-18-71 or funeral establishment requirements as set out in Code Section 43-18-70.

History.

Code 1981, § 43-18-46, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-18-47. Revocation hearing; service on licensee or applicant; revocation or restriction of license or registration.

(a) Upon the presentation before the board of any of the grounds enumerated in Code Section 43-18-46 or elsewhere in this article for revoking a license or registration, it shall be the duty of the board to cause written notice of the time and place of hearing upon the charge preferred, together with a copy of the charge, to be served upon the licensee or applicant for license, as the case may be, 20 days before the hearing.

(b) The board shall conduct such hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The board may, upon satisfactory proof that a licensee or registrant has been guilty of any of the offenses enumerated in Code Section 43-18-46 or elsewhere in this article revoke a license or registration or may limit or restrict a license or registration upon a majority vote of the board after a hearing thereon.

History.
Code 1981, § 43-18-47, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-48. Refusal to grant license or registration.

The board may refuse to grant a license or registration. Refusal to grant a license or registration shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-18-48, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-49. Reinstatement of revoked license.

At any time after the final termination of the proceeding revoking a license, the board may, by a majority vote, issue a new license to a person affected restoring and conferring all the rights and privileges of and pertaining to the practice of embalming or funeral directing, as defined and regulated by this article. Any person desiring a new license shall be held to the same requirements as are persons who have not previously been licensed as such in this state.

History.
Code 1981, § 43-18-49, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-50. Application for funeral service apprenticeship; period of apprenticeship.

(a) Every person desiring to serve as an apprentice shall make application as a funeral service apprentice to the board upon a form provided by the board. The applicant must be at least 18 years of age and have either graduated from high school or have a state approved high school equivalency (HSE) certificate. The apprenticeship shall be served at an approved establishment and under the direct supervision of a funeral director, embalmer, or both. The application must be verified by oath of applicant and be accompanied by a fee to be established by the board. The application shall be submitted to the board and may be accepted or rejected by a majority of the board.

(b) An apprenticeship shall be approved for a specific establishment and under a specific supervising funeral director, embalmer, or both. Any change in establishment or supervising funeral director, embalmer, or both shall terminate that apprenticeship and shall require submission of a new application.

(c) The total period of apprenticeship shall be 3,120 hours and must be served in a minimum of 18 months, but the minimum period shall be in addition to the time required to graduate from a college of funeral service or other college pursuant to paragraph (1) of subsection (b) of Code Section 43-18-41. An apprentice shall be authorized to earn apprenticeship hours in an amount to be determined by the board while attending a postgraduate school or a program at an accredited college of funeral service or other college approved by the board.

History.

Code 1981, § 43-18-50, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 1322, § 2; Ga. L. 2012, p. 625, § 5/HB 933; Ga. L. 2022, p. 168, § 10(6)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educational development" in the second sentence in subsection (a).

Cross references.

High-demand Career Initiatives Program, § 20-4-150 et seq.

43-18-51. Renewal of registration of apprenticeship.

A registration of apprenticeship shall be renewable biennially upon payment of the renewal fee as provided by the board. Failure to renew a registration shall be the same as a revocation and such apprentice may be reregistered as provided in Code Section 43-18-54. The hours served after a registration has been revoked will not be carried forth into any subsequent apprenticeship period.

History.

Code 1981, § 43-18-51, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 2762, § 3; Ga. L.

1998, p. 1322, § 3; Ga. L. 2022, p. 650, § 2/HB 1193.

The 2022 amendment, effective May 9, 2022, deleted "but shall not be renewed more than two times" from the end of the first sentence.

43-18-52. Supervision and control of apprentices; reporting hours served.

All apprentices shall be under the supervision and control of the board and shall upon application for licensure submit to the board proof of having served the required number of hours on forms provided by the board. After completing the 3,120 hours for apprenticeship within the specified period, they shall send the last report to the board regardless of the date. The information contained in the report shall be certified as correct by the funeral director in full and continuous charge and by the supervising funeral director and embalmer.

History.
Code 1981, § 43-18-52, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1998, p. 1322, § 3.

43-18-53. Leaves of absence during apprenticeship.

(a) The board may grant leaves of absence for good cause, and grant extensions thereof to apprentices registered under the provisions of this article. However, no credit shall be given for the period during which the apprentice is on such leave, and no more than an aggregate of four years of such leave shall be granted to any person. Application for leave of absence and for extension thereof shall be made by the apprentice upon a form provided by the board.

(b) Upon the termination of a leave of absence or of any extension thereof, if the apprentice resumes the apprenticeship at the same establishment and under the same funeral director in full and continuous charge and under the same funeral director, embalmer, or both, the apprentice shall report to the board the fact of having so resumed the duties as an apprentice. Such notice must be certified to by each of the aforementioned funeral directors and embalmers. An apprentice who fails to provide such notice within 30 days after the end of the leave of absence may not enter those hours on the apprenticeship report form.

(c) Upon the termination of a leave of absence or of any extension thereof, if the apprentice seeks to serve at a different facility or under different personnel, a new application and fee must be submitted.

History.
Code 1981, § 43-18-53, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-54. Refusal to grant apprenticeship registration; grounds for suspension, revocation, limitation of, or refusal to renew registration; reregistration.

(a) Refusal to grant an apprenticeship registration shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The board shall be authorized to suspend, revoke, limit, or refuse to renew a registration of apprenticeship, after notice and hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," upon a finding by a majority of the board of any of the following:

(1) Engaging in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the apprentice to practice in the funeral business, or is of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of funeral directing or embalming but shows that the apprentice has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of funeral services;

(2) Being on duty as an apprentice while under the influence of alcohol or illegal drugs;

(3) Being unable to practice with reasonable skill and safety to the public by reason of a physical or mental condition;

(4) Being convicted of a felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country, or in the courts of the United States, regardless of whether first offender treatment without an adjudication of guilt was given or whether an adjudication of guilty or sentence was otherwise withheld or not entered on the charge. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt or plea of guilty or probation relating to first time offenders; and "felony" shall include any offense which, if committed in this state, would be deemed a felony;

(5) Disobeying proper orders or instructions of that apprentice's supervising embalmer, funeral director, or both;

(6) Violating any provision of this article or rule or regulation of the board made pursuant to this article; or

(7) Practicing fraud or misrepresentation in obtaining a certificate of registration as an apprentice or knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of funeral service or on any document connected therewith while registered as an apprentice.

(c) An apprentice who has failed to renew that person's registration or who has had that person's registration suspended or revoked may, within one year after such expiration, suspension, or revocation, make application for registration. An applicant for reregistration whose previous apprenticeship was revoked for failure to renew may be granted full credit for the time previously served prior to expiration. An applicant for reregistration whose previous apprenticeship was suspended or revoked upon any of the grounds set forth in subsection (b) of this Code section, however, may be granted credit for no more than 75 percent of the time previously served prior to the disciplinary action. In all other cases regarding applicants for reregistration, the board may, when the circumstances warrant, allow an apprentice credit under a reregistration for time actually served under a previous registration.

History.

Code 1981, § 43-18-54, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 4; Ga. L. 2022, p. 650, § 3/HB 1193.

The 2022 amendment, effective May 9, 2022, deleted "but no more than two such applications may be approved by the board" from the end of the first sentence of subsection (c).

43-18-55. Continuing education requirements for embalmers.

(a) The board shall be authorized to require persons seeking renewal of an embalmer's license under this chapter to complete board approved continuing education of not less than ten hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations or by others the board deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under other such circumstances as the board deems appropriate.

(c) The continuing education requirement pursuant to this Code section shall be waived for persons who hold an inactive license or for licensed individuals over the age of 65.

(d) An embalmer who is also a licensed funeral director and who completes the continuing education requirements for funeral directors pursuant to Code Section 43-18-56 shall not be required to complete additional continuing education requirements pursuant to this Code section.

(e) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(f) This Code section shall apply to each licensing renewal cycle which begins after the 1996 renewal.

History. Code 1981, § 43-18-55, enacted by Ga. L. 1995, p. 853, § 1; Ga. L. 1996, p. 6, § 43.

43-18-56. Continuing education requirements for funeral directors.

(a) The board shall be authorized to require persons seeking renewal of a funeral director's license under this chapter to complete board approved continuing education of not less than ten hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations or by others the board deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under other such circumstances as the board deems appropriate.

(c) The continuing education requirement pursuant to this Code section shall be waived for persons who hold an inactive license or for licensed individuals over the age of 65.

(d) A funeral director who is also a licensed embalmer and who completes the continuing education requirements established for embalmers pursuant to Code Section 43-18-55 shall not be required to complete additional continuing education requirements pursuant to this Code section.

(e) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(f) This Code section shall apply to each licensing renewal cycle which begins after the 1996 renewal.

History. Code 1981, § 43-18-56, enacted by Ga. L. 1995, p. 853, § 1; Ga. L. 1996, p. 6, § 43.

Part 4

Operation of Funeral Establishments and Crematories

Administrative rules and regulations. Establishment, crematory licensure and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-6.

43-18-70. Practice at licensed funeral establishment or crematory; facilities; living quarters.

(a) No embalmer or funeral director shall engage in the practice of embalming or funeral directing at a funeral establishment or crematory which is not licensed by the board.

(b) A funeral establishment must be at a specified street address or location and must have the following minimum facilities and equipment:

(1) A room with adequate seating for a minimum of 30 people in which funeral services may be conducted;

(2) A preparation room equipped with a nonporous, sanitary floor and walls, and necessary drainage and ventilation and containing necessary instruments and supplies for the preparation and embalming of dead human bodies;

(3) A display room containing actual caskets or models, mock-ups, or sections of caskets or similar items if all such caskets are available and in stock for purchase at the establishment or can be delivered within 24 hours. Each funeral establishment shall maintain on the premises at each of its locations an adequate stock of funeral caskets which shall not be less than eight and which shall meet such other criteria as necessary to protect the public;

(4) At least one operable motor hearse which is either owned or leased by the establishment and which has a current Georgia registration; and

(5) At least one church truck.

(c) The board may adopt and enforce such rules as may be reasonable and proper to define such necessary drainage, ventilation, and sanitary flooring and walls and necessary and suitable instruments, supplies, and merchandise in a funeral establishment.

(d) If the funeral director resides in the funeral establishment to be accessible to the community for purposes of satisfying the requirements of funeral director in full and continuous charge, the living quarters in the funeral establishment must include at a minimum furnished sleeping quarters, cooking, refrigerating, and bathing facilities.

History.

Code 1981, § 43-18-70, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2007, p. 552, § 2/HB 90.

Editor's notes.

Ga. L. 1990, p. 1372, § 2, not codified by the General Assembly, provides that: "Nothing in this Act shall prohibit any funeral home director to conduct business outside of his or her county of residence."

43-18-71. Funeral establishments and crematories to be licensed and to employ licensed funeral director; display of name and license of funeral director.

(a) It shall be unlawful for any person, firm, corporation, or association to operate a funeral establishment or crematory engaged in the business of funeral directing or embalming or cremating without first obtaining a license from the board in accordance with this article. The board shall not issue a license to any funeral establishment or crematory unless such funeral establishment or crematory shall employ the service of a funeral director licensed in accordance with this article, who shall be in full and continuous charge of the establishment and who is a resident of this state. There shall be conspicuously displayed in each funeral establishment and crematory the name and license of the funeral director in full and continuous charge. A funeral director who is in full and continuous charge shall:

(1) Assume full responsibility for the supervision and operation of the funeral establishment for which that person has been designated as funeral director;

(2) Act as funeral director for only one funeral establishment; and

(3) Spend a minimum of 40 hours per week in the employ and operation of the establishment and be accessible and available to the community.

(b) When there is a change in the funeral director in full and continuous charge, such change shall be reported to the board in writing within five days of the effective date of such change. The board may request the new funeral director in full and continuous charge and owner to appear before the board to determine if the requirements for a funeral director in full and continuous charge have been met.

History.
Code 1981, § 43-18-71, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 5.

OPINIONS OF THE ATTORNEY GENERAL

Trade name of funeral home need not contain surname of person licensed to conduct business; name of licensed person must be conspicuously displayed in the establishment. 1965-66 Op. Att'y Gen. No. 65-105.

RESEARCH REFERENCES

ALR.
Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

Recovery back of money paid to unlicensed person required by law to have

occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-18-72. Crematories to be licensed; equipment, facilities, and personnel; application; reports; limitation of single body in cremation device.

(a)(1) It shall be unlawful for any person, firm, corporation, or association to operate a crematory without first obtaining a separate license for such purpose from the board in accordance with this article. The crematory must be at a specific address or location and must meet the following requirements and have the following minimum equipment, facilities, and personnel:

(A) A room with seating for a minimum of 30 people in which funeral services may be conducted;

(B) A display room containing an adequate supply of urns;

(C) Rolling stock consisting of at least one operable motor hearse either owned or leased by said firm with current Georgia registration;

(D) At least one operable cremation device;

(E) At least one operable processing station for grinding of cremated remains;

(F) At least one church truck; and

(G) Not be located within 1,000 feet of a residential subdivision platted and recorded in the office of the clerk of the superior court of a county in which such residential subdivision is located.

(2)(A) The provisions of subparagraphs (A), (B), and (F) of paragraph (1) of this subsection shall not apply to crematories which provide cremation services only to other funeral establishments.

(B) The provision of paragraph (G) of paragraph (1) of this subsection shall only apply to the issuance or renewal of any license on or after July 1, 2009, for any stand-alone crematory that was not in operation as of July 1, 2009. For purposes of this subparagraph, the term "stand-alone crematory" shall mean a crematory that is not located on or adjacent to a tract or parcel of land which contains a funeral establishment.

(b) The board may adopt and enforce such rules and regulations as may be reasonable and necessary to provide for the sanitary disposal of dead human bodies and prevent the spread of disease and to protect the health, safety, and welfare of the people of this state. Such rules and regulations may include inspections of any retort by the manufacturer

or other authorized crematory repair company once every five years to ensure proper operations.

(c) Application for licensure of a crematory shall be made upon a form approved by the board and shall be accompanied by an application fee. No license shall be issued unless the facility meets all the requirements set forth by the board.

(d) The board shall adopt rules requiring each crematory to submit periodic reports to the board in a standard form which include the names of persons cremated and the types of containers used.

(e) No more than one dead human body shall be placed in a cremation device at one time unless written permission has been received from the person possessing legal responsibility for the disposition of the dead human body.

(f) Nothing in this article shall require a funeral establishment for which a valid license to operate is in effect on May 9, 2002, to have a separate license for a crematory until on and after the renewal date of such license to operate a funeral establishment which first occurs after May 9, 2002, but such establishment must comply with all the minimum equipment and facilities requirements and all other statutes, rules, and regulations relating to crematories.

History.

Code 1981, § 43-18-72, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 5A; Ga. L. 1998, p. 1322, § 4; Ga. L. 2002, p. 641, § 5; Ga. L. 2009, p. 292, § 2/HB 68; Ga. L. 2021, p. 342, § 3/HB 124.

The 2021 amendment, effective May 4, 2021, substituted "cremation device" for "retort for cremation" at the end of subparagraph (a)(1)(D); in subsection (b), inserted "and regulations" near the beginning of the first sentence and added the second sentence; and substituted "cremation device" for "retort" in subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, "May 9, 2002" was substituted for "the effective date of this subsection" twice in subsection (f).

Pursuant to Code Section 28-9-5, in 2009, "after July 1, 2009, for any stand-alone crematory that was not in operation as of July 1, 2009" was substituted for "after the effective date of this subparagraph for any stand-alone crematory that was not in operation as of such effective date" in subparagraph (a)(2)(B).

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 200 (2002).

43-18-73. Renewal of licenses for the operation of funeral establishments and crematories; changes in ownership.

(a) Licenses for the operation of funeral establishments and of crematories shall expire biennially unless the owner or proprietor of a licensed funeral establishment or crematory applies to the board to renew the license prior to its expiration. The application shall show the name of the funeral establishment or crematory; the names and

addresses of all owners or, if the owner is a corporation, the names and addresses of all officers and directors of the corporation; and the names of all licensed embalmers and funeral directors who own or are employed by such funeral establishment or crematory or are otherwise connected therewith, together with the date of issue and the number of the license of each registered embalmer and funeral director as required. If the renewal fee prescribed by the board has been paid and the funeral establishment or crematory meets the other requirements of this article, the board shall issue a license; otherwise it shall be unlawful for any funeral establishment or crematory to operate in this state. Nothing in this Code section shall be construed to require a crematory to employ an embalmer in order to be licensed.

(b) Whenever there is a change in ownership of a funeral establishment or crematory, the board shall be notified within 15 days prior to the proposed change upon a form provided by the board.

History.
Code 1981, § 43-18-73, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-74. Transferability of licenses.

Licenses for funeral establishments or crematories shall be issued to such enterprises at their location at the time of issuance. Such license shall not be transferable to another location.

History.
Code 1981, § 43-18-74, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-75. Inspections; suspension or revocation of license; other disciplinary actions.

(a) The board shall provide for inspections from time to time, but not less frequently than annually, of the premises of funeral establishments and crematories for purposes of ensuring compliance with the provisions of this article and any rules or regulations issued pursuant thereto, and every such firm shall submit to such inspections. The board is authorized to contract with any one or more county boards of health, and each county board of health is authorized to contract with the board, for the provision of inspection services on behalf of the board for purposes of this subsection.

(b) The license of any funeral establishment or crematory may be suspended, revoked, or put on probation, or fines may be imposed by the board if the evidence produced before it indicates that the establishment or crematory has violated any of the provisions of this article or any rules or regulations issued pursuant thereto. The board shall

comply with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in relation to such hearing; and the licensee shall have the right to appeal any decision of the board in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-18-75, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2002, p. 641, § 6.

Law reviews.
For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 200 (2002).

43-18-76. Fine schedule for violation of minimum standards.

The board may establish a fine schedule for violation of minimum standards which the board determines to be a threat to the health, safety, or welfare of the public. A determination of such a violation shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-18-76, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-77. Funeral establishment or crematory temporarily without services of funeral director.

In the event that a funeral establishment or crematory is temporarily without the services of a funeral director in full and continuous charge, upon notice by the funeral establishment or crematory to the board within five days following the last day of service by such funeral director, the board shall grant the funeral establishment or crematory a 90 day grace period in which to have a funeral director in full and continuous charge approved by the board before any action may be taken by the board to revoke or terminate the establishment's or crematory's license. The board may, in its discretion, upon application by the funeral establishment or crematory, grant one additional 90 day grace period upon showing of good cause. Grace periods totaling not more than 180 days may be granted during any two-year period beginning the first day on which the grace period was granted. Failure to have a funeral director in full and continuous charge shall be grounds for the revocation or suspension of any license, after notice and hearing.

History.
Code 1981, § 43-18-77, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2002, p. 415, § 43.

43-18-78. Temporary destruction of licensed funeral establishment or crematory; use of temporary location during grace period.

In the event any funeral establishment or crematory is temporarily destroyed by fire, flood, or other natural catastrophe, upon notice by the

funeral establishment or crematory to the board within five days following the destruction, the board may grant the funeral establishment or crematory a 90 day grace period to use a board approved temporary location while reconstructing the previous location, provided the funeral establishment or crematory complies with all other provisions of this article and the rules of the board. The board may, in its discretion, upon application by the funeral establishment or crematory, grant additional 90 day grace periods upon showing of good cause.

History.
Code 1981, § 43-18-78, enacted by Ga. L. 1990, p. 1372, § 1.

43-18-79. Death of license holder.

No funeral establishment license shall terminate upon the death of the holder thereof but shall pass to the legal representative of the deceased or, if there is no legal representative, to the widow of the deceased who may continue to operate the establishment for the unexpired time of the license.

History.
Code 1981, § 43-18-79, enacted by Ga. L. 1992, p. 2762, § 6.

43-18-80. Authorizing agent; statement specifying disposition of cremated remains; shipment of remains.

(a) For the purposes of this Code section, "authorizing agent" means a person legally entitled to authorize the cremation of human remains.

(b) The authorizing agent shall provide to the funeral establishment in which the cremation arrangements are made a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the funeral establishment offering or conducting the cremation.

(c) Cremated remains shall be shipped only by a method that has an internal tracking system available and that provides a receipt signed by the person accepting delivery.

(d) The authorizing agent shall be responsible for the disposition of the cremated remains. If, after 60 days from the date of cremation, the authorizing agent or his or her representative has not specified the ultimate disposition or claimed the cremated remains, the funeral establishment or entity in possession of the cremated remains shall send a notification to the authorizing agent notifying him or her that, pursuant to this subsection, failure to respond to such notification and specify the final disposition of the cremains within 30 days of the transmission of such notice shall authorize the funeral establishment to

make arrangements for the disposition of the cremains. If, after 30 days, the funeral establishment or entity in possession of the cremated remains has not received instructions from the authorizing agent describing a specific method of disposing of the cremains, the funeral establishment or entity in possession of the cremains shall be authorized to dispose of the cremated remains in a dignified and humane manner by entombing such cremains in a crypt or underground in accordance with local and state law or by storage in the funeral establishment. The final resting place of the cremains shall be clearly marked and recorded by the funeral establishment entombing the cremains. Any costs or fees incurred to entomb, inter, or disinter the cremains shall be the responsibility of the authorizing agent; provided, however, that such cost shall not exceed $100.00.

History.
Code 1981, § 43-18-80, enacted by Ga. L. 2009, p. 292, § 3/HB 68.

ARTICLE 2

CONTRACTS FOR PRENEED FUNERAL SERVICES

43-18-90 through 43-18-108. [Reserved]

History.
Ga. L. 2000, p. 882, § 4, effective July 1, 2000, repealed and reserved this article. The former article, relating to contracts for preneed funeral services, consisted of Code Sections 43-18-90 through 43-18-108 and was based on Ga. L. 1966, p. 398, §§ 1-16; Ga. L. 1974, p. 275, §§ 2-8; Ga. L. 1982, p. 3, § 43; Ga. L. 1986, p. 855, §§ 14-22; Ga. L. 1991, p. 94, § 43; Ga. L. 1993, p. 123, § 39; Ga. L. 1994, p. 97, § 43; repealed by Ga. L. 2000, p. 882, § 4, effective July 1, 2000.

Editor's notes.
Ga. L. 2000, p. 882, § 4 repealed and reserved this article, effective July 1, 2000.

CHAPTER 19

GEOLOGISTS

Sec.		Sec.	
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43-19-2.	Purpose of chapter.		
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43-19-11.	Application.		
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		43-19-27.	Penalty.
		43-19-28.	[Repealed] Termination.

Administrative rules and regulations.

Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Registration for Professional Geologists, Chapter 265-1.

Standards of conduct, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Registration for Professional Geologists, Chapter 265-8.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S.,

States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-19-1. Short title.

This chapter shall be known and may be cited as the "Registration of Geologists Act of 1975."

History.

Code 1933, § 84-2101A, enacted by Ga. L. 1975, p. 163, § 1.

43-19-2. Purpose of chapter.

In order to safeguard life, health, and property and to promote the public welfare, the practice of geology in this state is declared to be subject to regulation in the public interest. This chapter is intended to introduce qualifying criteria into a previously unregulated professional field. Such action recommends itself through benefits to the safety, health, and property of the people of this state and to the promotion of the public welfare. These benefits are in the fields of geology as related to engineering, ground water, mineral exploration and development, geologic hazards, the further development of the science of geology, and other geologic matters of concern to the people of the state.

History.

Code 1933, § 84-2102A, enacted by Ga. L. 1975, p. 163, § 1.

43-19-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Registration for Professional Geologists.

(2) "Geologist" means a person engaged in the practice of geology.

(3) "Geology" means that science which treats of the earth in general; investigation of the earth's crust and the rocks and other materials which compose it; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind.

(4) "Public practice of geology" means the performance of geological service or work such as consultation, investigation, surveys, evaluation, planning, mapping, and inspection of geological work in which the performance is related to public welfare or safeguarding of life, health, property, and the environment, except as specifically exempted by this chapter. A person shall be construed to practice

publicly or offer to practice publicly geology, within the meaning and intent of this chapter, who practices any branch of the profession of geology; or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a geologist; or through the use of some other title implies that he is a geologist; or that he is registered under this chapter; or who holds himself out as able to perform or who does perform any geological services or work recognized as geology.

(5) "Qualified geologist" means a person who is not registered under this chapter but who possesses all the qualifications specified in this chapter for registration.

(6) "Registered certified specialty geologist" means a person who is certified as a specialty geologist under this chapter.

(7) "Registered geologist" means a person who is registered as a geologist under this chapter.

(8) "Responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of geological work or the supervision of such work.

(9) "Subordinate" means any person who assists a registered geologist or a registered engineer in the practice of geology without assuming the responsible charge of work.

History.
Code 1933, § 84-2103A, enacted by Ga. L. 1975, p. 163, § 1.

43-19-4. State Board of Registration for Professional Geologists; members.

(a) A State Board of Registration for Professional Geologists is created, whose duty it shall be to administer this chapter. The board shall be comprised of:

(1) Five members who shall be geologists registered under this chapter, one of whom shall be an academic geologist, one a governmental geologist, one a salaried company geologist, one an independent or consultant geologist, and one a geologist at large;

(2) A sixth member who shall be appointed from the public at large and who shall have no connection whatsoever with the practice of professional geology; and

(3) The commissioner of natural resources, or his designated agent, as a permanent ex officio member.

(b) The members of the board mentioned in paragraphs (1) and (2) of

subsection (a) of this Code section shall be appointed by the Governor, approved by the Secretary of State, and confirmed by the Senate.

(c) Each member of the board shall be a citizen of the United States and a resident of the State of Georgia.

(d) The members of the board provided for in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor for terms of five years and until their successors are appointed and qualified. The members of the board holding office on June 30, 1987, shall serve until the expiration of the term for which they were appointed and until their successors have been appointed and qualified. On the expiration of the term of any member, the member's successor shall be appointed in like manner by the Governor for a term of five years.

(e) No person shall serve as a member of the board for more than one consecutive five-year term.

(f) The Governor may remove any member of the board pursuant to the authority of Code Section 43-1-17. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the Governor as provided for in this chapter.

(g) The members of the board shall, before entering upon the discharge of their duty, subscribe to and file with the Secretary of State the constitutional oath of officers, whereupon the Secretary of State shall issue to each appointee a certificate of appointment.

(h) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Code 1933, § 84-2514A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2114A, as redesignated by Ga. L. 1976, p. 695, § 1; Code 1933, § 84-2114A.1, enacted by Ga. L. 1980, p. 50, § 1; Ga. L. 1987, p. 603, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "permanent" was substituted for "permament" in paragraph (a)(3).

43-19-5. Board meetings; officers.

(a) The board shall hold such meetings as may be necessary for it to carry out its duties under this chapter. An affirmative vote of a majority of the members present shall be necessary to transact business.

(b) The board shall annually elect a chairman and a vice-chairman. The division director shall be the secretary of the board and, in addition to his duties as prescribed by law, shall perform such other administrative duties as may be prescribed by the board.

History.
Code 1933, § 84-2515A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2115A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 2; Ga. L. 2000, p. 1706, § 19.

43-19-6. General powers and duties of board.

In addition to other powers and duties specified in this chapter, the board shall:

(1) Adopt and amend rules and regulations which may be reasonably necessary for this chapter and the regulation of proceedings before the board. The board and all of its rules, regulations, and procedures are subject to and shall comply with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(2) Adopt and have an official seal;

(3) Issue, renew, and reinstate the certificates of duly qualified persons;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Adopt a code of professional conduct; and

(7) Have such other powers and duties as are necessary to effectuate this chapter.

History.
Code 1933, § 84-2517A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2117A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 3.
Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Registration for Professional Geologists, Chapter 265-1 et seq.

43-19-7. Service of appeals, documents, and legal process on division director.

All appeals from a decision of the board, all documents or applications required by law to be filed with the board, and any notice or legal process to be served upon the board shall be filed with or served upon the division director at his or her office.

History.
Code 1933, § 84-2516A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2116A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 1112, § 14/HB 1055.

43-19-8. [Reserved] Official records and affidavits as evidence.

History.
Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2118A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 4; Ga. L. 2000, p. 1706, § 19; repealed by Ga. L. 2011, p. 99, § 68/HB 24, effective January 1, 2013.

Editor's notes.
Ga. L. 2011, p. 99, § 68/HB 24, which repealed and reserved this Code section, purported to repeal and reserve Code Section 43-18-8 but actually repealed and reserved Code Section 43-19-8.

43-19-9. [Reserved] Code of professional conduct.

History.
Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1; repealed by Ga. L. 1987, p. 603, § 5, effective June 30, 1987.

Editor's notes.
Ga. L. 1987, p. 603, § 5 repealed and reserved this Code section, effective June 30, 1987.

43-19-10. Registration required.

It shall be unlawful for any person to practice publicly or offer to practice publicly geology in this state, as defined in this chapter, or to use in connection with his name or otherwise assume or advertise any title or description tending to convey the impression that he is a registered geologist unless such person has been duly registered or exempted under this chapter. The right to engage in the practice of geology shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, and shall not be transferable.

History.
Code 1933, § 84-2104A, enacted by Ga. L. 1975, p. 163, § 1.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-19-11. Application.

An application for registration as a geologist or certification in a specialty shall be made under oath and shall show the applicant's education and a detailed summary of his geologic work. The application shall be accompanied by an application fee fixed by the board.

History.
Code 1933, § 84-2507A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2107A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1977, p. 746, § 1; Ga. L. 1987, p. 603, § 6.

43-19-12. Qualifications of applicants.

To be eligible for a certificate of registration, an applicant shall meet each of the following minimum qualifications:

(1) Be of good ethical character;

(2) Have graduated from an accredited college or university which has been approved by the board with a major in either geology, engineering geology, or geological engineering; or have completed 45 quarter hours or the equivalent in geological science courses leading to a major in geology, of which at least 36 quarter hours or the equivalent were taken in the third or fourth year or in graduate courses;

(3) Have at least seven years of professional geological work which shall include a minimum of three years of professional geological work under the supervision of a registered geologist, a registered civil engineer, or other supervision acceptable to the board. The following criteria of education and experience qualify, as specified, toward accumulation of the required seven years of professional geological work:

(A) Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study shall count as a year of training;

(B) Credit for undergraduate study, graduate study, and graduate courses, individually or in any combination thereof, shall in no case exceed a total of four years toward meeting the requirements for at least seven years of professional geological work as set forth above;

(C) The board may consider, in lieu of the above professional geological work as set out in this paragraph, the cumulative total of professional geological work or geological research of persons teaching at the college or university level, provided that such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the professional requirements required; and

(D) The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position as determined by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it; and

(4) Successfully pass such examinations as are established by the board and which are designed to demonstrate that the applicant has

the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

History.
Code 1933, § 84-2508A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2108A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 695, § 3; Ga. L. 1987, p. 603, § 7; Ga. L. 1991, p. 1130, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1991, "and" was added at the end of subparagraph (3)(C).

RESEARCH REFERENCES

ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-19-13. Examinations.

(a) Examinations shall be held at least annually.

(b) The board shall approve the scope, form, and content of the examinations required for licensure under this chapter.

History.
Code 1933, § 84-2510A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2110A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2010, p. 266, § 24/SB 195.

43-19-14. Reciprocity.

A person holding a certificate of registration to engage in the practice of geology, on the basis of comparable licensing requirements issued to him by a proper authority of a state, territory or possession of the United States, or the District of Columbia, and who, in the opinion of the board, otherwise meets the requirements of this chapter based on verified evidence may be registered, upon application, without further examination.

History.
Code 1933, § 84-2511A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2111A, as redesignated by Ga. L. 1976, p. 695, § 1.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

43-19-15. Issuance of certificates of registration; renewal or replacement.

(a) The board shall issue a certificate of registration, upon payment of the registration fee as fixed by the board, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. The issuance of a certificate of registration by the board shall be prima-facie evidence that the person named therein is entitled to all

the rights and privileges of a registered geologist while the certificate remains unrevoked or unexpired.

(b) All certificates shall be renewable biennially at such time as may be designated by the division director. All applications for renewal shall be filed with the division director prior to the expiration date, accompanied by the renewal fee prescribed by the board. A license which has expired for failure to renew may only be restored after application and payment of the prescribed restoration fee.

(c) A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board and payment of a fee set by the board.

History.
Code 1933, § 84-2512A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2112A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 696, § 6; Ga. L. 1987, p. 603, § 8; Ga. L. 2000, p. 1706, § 19.

43-19-16. Denial, suspension, or revocation of certificate; appeal.

(a) The board shall have the authority to refuse to grant a certificate to an applicant therefor or to revoke or suspend the certificate of a person registered by the board or to discipline a person registered by the board as provided in Code Section 43-1-19.

(b) The action by the board in granting or refusing to grant or renew a certificate under this chapter or in revoking or suspending or in refusing to revoke or suspend such a certificate may be appealed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the superior court of the county of domicile of the board; provided that, if the findings of the board are supported by any evidence, such findings shall be accepted by the court.

History.
Code 1933, § 84-2522A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2122A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 9; Ga. L. 2000, p. 1706, § 11.

43-19-17. [Reserved] Reissuance of certificates.

History.
Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1; repealed by Ga. L. 1987, p. 603, § 10, effective June 30, 1987.

Editor's notes.
Ga. L. 1987, p. 603, § 10 repealed and reserved this Code section, effective June 30, 1987.

43-19-18. Certification in a specialty.

(a) In addition to registering as a geologist, qualified persons may also be eligible for certification in a specialty. Such specialties may be

created by the board by regulation, with such regulations to contain any required additional qualifications. Only a registered geologist is eligible for certification in a specialty. Application may be submitted for both registration as a geologist and certification in a specialty at the same time, but the applicant must be approved for registration as a geologist before being considered for certification in a specialty. The certification in a specialty is dependent, in every case, upon the approval of registration as a geologist.

(b) An applicant for certification in a specialty shall meet all of the requirements of a registered geologist and such special requirements as the board may establish by regulation.

History.
Code 1933, § 84-2509A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2109A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 695, §§ 4, 5; Ga. L. 1987, p. 603, § 11; Ga. L. 1991, p. 1130, § 2.

43-19-19. Seals.

Each registrant under this chapter, upon issuance of a certificate of registration, may use a seal of such design as is authorized by the board, bearing the registrant's name and the legend "Registered Professional Geologist" or "Certified (subspecialty) Geologist." All drawings, reports, or other geologic papers or documents involving the practice of geology, as defined in this chapter, which shall have been prepared or approved by a registered geologist or a subordinate employee under his direction for the use of or for delivery to any person or for public record within this state shall be signed by him and impressed with the seal provided for in this Code section or the seal of a nonresident practicing under this chapter, either of which shall indicate his responsibility for them.

History.
Code 1933, § 84-2513A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2113A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1977, p. 746, § 2; Ga. L. 1991, p. 1130, § 3.

RESEARCH REFERENCES

C.J.S.
78A C.J.S., Seals, § 2.

43-19-20. Requirement that state and subdivisions contract only with registered geologists.

This state and its political subdivisions, such as a county, a municipality, or a legally constituted board, district, commission, or authority, shall contract for geological services only with persons registered under this chapter or with a firm employing a registered geologist.

History.
Code 1933, § 84-2527A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2127A, as redesignated by Ga. L. 1976, p. 695, § 1.

43-19-21. [Reserved] Subpoena.

History.
Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1; Ga. L. 1982, p. 3, § 43; repealed by Ga. L. 1987, p. 603, § 12, effective June 30, 1987.

Editor's notes.
Ga. L. 1987, p. 603, § 12 repealed and reserved this Code section, effective June 30, 1987.

43-19-22. Attorney General as legal adviser.

The Attorney General of this state or any assistant designated by him or her shall act as legal adviser of the board.

History.
Code 1933, § 84-2526A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2126A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2002, p. 415, § 43.

43-19-23. [Reserved] Filing of complaints.

History.
Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1; repealed by Ga. L. 1987, p. 603, § 13, effective June 30, 1987.

Editor's notes.
Ga. L. 1987, p. 603, § 13 repealed and reserved this Code section, effective June 30, 1987.

43-19-24. Exceptions to operation of chapter.

Any person, except as specifically exempted below, who shall publicly practice or offer to practice publicly geology in this state is subject to this chapter. The following persons are exempt:

(1) Persons engaged solely in teaching the science of geology or engaged in nonpublic geologic research in this state;

(2) Officers and employees of the United States or this state, practicing solely as such officers or employees; and

(3) A subordinate to a geologist registered under this chapter or to a registered engineer, insofar as he acts solely in such capacity. This exemption, however, does not permit any such subordinate to practice geology for others in his own right or use the title "registered geologist."

History.
Code 1933, § 84-2105A, enacted by Ga. L. 1975, p. 163, § 1.

43-19-25. Partnership, limited liability, and corporate practice; nonpublic geological services; practice by nonresident or new resident.

(a) This chapter does not prohibit one or more geologists from practicing through the medium of a sole proprietorship, partnership, limited liability company, or corporation. In a partnership, limited liability company, or corporation whose primary activity consists of geological services, at least one partner, member, or officer shall be a registered geologist.

(b) This chapter does not prevent or prohibit an individual, firm, company, association, or corporation whose principal business is other than the public practice of geology from employing a nonregistered geologist to perform nonpublic geological services necessary to the conduct of its business.

(c) This chapter shall not be construed to prevent or to affect:

(1) The practice of any profession or trade for which a license is required under any other law of this state; the practice of registered professional engineers from lawfully practicing soils mechanics, foundation engineering, and other professional engineering as provided in this title; or licensed architects from lawfully practicing architecture as provided in this title; or

(2) The practice of a person who is not a resident of and has no established place of business in this state or who has recently become a resident hereof practicing or offering to practice the profession of geology herein for more than 90 days in any calendar year if the person shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter. Such practice shall continue only for such time as the board requires for the consideration of the applicant for registration.

History.
Code 1933, § 84-2106A, enacted by Ga. L. 1975, p. 163, § 1; Ga. L. 1987, p. 603, § 14; Ga. L. 1993, p. 123, § 40.

Cross references.
Professional corporations generally, T. 14, C. 7.

43-19-26. Unlawful acts.

(a) It shall be unlawful for any person other than a registered geologist, a registered certified specialty geologist, or a subordinate under the direction of one of the above to prepare any geologic plans, reports, or documents in which the performance is related to the public welfare or safeguarding of life, health, property, or the environment.

(b) It shall be unlawful for anyone other than a geologist registered under this chapter to stamp or seal any plans, plats, reports, or other

documents with the seal or stamp of a registered geologist or registered certified specialty geologist or to use in any manner the title "registered geologist" or the title of any registered certified specialty geologist unless registered, or registered and certified, under this chapter.

(c) It shall be unlawful for any person to affix his signature or to stamp or seal any plans, plats, reports, or other documents after the certification of the registrant named thereon has expired or has been suspended or revoked unless the certificate has been renewed or reissued.

History.
Code 1933, § 84-2104A, enacted by Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2002, "specialty" was substituted for "speciality" in two places in subsection (b).

RESEARCH REFERENCES

ALR.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-19-27. Penalty.

Any person who publicly practices or offers to practice publicly geology for others in this state without being registered in accordance with this chapter; any person presenting or attempting to use as his own the certificate of registration or the seal of another; any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration; any person who falsely impersonates any other registrant of like or different name; or any person who attempts to use an expired or revoked certificate of registration or who attempts to practice at any time during a period when the board has suspended or revoked his certificate of registration shall be guilty of a misdemeanor.

History.
Code 1933, § 84-2525A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2125A, as redesignated by Ga. L. 1976, p. 695, § 1.

RESEARCH REFERENCES

ALR.
Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 A.L.R. 915.

43-19-28. [Repealed] Termination.

History.
This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8); Ga. L. 1987, p. 603, § 15; repealed by Ga. L. 1992, p. 3137, § 16, effective July 1, 1992.

CHAPTER 20

HEARING AID DEALERS AND DISPENSERS

Sec.	
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43-20-18.	Injunctions.
43-20-19.	Exceptions to operation of chapter.
43-20-20.	Penalty.
43-20-21.	[Repealed] Termination.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-1.

OPINIONS OF THE ATTORNEY GENERAL

Hearing aid dispenser not audiologist. — Licensee under the Georgia Hearing Aid Dealers and Dispensers Act, Ga. L. 1978, p. 1728, is not an "audiologist" of any character or description and cannot be represented as a "certified hearing aid audiologist," nor the licensee's services as including those of an "audiologist." 1975 Op. Att'y Gen. No. 75-5.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers

and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Validity and construction of state statutes regulating hearing aid fitting or sales, 96 A.L.R.3d 1030.

43-20-1. Short title.

This chapter may be cited as the "Georgia Hearing Aid Dealers and Dispensers Act."

History.

Ga. L. 1970, p. 653, § 1; Code 1933, § 84-5601, enacted by Ga. L. 1978, p. 1728, § 1.

43-20-2. Declaration of policy.

The purpose and intent of this chapter is to establish and enforce standards of competence and ethics in the dispensing of hearing aid devices or instruments, for profit or otherwise, and to protect the public from the dispensing of hearing aids, for profit or otherwise, by unskilled or unprincipled persons.

History.

Ga. L. 1970, p. 653, § 2; Code 1933, § 84-5602, enacted by Ga. L. 1978, p. 1728, § 1.

43-20-3. Definitions.

As used in this chapter, the term:

(1) "Apprentice dispenser's permit" means a temporary nonrenewable one-year permit issued while the applicant is in apprenticeship under a licensed dispenser in order to become a licensed hearing aid dispenser.

(2) "Board" means the State Board of Hearing Aid Dealers and Dispensers.

(3) "Dealer's license" means the license required for each office, store, or location established or maintained for the dispensing of hearing aid devices or instruments in this state.

(4) "Dispenser's license" means the license required for each individual who shall engage in the practice of dispensing hearing aid instruments or devices to or for use by the eventual user thereof.

(5) "Hearing aid device or instrument," "hearing aid," or "aid"

means any wearable electronic instrument or device designed for or represented or offered for the purpose of compensating for defective human hearing, including parts, attachments, ear molds, and accessories, except batteries, cords, replacement tubing, and minor service limited to the removal of battery corrosion.

(6) "License" means any license issued to hearing aid dealers or to hearing aid dispensers by the State Board of Hearing Aid Dealers and Dispensers or by the division director on behalf of the board under this chapter.

(7) "Practice of dispensing hearing aids" means the providing of a hearing aid to a consumer by sale, rental, lease, or otherwise. A holder of a license or permit issued under this chapter shall be entitled to conduct testing and other procedures to determine suitability for use of a hearing aid, to determine hearing aid characteristics which properly compensate the hearing condition, to select suitable aids, to fit aids to the subject, and to counsel and instruct in the use thereof.

(8) "Training permit" means a temporary renewable six-month permit issued while the applicant is in training, under the direct supervision and immediate observation of a licensed dispenser, to become a licensed dispenser.

History.
Ga. L. 1970, p. 653, § 3; Code 1933, § 84-5604, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.

Administrative rules and regulations.
Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-4.

OPINIONS OF THE ATTORNEY GENERAL

Only licensed hearing aid dealers may make ear molds. — Since the statute expressly states that an ear mold is included within the definition of hearing aid device, and making an ear impression for an ear mold can be characterized as part of the dispensing process under the language of those provisions, it is unlawful for one not licensed under the provisions regarding audiologists to make ear impressions for ear molds to be used with hearing aids. 1978 Op. Att'y Gen. No. 78-84.

43-20-4. State Board of Hearing Aid Dealers and Dispensers; composition; qualifications of members; terms of office; vacancies; selection of officers.

(a) There shall be established the State Board of Hearing Aid Dealers and Dispensers, which shall administer and enforce this chapter.

(b) The board shall consist of seven members, four of whom shall

hold dispenser's licenses issued by the board and each shall have no less than three years' experience in the practice of dispensing hearing aids, one of whom shall be a diplomate or eligible for certification by the American Board of Otolaryngology and licensed to practice medicine in this state, one of whom shall be an audiologist licensed under Chapter 44 of this title, and one of whom shall be appointed from the public at large, shall be an individual to whom neither this state nor any other state has ever issued a license, permit, certificate, or registration to engage in the practice of dispensing hearing aids, and shall not employ any individual to engage in the practice of dispensing hearing aids. Each member of the board shall be a resident of this state.

(c) Each member of the board shall be appointed by the Governor with the approval of the Secretary of State. The term of office for each member shall be three years or until his or her successor has been appointed and qualified. Upon the expiration of each term, the Governor, with the approval of the Secretary of State, shall appoint a successor as provided above. Any vacancy on the board arising from death, resignation, or other cause shall be filled by such appointment for the unexpired term.

(d) The members of the board shall annually designate one such member to serve as chairperson and another to serve as vice chairperson and may select such additional officers as the board deems necessary. The chairperson and vice chairperson shall each hold a dispenser's license.

History.
Ga. L. 1970, p. 653, § 13; Code 1933, § 84-5614, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1991, p. 401, § 1; Ga. L. 1996, p. 1017, § 1; Ga. L. 2015, p. 1326, § 1/HB 232.

43-20-5. Meetings; reimbursement of members; notice of meetings.

(a) The board shall meet not less than once a year at a place, day, and hour determined by the division director and as many other times per year as deemed necessary. Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(b) The division director shall notify each member of the board not less than ten days in advance of the time and place of any meeting of the board.

History.
Ga. L. 1970, p. 653, § 15; Code 1933, § 84-5616, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 4, § 43; Ga. L. 2010, p. 266, § 25/SB 195.

43-20-6. General powers and duties of board; division director.

(a) The board shall have the responsibility and duty of administering and enforcing this chapter. The board shall have the power to establish and to revise minimal procedure and equipment requirements which shall be used in the dispensing of hearing aids.

(b) The board shall:

(1) Supervise the issuance of licenses and administer qualifying examinations;

(2) License persons who make proper application to the division director and who meet the qualifications for licensure;

(3) Issue and renew licenses;

(4) Suspend, revoke, or otherwise sanction licenses in the manner provided in this chapter;

(5) Appoint representatives to conduct or supervise examinations; and

(6) Make available to the public a copy of this chapter, any amendments thereto, and all adopted rules.

(c) The division director shall be guided by the recommendations of the board in all matters relating to this chapter and shall assist the board in carrying out this chapter.

(d) In the administration and enforcement of this chapter, the board shall have the power to adopt reasonable rules and regulations not inconsistent with this chapter and the Constitution and laws of this state or of the United States for governing its times and places of meetings; for organization and reorganization; for the holding of examinations; for governing all other matters requisite to the exercising of its powers; for the performance of its duties relating to examinations; for granting, suspending, revoking, or otherwise sanctioning licenses; and for the transaction of its business under this chapter.

(e) The board may provide, by regulation, for the general scope of the examination described in Code Section 43-20-9. The board may approve the examination and obtain advice and assistance in providing for and grading such examination; and the division director may contract with third parties to perform administrative services related to the examination as he or she deems appropriate.

History.

Ga. L. 1970, p. 653, § 14; Code 1933, § 84-5615, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 26/SB 195.

Administrative rules and regulations.

Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Hearing Aid Dealers and Dis-

pensers, Chapter 276-1 et seq.

43-20-7. License required; scope of authority of license holders; issuance of duplicate licenses.

(a) It is unlawful for any person or firm to engage in the practice of dispensing hearing aids, as defined in this chapter, in this state without having a valid license issued under this chapter.

(b) No person or firm, except those exempted in Code Section 43-20-19, shall engage in the practice of dispensing hearing aid devices or instruments or display a sign or in any way advertise or represent himself or any firm as practicing the dispensing of hearing aid devices or instruments in this state unless such person holds an unsuspended, unrevoked license issued by the board.

(c) A dispenser's license issued under this chapter shall entitle the holder to dispense hearing aid devices or instruments under the supervision of a licensed dealer.

(d) The dealer's license issued under this chapter shall permit and require the holder to establish and operate an establishment open to the public for the purpose of dispensing hearing aids and providing follow-up services.

(e) No firm shall engage in the practice of dispensing hearing aid devices or instruments or display a sign or in any way advertise or represent itself as dispensing hearing aid devices or instruments in this state unless each office or location is staffed by a person who holds a valid dispenser's license issued under this chapter.

(f) Duplicate dealers' licenses shall be issued by the division director on behalf of the board to valid license holders operating more than one office or place of practice upon the payment of an additional dealer's license fee for each location, provided that each such location shall be staffed and supervised by a person holding a valid dispenser's license issued under this chapter.

History.
Code 1933, § 84-5603, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Unlawful to make ear molds without license. — Since Ga. L. 1978, p. 1728, § 1 expressly states that an ear mold is included within the definition of a hearing aid device, and making an ear impression for an ear mold can be characterized as part of the dispensing process under the language of those provisions, it is unlawful for a person not licensed under the provisions regarding audiologists to make

ear impressions for ear molds to be used with hearing aids. 1978 Op. Att'y Gen. No. 78-84.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-20-8. Issuance of licenses; fees.

(a) The board may issue a dealer's license to any applicant for a dealer's license upon compliance with this chapter, upon payment of the appropriate license fee for a dealer's license, and upon the presentation of evidence satisfactory to the board that such applicant has established or will establish and maintain a regular office, store, or location for the dispensing of hearing aid devices or instruments, and that a person who possesses a valid Georgia dispenser's license will be responsible for the dispensing of hearing aids under such dealer's license.

(b)(1) The board may issue a dispenser's license to an applicant only when:

(A) The applicant has satisfactorily completed a board approved examination;

(B) Proof of age has been verified; and

(C) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. An application for a dispenser's license by examination under this chapter shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for a dispenser's license by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check. This subparagraph shall not apply to an application for a renewal of a dispenser's license.

(2) The dispenser's license shall authorize the holder to dispense hearing aids under the general supervision of a licensed dealer.

(c) The dealer's license fee shall be in an amount determined by the board and must be paid for each office or location established by the dealer.

(d) The dispenser's license fee shall be in an amount determined by the board.

History.
Ga. L. 1970, p. 653, § 7; Code 1933, § 84-5607, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 1; Ga. L. 1991, p. 401, § 2; Ga. L. 2010, p. 266, § 27/SB 195; Ga. L. 2015, p. 1326, § 2/HB 232.

Administrative rules and regulations.
Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-7.

RESEARCH REFERENCES

ALR.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-20-9. Examinations; qualifications; apprentice dispensers; establishment of uniform criteria for passing and failing.

(a) An applicant may obtain a license by successfully passing a board approved examination, provided that the applicant:

(1) Is at least 18 years of age; and

(2) Is of good moral character.

(b) Every apprentice dispenser who has held the permit over 30 days shall be scheduled to stand for the written examination at every scheduled examination until all sections have been passed, the permit has been revoked by the board, or the permit has expired. The board shall have the power to revoke a permit without a hearing if the holder of an apprentice dispenser permit fails to stand for the examination. The board shall also have the power to revoke a permit without a hearing if the holder of an apprentice dispenser permit fails to pass the written portion of the examination on two occasions. The board may include the fee for an initial examination as a condition for approval of an applicant for an apprentice dispenser's permit.

(c) The board shall establish uniform criteria for passing and failing candidates.

History.
Ga. L. 1970, p. 653, § 9; Code 1933, § 84-5609, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 2; Ga. L.

1989, p. 423, § 1; Ga. L. 1991, p. 401, § 3; Ga. L. 1993, p. 452, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 28/SB 195.

Administrative rules and regulations.

Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-2.

RESEARCH REFERENCES

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-20-10. Nonresident licenses; reciprocity.

(a) Nonresident dealers' licenses may be issued to individuals domiciled outside of this state upon presentation of satisfactory evidence to the board that they comply with all provisions of this chapter for a dealer's license and upon payment of the fees required for such licenses. Holders of nonresident dealers' licenses shall be governed by and shall be subject to all conditions and provisions of this chapter relating to dealers' licenses.

(b) A nonresident dispenser's license may be issued to an applicant who holds a current unsuspended, unrevoked license to practice the dispensing of hearing aids in another state or jurisdiction upon payment of the fee provided for a dispenser's license under this chapter and upon presentation of satisfactory evidence to the board that such other state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice of dispensing hearing aids, provided that such state or jurisdiction has a program equivalent to or stricter than that required by this chapter for determining the qualifications of applicants for a dispenser's license and that such state or jurisdiction has a provision for reciprocity and has entered into a reciprocal agreement with the board. No such applicant for a reciprocal nonresident dispenser's license shall be required to submit to or undergo a qualifying examination. The holder of a nonresident dispenser's license shall be registered in the same manner as the holder of a regular resident dispenser's license. Fees, grounds, and procedures for renewal, suspension, and revocation of dispensers' licenses shall apply to all nonresident dispensers' licenses.

History.

Ga. L. 1970, p. 653, § 8; Code 1933, § 84-5608, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1991, p. 401, § 4.

Cross references.

Cooperation between Georgia and other states generally, T. 28, C. 6.

43-20-11. Apprentice dispenser's permit; training permits.

(a) An apprentice dispenser's permit shall be issued by the division director on behalf of the board only when:

(1) Application has been made;

(2) A statement of supervision has been provided by a licensed dispenser;

(3) A statement has been made by the supervising dealer that the applicant is capable of making the tests and applying the techniques required to dispense hearing aids in accordance with this chapter;

(4) Proof of age has been made. Apprentice dispensers' permits are limited to one year in duration and shall not be renewed; and

(5) The applicant has passed the practical portion of the examination.

(b) Training permits shall be issued by the division director on behalf of the board only when application has been made and a statement of supervision has been provided by a licensed dispenser. The permit should authorize the person to dispense hearing aids only under direct supervision and immediate observation of the licensed dispenser who shall be responsible for the trainees' compliance with this chapter. Proof of age shall also be made. Training permits should be for a duration of six months and may be renewed as often as necessary for additional six-month time periods so long as the requirements of this Code section for issuance of permits are met for each renewal.

History.
Ga. L. 1970, p. 653, § 10; Code 1933, § 84-5610, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 3; Ga. L. 1989, p. 423, § 2; Ga. L. 1991, p. 401, § 5; Ga. L. 2000, p. 1706, § 19.

43-20-12. Notice to division director of place of practice and identification of dispensers, apprentice dispensers, and trainees; notice to holders of licenses and permits.

(a) A person holding a dealer's license shall notify the division director in writing of the regular addresses of places of business operated by the dealer for dispensing hearing aids. Furthermore, the dealer is required to notify the division director in writing as to the names and license or permit numbers of all dispensers, apprentice dispensers, and trainees employed or otherwise practicing at each of his or her places of business. The dealer is required to notify the division director in writing of any changes of the foregoing within seven calendar days of such change. Any failure shall be considered a violation of this chapter by the dealer.

(b) Any notice required to be given by the division director or by the

board to any person who holds a license or permit issued by the board shall be mailed to such licensee or permit holder to the address of the place of practice last recorded with the division director; and such mailing shall constitute sufficient notice to such licensee.

History.
Ga. L. 1970, p. 653, § 11; Code 1933, § 84-5611, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 29/SB 195.

43-20-13. Furnishing bill of sale or receipt to person supplied with hearing aid.

Any person who dispenses hearing aid devices or instruments shall deliver to each person supplied with a hearing aid device or instrument a written receipt or bill of sale in such form as may be prescribed by the board, which receipt or bill of sale shall contain, as a minimum, the dealer's name, license number, address, and schedule of office hours, as well as the dispenser's name, signature, and license number, together with specification as to the make and model and serial number of the hearing aid device or instrument furnished. The receipt or bill of sale shall also clearly state the full terms of sale, including guarantees, if any, and shall also contain such other information as the board may determine to be necessary in the public interest. If a hearing aid device or instrument which is not new is sold, the receipt therefor must be clearly marked "used" or "reconditioned," whichever is applicable, with the terms of the guarantee, if any, clearly stated.

History.
Ga. L. 1970, p. 653, § 4; Code 1933, § 84-5605, enacted by Ga. L. 1978, p. 1728, § 1.

43-20-14. Biennial renewal of licenses; posting licenses; duplicate licenses.

Licenses issued under this chapter shall be renewable biennially. Each and every dealer's license and dispenser's license required by this chapter shall be conspicuously posted at each location and place of practice at all times as may be required by regulations established by the board. When more than one office or place of business is operated, a duplicate license shall be obtained from the division director for each such location or place regularly carrying on the practice of dispensing hearing aid devices or instruments, upon the payment of an additional appropriate fee for each duplicate license. The address of the location or place of doing business shall be stated on the duplicate license, which shall be posted at the location.

History.
Ga. L. 1970, p. 653, § 12; Code 1933, § 84-5612, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.

43-20-15. Continuing education requirement.

(a) As a prerequisite for the renewal of a dispenser's license on or before December 31, 2015, the individual must provide proof to the board that such individual has successfully completed 14 hours of continuing education in a program approved by the board.

(b) As a prerequisite for the renewal of a dispenser's license on or after January 1, 2016, the individual must provide proof to the board that such individual has successfully completed 20 hours of continuing education in a program approved by the board.

(c) The board may promulgate such rules and regulations as are necessary to implement the continuing education requirement.

History.
Code 1933, § 84-5613, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 4; Ga. L. 1994, p. 1715, § 1; Ga. L. 2015, p. 1326, § 3/HB 232.

Administrative rules and regulations.
Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-10.

43-20-16. Denial, nonrenewal, suspension, or revocation of licenses or permits; reprimands.

In addition to any other penalties as provided for in this chapter, the board is authorized to reprimand any licensee or permit holder under this chapter and to suspend, revoke, or otherwise sanction his license or permit for a fixed period, or may refuse to renew or may deny the license or permit, upon affording an opportunity for a hearing, for any of the following causes:

(1) Conviction of, or a plea of nolo contendere to, a felony or a misdemeanor involving moral turpitude. The record of conviction or plea or a copy thereof certified by the clerk of the court shall be conclusive evidence of such conviction or plea;

(2) Procuring of a license or permit by fraud or deceit;

(3) Selling, bartering, or offering to sell or barter a license or permit;

(4) Purchasing or procuring by barter a license or permit with intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aid devices or instruments or to sell such devices or instruments;

(5) Altering a license or permit with fraudulent intent;

(6) Using or attempting to use as a valid license or permit a license

or permit which has been purchased, fraudulently obtained, counterfeited, or materially altered;

(7) Willfully making a false statement in an application for a license or permit or application for renewal of a license or permit;

(8) Being found guilty of unethical conduct by the board or by some other tribunal or court of law. Unethical conduct shall include:

(A) Fraud or misrepresentation in the dispensing of a hearing aid;

(B) Knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any service covered by this chapter;

(C) Using, or causing or promoting the use of, any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful;

(D) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type and where it is determined that the purchase of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(E) Representing that the services or advice of a licensed physician or an audiologist will be used or made available in the selection, adjustment, maintenance, or repair of hearing aids when that is not true or using the words "hearing center," "doctor," "ear specialist," "clinic," "clinical audiologists," "state licensed clinic," "state registered," "state certified," "state approved," or any other term, abbreviation, or symbol when it would falsely give the impression that one is being treated medically or that the licensee's or permit holder's service has been recommended by the state;

(F) Representing or implying that a hearing aid device or instrument is or will be "custom made," "made to order," "prescription made," or in any other sense specially fabricated for an individual person when such is not the case;

(G) Representing that a recommendation for a specific brand or model aid or source of product or service has resulted from an unbiased or impartial process when such is not the case;

(H) Permitting another to use his license or permit;

(I) Advertising a manufacturer's product or using a manufactur-

er's name or trademark which implies a relationship with the manufacturer that does not exist;

(J) Giving or receiving, directly or indirectly, or offering to give or receive money or anything of value to any person who advises another in a professional capacity as an inducement to influence or have such person influence others to purchase or contract to purchase any product sold or offered for sale by a licensee or permit holder or to influence persons to refrain from dealing in the products of competitors;

(K) Selecting or fitting a hearing aid for a person who has not been given the appropriate tests utilizing procedures and instrumentation as specified by this chapter or by the rules and regulations of the board; or

(L) Committing any other professionally immoral act;

(9) Practicing while suffering from a contagious or infectious disease;

(10) Dispensing hearing aids under a false name or alias;

(11) Violating any of the provisions of this chapter or the rules and regulations promulgated by the board; or

(12) Gross incompetence or negligence in dispensing hearing aids.

History. Ga. L. 1970, p. 653, § 16; Code 1933, § 84-5617, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1982, p. 3, § 43.

OPINIONS OF THE ATTORNEY GENERAL

Licensed hearing aid dispensers are prohibited from holding themselves out as "audiologists" or as "certified hearing aid audiologists." 1975 Op. Att'y Gen. No. 75-5.

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-20-17. Procedure as to contested cases; judicial review.

Contested cases under this chapter shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; provided, however, that any person whose license or permit has been revoked, suspended, or otherwise sanctioned by a final order of the board or denied or not renewed pursuant to Code Section 43-20-16 may appeal to the superior court to review the decision of the

board to determine its legal correctness; and provided, further, that the findings of fact rendered by the board will be accepted by the court if said findings are supported by any evidence.

History. Ga. L. 1970, p. 653, § 17; Code 1933, § 84-5618, enacted by Ga. L. 1978, p. 1728, § 1.

43-20-18. Injunctions.

The board shall have the power to bring an action to enjoin any person, firm, or corporation who, without being licensed or issued a permit by the board, dispenses hearing aids in this state. The action shall be filed in the county in which such person resides or practices or in the county where the firm or corporation maintains an office or practices. If it shall appear that the person, firm, or corporation is guilty of dispensing hearing aids without a license or permit issued by the board, then such person, firm, or corporation shall be enjoined from dispensing hearing aids without a valid license or permit throughout the state. It is declared that such unlicensed activities are a menace and a nuisance and are dangerous to the public health, safety, and welfare; and, therefore, it shall not be necessary, in order to obtain relief, as provided in this Code section, for the board to allege or prove that there is no adequate remedy at law.

History. Ga. L. 1970, p. 653, § 19; Code 1933, § 84-5619, enacted by Ga. L. 1978, p. 1728, § 1.

43-20-19. Exceptions to operation of chapter.

(a) This chapter shall not apply to a person who is a physician licensed to practice medicine in this state or to a person who is licensed as an audiologist under Chapter 44 of this title.

(b) This chapter shall not apply to a person while he is working as an employee of a federal, state, county, or municipal agency or a duly chartered educational institution or a training center, provided that such person does not engage in the sale, rental, or lease of hearing aids.

(c) Nothing in this chapter shall be construed to prevent a person licensed under any other law of this state from operating within the scope of that license, provided that such person does not engage in the sale, rental, or lease of hearing aids.

(d) Nothing in this chapter shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aid devices or instruments at retail, provided that it holds a dealer's license issued under this chapter and that it employs only properly licensed persons who engage in the sale or

dispensing of such products to the purchaser and user thereof. Such corporations, partnerships, trusts, associations, or other like organizations shall file with the board a list of all licensed dispensers directly or indirectly employed by them, including the addresses and license numbers of such dispensers.

History.
Ga. L. 1970, p. 653, § 5; Code 1933, § 84-5606, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1992, p. 3316, § 1.
Cross references.
Professional corporations generally, T. 14, C. 7.
Professional associations generally, T. 14, C. 10.

43-20-20. Penalty.

Any person who dispenses or sells hearing aid devices or instruments without a license or who otherwise is in violation of this chapter shall be guilty of a misdemeanor. For the purposes of this chapter, such misdemeanor shall be considered a crime involving moral turpitude.

History.
Ga. L. 1970, p. 653, § 21; Code 1933, § 84-9982, enacted by Ga. L. 1978, p. 1728, § 2.

43-20-21. [Repealed] Termination.

History.
This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8); Ga. L. 1984, p. 1119, § 5 and Ga. L. 1990, p. 1857, § 1; repealed by Ga. L. 1992, p. 3137, § 17, effective July 1, 1992.

CHAPTER 20A

REGULATION OF PRIVATE IMMIGRATION ASSISTANCE SERVICES

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43-20A-21.	Criminal penalties for violations.

Cross references.

Security and immigration compliance, T. 13, C. 10, A. 3.

Enforcement of immigration and custom laws, § 35-2-14.

Editor's notes.

Ga. L. 2006, p. 105, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

Ga. L. 2008, p. 1112, § 15, effective July 1, 2008, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 43-20A-1 through 43-20A-4, relating to regulation of private immigration assistance services, and was based on Ga. L. 2006, p. 105, § 6/SB 529.

Law reviews.

For article, "Taming Immigration: The 64th Henry J. Miller Distinguished Lecture Series Remarks," see 36 Ga. St. U.L. Rev. 971 (2020).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.
Extreme Hardship Suspending Deportation of Alien, 35 POF2d 459.
Political Asylum — Well Founded Fear of Persecution, 13 POF3d 665.
Wrongful Confinement to a Mental Health or Developmental Disabilities Facility, 44 POF3d 217
C.J.S.
3A C.J.S., Aliens, § 728.

43-20A-1. Short title.

This chapter shall be known and may be cited as the "Registration of Immigration Assistance Act."

History.
Code 1981, § 43-20A-1, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.
Law reviews.
For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally . . . Act Locally'," see 13 Ga. St. B. J. 14 (2007).

43-20A-2. Definitions.

As used in this chapter, the term:

(1) "Advertise" or "advertising" means any communication, written or otherwise, produced or caused to be produced by a person licensed pursuant to this chapter promoting the goods or services regulated by this chapter.

(2) "Alien" means any person not a citizen of the United States.

(3) "Application" means any forms, documents, and information required pursuant to this chapter that applicants are required to file with the Secretary of State.

(4) "Client" means any person seeking immigration assistance.

(5) "Compensation" means money, property, services, promise of payment, or any other consideration or anything of value.

(6) "Immigrant" means every alien with the exception of an alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(7) "Immigration assistance" means any service provided to clients for compensation related to immigration matters, but shall not include legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or the interpretation of the law.

(8) "Immigration assistance provider" means any person who is licensed to provide immigration assistance pursuant to this chapter.

(9) "Immigration matter" means any proceeding, filing, or action

affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(A) Immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

(10) "Nonimmigrant" means any alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(11) "Order" means, but is not limited to, an administrative order issued under the provisions of this chapter or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self-regulatory organization that makes a finding that the provisions of this chapter have been violated and sanctions administered.

(12) "Person" means any individual, partnership, corporation, association, or private organization of any character, but not a governmental entity of any kind.

History.
Code 1981, § 43-20A-2, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055; Ga. L. 2011, p. 752, § 43/HB 142.

43-20A-3. Purpose and intent of chapter; administration and enforcement.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not exempted by this chapter. This chapter shall be administered and enforced by the Secretary of State. The Secretary of State may delegate such of his or her powers or duties under this chapter as he or she desires to a division director in his or her office. With respect to the enforcement of this chapter, the Secretary of State shall retain all powers and duties and may perform all functions of the licensing boards as provided in Chapter 1 of this title.

History.
Code 1981, § 43-20A-3, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-4. Licensing of immigration assistance providers.

(a) A person shall not provide immigration assistance in this state without holding a license issued pursuant to this chapter as an immigration assistance provider.

(b) Any person desiring to be licensed as an immigration assistance provider shall file an application for such license with the Secretary of State. All original and subsequent applications filed with the Secretary of State shall be upon such form and in such detail as the Secretary of State shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the Secretary of State shall require.

(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants and licensees as part of an application filed with the Secretary of State, shall be confidential. The Secretary of State shall deem as public records the following information and shall make such information reasonably available for inspection by the general public: a licensee's name, license number and status, business name, business address, business telephone number, type of license held, and term of license; the fact that a licensee has or has not received a disciplinary sanction; and such other information pertaining to the license of a licensee as the Secretary of State may determine by rule.

(d) No person shall be granted a license as an immigration assistance provider unless such person:

(1) Is 18 years of age or older;

(2) Is a United States citizen or holds a valid legal immigration status pursuant to federal law;

(3) Provides a criminal background report and, within the five-year period preceding the date of the application, has no criminal convictions, other than traffic violations;

(4) Completes and submits an application;

(5) Provides proof of a $5,000.00 performance bond issued in a form acceptable to the Secretary of State by a bonding company licensed to conduct bonding business in the State of Georgia; and

(6) If an applicant intends to provide services which shall require

him or her to control the legal funds of a client seeking immigration assistance, provides a financial statement for the current fiscal year.

(e) The Secretary of State shall establish an appropriate procedure for the acceptance and review of applications submitted pursuant to subsection (b) of this Code section.

(f) All immigration assistance providers holding licenses in good standing shall be eligible for the renewal of such license pursuant to procedures established by the Secretary of State. In the event a licensee fails to renew his or her license, such license shall be automatically revoked.

History.
Code 1981, § 43-20A-4, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-5. Permissible services; terms of contract for immigration services.

(a) An immigration assistance provider licensee may perform the following services as immigration assistance:

(1) Completing a government agency form on behalf of the client and appropriate to the client's needs;

(2) Transcribing responses to a government agency form which is related to an immigration matter; provided, however, that advice shall not be offered to a client as to his or her answers on such forms;

(3) Translating information on forms to a client and translating the client's answers to questions posed on such forms;

(4) Securing for the client supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) Notarizing signatures on government agency forms, provided that the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(6) Preparing or arranging for the preparation of photographs and fingerprints;

(7) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results; and

(8) Performing such other services that the Secretary of State determines by rule may be appropriately performed by such licensees in light of the purposes of this chapter.

(b) A contract to provide any service in conjunction with immigration assistance shall clearly state the obligations of the immigration assistance provider and the client who is to receive such service.

History.
Code 1981, § 43-20A-5, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-6. Exemptions from provisions of this chapter.

(a) The following persons are exempt from this chapter:

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) A legal intern, clerk, paralegal, or person in a similar position employed or independently contracted by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance in the course of employment;

(3) A not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of such organizations accredited under 8 C.F.R. 292.2(d); and

(4) Any person employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide nonlegal advice in conjunction with immigration assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such nonlegal advice in conjunction with immigration assistance is provided.

(b) Any person who provides or offers immigration assistance and is not exempted pursuant to this Code section shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to clients. Each sign shall be at least 12 inches by 17 inches and shall contain the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) Every person engaged in immigration assistance that is not an attorney and that advertises immigration assistance in a language

other than English shall include conspicuously in such advertisement the following notice in English and the language in which the advertisement appears: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is by radio or television, the statement may be modified but shall include substantially the same message.

(d) Any person who provides or offers immigration assistance that is not exempted pursuant to this Code section shall not, in any document identifying such person as an immigration assistance provider, translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(e) A person engaged in providing immigration assistance that is not exempted pursuant this Code section as a licensed attorney shall not:

(1) Refuse to return documents supplied by, prepared on behalf of, or paid for by the client upon the request of the client. Such documents shall be returned upon request even if there is a fee dispute between such person and the client;

(2) Represent or advertise, in conjunction with immigration assistance, other titles or credentials, including but not limited to "notary public" or "immigration consultant," that could cause a client to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided, however, that a certified notary public may use the term "notary public" if the use is accompanied by the statement that the person is not an attorney and the term "notary public" is not translated to another language; or

(3) Provide materially false or misleading information in an application for licensure or renewal of a license.

History.
Code 1981, § 43-20A-6, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-7. Civil penalties for violations; private cause of action; rules and regulations.

(a) The Secretary of State may assess civil penalties against any individual or entity that he or she finds to have violated this chapter in an amount of up to $1,000.00 per violation not to exceed $50,000.00. A civil penalty assessed pursuant to this Code section shall be in addition to any other appropriate civil or criminal penalties.

(b) Any person that suffers injuries or damages as a result of the

unlawful practice of immigration assistance shall have a cause of action against the person or entity that provided the unlawful immigration assistance.

(c) The Secretary of State shall issue rules and regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter.

History.
Code 1981, § 43-20A-7, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-8. Maintaining documents.

(a) The Secretary of State shall maintain all documents filed with the Secretary of State pursuant to this chapter in their original form or by copy.

(b) All documents filed with the Secretary of State pursuant to a subpoena, an order, or a notice to produce issued by the Secretary of State or any records or documents produced relating to an investigation pursuant to Code Section 43-20A-15 may be destroyed by order of the Secretary of State once the investigative file is closed, if a demand for return is not made by the person producing such records at the time he, she, or it produces the records.

(c) Any reproduction of any original writing or record filed with, or maintained by, the Secretary of State, or other filing depository designated by the Secretary of State, shall be deemed to have been made in the regular course of business. Such reproduction shall be subject to certification.

(d) All immigration assistance providers who are licensed or required to be licensed with the Secretary of State shall preserve records documenting compliance pursuant to this chapter for at least three years from the date such records were produced. Immigration assistance providers shall preserve client records that contain certain necessary information in a manner to be determined by the Secretary of State. Such records shall be subject to reasonable periodic or special inspections by the Secretary of State. An inspection may be made at any time and without prior notice. The Secretary of State may copy and remove any record the Secretary of State reasonably considers necessary or appropriate to conduct the inspection.

History.
Code 1981, § 43-20A-8, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-9. Obligation of service provider to provide notice of pending disciplinary, administrative, civil, or criminal action.

(a) Any immigration assistance provider shall report in writing immediately to the Secretary of State if:

(1) He or she has been made or is the subject of any disciplinary, administrative, civil, or criminal action; and

(2) He or she has been served in any civil complaint or arbitration filed alleging fraud or any violation of any local, state, or federal law.

(b) The immigration assistance provider shall provide to the Secretary of State a copy of any notice, order, pleading, indictment, accusation, or similar legal document relating to an action subject to subsection (a) of this Code section that he or she has in his or her possession.

History.
Code 1981, § 43-20A-9, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-10. Fees.

The Secretary of State shall be authorized to charge a license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged. Each fee shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the Secretary of State shall approximate the total of the direct and indirect costs to the state of the operations involved in the issuance of a license. Fees may be refunded for good cause, as determined by the Secretary of State.

History.
Code 1981, § 43-20A-10, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-11. Amendment of license application to account for events or developments after license granted.

Should material events or developments occur after a person has been granted a license pursuant to this chapter, such person shall amend the license application submitted pursuant to Code Section 43-20A-4 by adding statements of fact that developed, or became known, after the effective date of such application and by deleting statements of fact that, because of such developments, may be misleading. Such additions and deletions shall be filed with the Secretary of State not more than 30 days after their occurrence.

History.
Code 1981, § 43-20A-11, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-12. Service member.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to this chapter expires while such service member is serving on active duty outside the state shall be permitted to practice as an immigration assistance provider in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing as an immigration assistance provider with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. Such service member shall present to the Secretary of State either a copy of the official military orders or a written verification signed by the service member's commanding officer in order for the Secretary of State to waive any charges.

History.
Code 1981, § 43-20A-12, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-13. Authority to employ investigators.

For the purposes of investigating violations of this chapter, the Secretary of State shall be authorized to employ investigators pursuant to Code Section 43-1-5.

History.
Code 1981, § 43-20A-13, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-14. Disclosure of information.

Notwithstanding the provisions of Code Section 43-1-19, the Secretary of State shall be authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure. Nothing in this chapter shall be construed to prohibit or limit the authority of the Secretary of State to disclose to any person or entity information concerning the

existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure.

History.
Code 1981, § 43-20A-14, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-15. Formal order of investigation; authorized action; emergency order; notice requirements.

(a) The Secretary of State shall be authorized to issue a formal order of investigation. Such order shall commence an investigation to determine whether any person is in violation of this chapter or to aid in the enforcement of this chapter.

(b) The Secretary of State shall be authorized to take any administrative action authorized by law to enforce the provisions of this chapter. The Secretary of State shall be authorized to transmit a civil or criminal referral investigative report and evidence of violations of this chapter to any prosecuting attorney or to the Attorney General, who may, at his or her individual discretion, institute any necessary civil or criminal proceedings.

(c) Notwithstanding any other provision of this chapter, an emergency order pursuant to this Code section shall be effective on the date of issuance, provided that:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings, which shall be promptly instituted; or

(2) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d) Upon issuance of the notice and proposed order, pursuant to this Code section, the Secretary of State shall promptly serve each person subject to the order with a copy of the notice and proposed order. The order shall include a statement of any administrative sanctions that the Secretary of State will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled pursuant to the provisions of Code Sections 50-13-18 and 50-13-41. Hearings shall be conducted by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50. If a person subject to the order does not request from the Office of State Administrative Hearings a hearing within 30 days after the date of service of the notice and proposed order, the order

shall become final as to that person by operation of law. If any person subject to the emergency order requests a hearing, or is ordered by the Secretary of State, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Secretary of State may modify, vacate, or extend the emergency order any time prior to a final determination.

History.
Code 1981, § 43-20A-15, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-16. Cause for disciplinary actions; disciplinary order a final order.

(a) The Secretary of State shall order the discipline, denial, suspension, or revocation of license issued pursuant to this chapter, if the Secretary of State finds that the order is in the public interest and that such person:

(1) Has filed an application for licensure with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, contained a statement that was, in light of the circumstances under which it was made, false with respect to a material fact in the application;

(2) Has violated or failed to comply with any provisions of this chapter;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by any government agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the law of another state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Has been convicted of any felony in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (5) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(5) Within the last ten years has been convicted of a felony or misdemeanor involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United

States, the record of conviction being conclusive evidence of conviction, which the Secretary of State finds:

(A) Involves the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of immigration assistance; or

(C) Involves the theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(6) Is the subject of an order of the Secretary of State that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(7) Is the subject of any of the following orders which are effective at the time of the Secretary of State's order and were issued within five years before the Secretary of State's order:

(A) An order by an agency or administrator of another state, a foreign country, or the federal government, entered after notice and opportunity for hearing, that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(B) A United States Postal Service fraud order; or

(C) A cease and desist order entered after notice and opportunity for hearing by the Secretary of State or other state or federal authority;

(8) Is determined by the Secretary of State not to be qualified pursuant to this chapter;

(9) Violated or conspired to violate this chapter;

(10) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity;

(11) Has failed to cure any application deficiency within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State shall vacate an order pursuant to this paragraph when the deficiency is corrected, unless the applicant has abandoned the application; or

(12) Has failed to comply with an order for child support as defined by Code Section 19-11-9.3. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this subsection.

(a.1) The Secretary of State shall not order the discipline, denial, suspension, or revocation of a license issued pursuant to this chapter because a person has been found by the Georgia Higher Education Assistance Corporation to be a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295.

(b) Prior to issuing an order pursuant to subsection (a) of this Code section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred;

(3) The degree of harm imposed upon others; and

(4) Any other relevant conduct of the applicant.

(c) If the Secretary of State determines that a licensee is no longer in existence or acting as an immigration assistance provider, the subject of an adjudication of incapacity, subject to the control of a trustee, conservator, or guardian, or cannot reasonably be located, the Secretary of State may issue an order that cancels or terminates the license. The Secretary of State may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive.

(d) An order issued pursuant to subsection (a) of this Code section shall constitute a final order, shall be deemed to be in the public interest, and shall not be deemed to constitute findings of fact or conclusions of law related to other persons. The entry of such an order shall not be deemed to be a waiver or estoppel on the part of the Secretary of State from proceeding in individual actions against any persons who may have violated this chapter, nor shall such an order prevent the Secretary of State from bringing individual actions against any persons who have violated this chapter, if such violation was not known to the Secretary of State at the time the order was issued.

(e) An order is not a proceeding or enforcement action pursuant to Chapter 13 of Title 50.

History. Code 1981, § 43-20A-16, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055; Ga. L. 2019, p. 462, § 1-14/SB 214.

43-20A-17. Suspension of license for nonpayment, default, or breach of repayment or service obligation under certain educational loan or scholarship programs prohibited.

The Secretary of State shall not suspend a license issued pursuant to this chapter because of nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

History.
Code 1981, § 43-20A-17, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055; Ga. L. 2019, p. 462, § 1-15/SB 214.

43-20A-18. Cease and desist order.

(a) The Secretary of State may issue a cease and desist order prohibiting a person from violating the provisions of this chapter by engaging in the practice of immigration assistance without a license issued pursuant to this chapter. Such cease and desist order shall become effective immediately upon signature of the Secretary of State and proper notice pursuant to this chapter.

(b) The violation of any order issued pursuant to subsection (a) of this Code section shall subject such person violating the order to further proceedings before the Secretary of State, and the Secretary of State shall be authorized to impose a civil penalty not to exceed $500.00 for each transaction constituting a violation thereof. Such civil penalty shall be in addition to any other fines and penalties subject to committing a violation pursuant to this subsection. Each day that a person practices in violation of this subsection shall constitute a separate violation.

(c) Nothing in this Code section shall be construed to prohibit the Secretary of State from bringing remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

History.
Code 1981, § 43-20A-18, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-19. Notice of opportunity for hearing.

(a) Where the Secretary of State has issued any order to discipline, deny, suspend, or revoke a license of an applicant or person licensed pursuant to this chapter, he or she shall promptly send to the respondent to such order a notice of opportunity for hearing. Before entering an order refusing to issue a license pursuant to this chapter to any person and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person a notice of opportunity for hearing.

(b) Notices of opportunity for hearing shall be served personally by investigators appointed by the Secretary of State, sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on the licensee's application, or directed for service to the sheriff of the county where such person resides or is found; and such notice shall state:

(1) The order which has issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order;

(3) A statement of the right of any party to subpoena witnesses and documentary evidence through the Secretary of State;

(4) That the person to whom such notice is sent will be afforded a hearing in accordance with the Code Sections 50-13-18 and 50-13-41; and

(5) Contested cases shall be heard by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50.

(c) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall set forth his or her findings and conclusions of laws with respect to the matters involved.

History.
Code 1981, § 43-20A-19, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-20. Licensee required to notify licensing authority within 10 days of felony conviction.

Any individual licensed pursuant to this chapter who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction.

History.
Code 1981, § 43-20A-20, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

43-20A-21. Criminal penalties for violations.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor for a first offense and a high and aggravated misdemeanor for a second or subsequent offense committed within five years of a previous conviction for the same offense.

History.
Code 1981, § 43-20A-21, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under former O.C.G.A. § 43-20A-4 (see now O.C.G.A. § 43-20A-21) are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

CHAPTER 21

OPERATORS OF HOTELS, INNS, AND ROADHOUSES

Article 1

Rights, Duties, and Liabilities of Innkeepers

Sec.

43-21-1. Definitions.
43-21-2. Depositories for hire.
43-21-3. Duty of innkeeper to receive guests.
43-21-3.1. Notice of termination of occupancy by innkeeper.
43-21-3.2. Written statement of period of occupancy signed by guest; rights of innkeeper and guest under contract.
43-21-4. Innkeeper as depository for hire; rules governing liability.
43-21-5. Attachment of lien on property of guests or their agents; priorities.
43-21-6. Enforcement of lien created by Code Section 43-21-5.
43-21-7. Checks or receipts for baggage.
43-21-8. Liability of innkeeper for stolen goods.
43-21-9. Acts constituting entrustment of property to innkeeper.
43-21-10. Deposit of valuables by guest with innkeeper.
43-21-11. Limitation on liability of innkeeper when valuables deposited with him.
43-21-12. Loss of or injury to property by innkeeper.
43-21-13. Defrauding innkeeper.
43-21-14. Proof of intent to defraud.
43-21-15. Posting copies of law as to fraud.
43-21-16. [Repealed] Charging of excessive rates during 1996 Olympic Games; penalties; automatic repeal.

Article 2

Sanitary Regulations for Hotels and Inns

43-21-30. Bed linens.
43-21-31. Screens on doors and windows.
43-21-32. Closets and restrooms.
43-21-33. Penalty.

Article 3

Roadhouses and Public Dance Halls

43-21-50. License requirement.
43-21-51. Application for license.
43-21-52. Term of licenses; fees; engaging in business under an expired license.
43-21-53. License fee as supplemental to other licenses and taxes.
43-21-54. Revocation of license after conviction for violation of article; barring of issuance of new license after revocation.
43-21-55. Furnishing list of employees to sheriff; notice of change of ownership.
43-21-56. Registration of guests; maintaining register.
43-21-57. Injunctions.
43-21-58. Authority of municipality to adopt provisions of article for establishments located in municipality.
43-21-59. Applicability of article.
43-21-60. Supplemental nature of article.
43-21-61. Occupying rooms for immoral purposes.
43-21-62. Penalty.

Cross references.

Authority of Safety Fire Commissioner to promulgate rules and regulations regarding fire hazards in hotels, apartment houses, and other public places, § 25-2-19.

Regulation of tourist courts, T. 31, C. 28.

County and municipal excise taxes on

rooms, lodgings, and accommodations, § 48-13-50 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq. Am. Jur. 2d, New Topic Service, Americans with Disabilities Act, § 615 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Liability of innkeeper for interference with guest, 17 A.L.R. 139.

What constitutes a hotel or inn, 19 A.L.R. 517; 53 A.L.R. 988.

What constitutes a boarding house, 19 A.L.R. 538.

Constitutionality of statute in relation to hotel rates or charges, 19 A.L.R. 641.

Status and rights of one renting room in club, 32 A.L.R. 1016.

Tax or license fee in respect of dancing or other entertainment provided in connection with service of refreshments, 142 A.L.R. 572.

Relation of innkeeper and guest as affected by payment for accommodations by week, month, or the like, 145 A.L.R. 363.

Discrimination as between restaurants or eating places in statutes or ordinances respecting them, 169 A.L.R. 976.

Maintenance or regulation by public authorities of tourist or trailer camps, motor courts, or motels, 22 A.L.R.2d 774.

Tourist or trailer camp, motor court or motel, as nuisance, 24 A.L.R.2d 571.

Liability of innkeeper for injury to guest using hall or similar passageway, 27 A.L.R.2d 822.

Liability of innkeeper for injury by object thrown or falling because of conduct of guest, 74 A.L.R.2d 1241.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 A.L.R.3d 433.

Liability of hotel or motel operator for injury or death resulting to guest from defects in furniture in room or suite, 91 A.L.R.3d 483.

ARTICLE 1

RIGHTS, DUTIES, AND LIABILITIES OF INNKEEPERS

Law reviews.

For article, "The Myth of the Sharing Economy and its Implications for Regulating Innovation," see 67 Emory L.J. 197 (2017).

43-21-1. Definitions.

As used in this article, the term:

(1) "Guest" means a person who pays a fee to the keeper of an inn for the purpose of entertainment at that inn.

(2) "Inn" means all taverns, hotels, and houses of public general entertainment for guests.

History.
Orig. Code 1863, §§ 2093, 2095; Code 1868, §§ 2088, 2090; Code 1873, §§ 2114, 2116; Code 1882, §§ 2114, 2116; Civil Code 1895, §§ 2932, 2934; Civil Code 1910, §§ 3503, 3507; Code 1933, § 52-101.

JUDICIAL DECISIONS

No duty to monitor medical conditions of guests. — O.C.G.A. § 43-21-1 et seq., does not impose upon innkeepers the duty to rescue and does not expand an innkeeper's duty of care for the personal safety of the innkeeper's guests beyond that required in the state's caselaw; to require that an innkeeper monitor in any manner the possible health problems of a guest, which are not caused by or are unrelated to the stay at the facility, is not only unwarranted as a matter of law but unworkable as a matter of fact and practicality. Rasnick v. Krishna Hospitality, Inc., 289 Ga. 565, 713 S.E.2d 835, 2011 Ga. LEXIS 543 (2011).

Liability for baggage commences at time of delivery to hotel porter at depot. — Traveler who is met at a depot by the porter of a hotel, who indicates a conveyance by which the traveler may go to the hotel, becomes the guest of the hotel so far as to render the proprietor liable for safe-keeping of the traveler's baggage or baggage check delivered to the porter; such liability commences from time of delivery to porter. Coskery v. Nagle, 83 Ga. 696, 10 S.E. 491, 1889 Ga. LEXIS 138 (1889).

Issue of guest status and liability for jewelry. — There was an issue of fact as to whether the guest was still a "guest" at the time the guest's jewelry was entrusted to the hotel and, therefore, whether the innkeeper statutes applied, but if the guest was still a guest at the time the guest asked the hotel to keep the jewelry, the claim under the innkeeper statutes was limited to $1,000. Jordan v. Marriott International, Inc., 346 Ga. App. 706, 816 S.E.2d 822, 2018 Ga. App. LEXIS 451 (2018).

No expectation of privacy after check out time. — Because the motel room registration of the woman the defendant was staying with had run out at 11:00 A.M., neither the defendant nor the woman was a guest after that time due to their failure to pay for another night's stay and, thus, the defendant had no legal possession or control of the room and no expectation of privacy where the drugs were found since the officers entered and searched the motel room after 11:00 A.M. Lindsey v. State, 353 Ga. App. 231, 836 S.E.2d 563, 2019 Ga. App. LEXIS 623 (2019).

Persons not paying fee for room are not guests. — Trial court erred by assuming that the defendants had a continuing expectation of privacy in a hotel room because a guest services agent had the authority to evict the defendants from the room once the agent learned that the defendants had checked into the hotel using a fraudulent credit card, and because the defendants had obtained the room through a fraudulent credit card that would not be honored by the credit card company, the defendants were not paying a fee for the room and were not guests within the meaning of O.C.G.A. § 43-21-1(1); therefore, the defendants could be evicted from the room for cause, and if the defendants were being evicted from the hotel for cause, under O.C.G.A. § 43-21-3.1(b), the defendants were not entitled to notice of the eviction. State v.

Delvechio, 301 Ga. App. 560, 687 S.E.2d 845, 2009 Ga. App. LEXIS 1274 (2009).

No duty to comply with requests to attempt rescue of guest from medical peril. — Court of appeals did not err in affirming an order granting a motel summary judgment in a wife's a wrongful death action, alleging that the failure of the motel's personnel to heed her concern about the guest amounted to a breach of duty to render aid to a guest because the motel had no duty to comply with the wife's requests to attempt a rescue of the guest from his medical peril; the alleged negligence in the wife's suit could not be credibly cast as a condition of the premises or akin to a premises hazard like a smoke-filled building because any risk or problem stemming from a medical condition unrelated to and not caused by the guest's stay at the facility was not internal to the premises but rather internal to the guest. Rasnick v. Krishna Hospitality, Inc., 289 Ga. 565, 713 S.E.2d 835, 2011 Ga. LEXIS 543 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.

40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 25 et seq.

C.J.S.

43A C.J.S., Inns, Hotels and Eating Places, § 266 et seq.

ALR.

Relation of innkeeper and guest as affected by payment for accommodation by week, month, or the like, 12 A.L.R. 261; 145 A.L.R. 363.

Improper motive or purpose in going to hotel as affecting one's status as guest, or invitee of a guest, for purpose of determining degree of care owed by proprietor, 16 A.L.R. 1388.

Liability of innkeeper for indignity to one occupying room without being registered, 29 A.L.R. 481.

What constitutes a hotel or inn, 53 A.L.R. 988.

43-21-2. Depositories for hire.

Persons entertaining only a few individuals, or simply for the accommodation of travelers, are not innkeepers but are depositories for hire and are bound to ordinary diligence.

History.

Orig. Code 1863, § 2100; Code 1868, § 2095; Code 1873, § 2121; Code 1882, § 2121; Civil Code 1895, § 2939; Civil Code 1910, § 3512; Code 1933, § 52-102.

RESEARCH REFERENCES

ALR.

Justification of guest in leaving hotel or boarding house before expiration of contract, 10 A.L.R. 127.

What constitutes a hotel or inn, 53 A.L.R. 988.

43-21-3. Duty of innkeeper to receive guests.

An innkeeper who advertises himself as such is bound to receive as guests, so far as he can accommodate them, all persons of good character who desire accommodation and who are willing to comply with his rules.

History.
Orig. Code 1863, § 2100; Code 1868, § 2095; Code 1873, § 2121; Code 1882, § 2121; Civil Code 1895, § 2939; Civil Code 1910, § 3512; Code 1933, § 52-103.

JUDICIAL DECISIONS

Valid claims for damages for failure to provide lodging. — Based on the innkeeper's refusal to provide lodging for the disabled individual and the individual's service dog, the individual's proposed amended complaint stated valid claims for damages under O.C.G.A. §§ 30-4-2 and 43-21-3; the amendment was not futile, and leave to amend pursuant to Fed. R. Civ. P. 15(a) was granted. Amick v. BM & KM, Inc., 275 F. Supp. 2d 1378, 2003 U.S. Dist. LEXIS 18620 (N.D. Ga. 2003).

RESEARCH REFERENCES

ALR.
Improper motive or purpose in going to hotel as affecting one's status as guest, or invitee of a guest, for purpose of determining degree of care owed by proprietor, 16 A.L.R. 1388.

Exclusion of person (for reason other than color or race) from place of public entertainment or amusement, 1 A.L.R.2d 1165.

Punitive damages for wrongful ejection or rejection of guest from hotel or restaurant, 14 A.L.R.2d 715.

Civil rights: actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like, 35 A.L.R.3d 859.

Hotel or innkeeper's liability for refusal to honor reservation, 58 A.L.R.3d 369.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 A.L.R.3d 351.

What constitutes private club or association not otherwise open to public that is exempt from state civil rights statute, 83 A.L.R.5th 467.

43-21-3.1. Notice of termination of occupancy by innkeeper.

(a) Whenever the keeper of a hotel, apartment hotel, boarding house, inn, or other accommodations furnished on a day-to-day or weekly basis wishes to terminate the occupancy of a guest for reasons other than those described in subsection (b) of this Code section, the keeper shall give notice of such intention to the guest. The period of time to be specified in the notice as to when the occupancy will be declared terminated by the keeper shall be equal to the period of time for which occupancy is paid for by the guest and accepted by the keeper.

(b) The notice requirement of subsection (a) of this Code section shall not apply to a termination of occupancy for cause, such as failure to pay sums due, failure to abide by rules of occupancy, failure to have or maintain reservations, or other action by a guest.

History.
Code 1981, § 43-21-3.1, enacted by Ga. L. 1986, p. 1212, § 1; Ga. L. 2008, p. 1032, § 13/HB 1168.

JUDICIAL DECISIONS

Proper termination of hotel room rental agreement. — Contraband found by police officers in the defendant's hotel room was properly seized under the Fourth Amendment because the hotel manager had the authority to terminate the defendant's rental agreement without prior notice on the ground the defendant was selling drugs from the room and creating a disturbance at the hotel, and did so before the officers went to the room; thus, the defendant no longer had a reasonable expectation of privacy in the room. The officers had to determine if anyone was in the room before the clerk could lock the door and effectuate the eviction, and thus properly entered the room to search in places where someone could be hiding and properly seized marijuana found on a table in plain view as well as marijuana located under the bed. Johnson v. State, 285 Ga. 571, 679 S.E.2d 340, 2009 Ga. LEXIS 288 (2009).

As a hotel manager had grounds to conclude that a guest was causing a disturbance, the manager was authorized to evict the guest for cause without giving advance notice under O.C.G.A. § 43-21-3.1(a). Therefore, the guest's arrest for criminal trespass was legal and the guest's false imprisonment claim against the hotel and manager was properly dismissed on summary judgment. Lewis v. Ritz Carlton Hotel Co., LLC, 310 Ga. App. 58, 712 S.E.2d 91, 2011 Ga. App. LEXIS 488 (2011), cert. denied, No. S11C1649, 2011 Ga. LEXIS 854 (Ga. Oct. 17, 2011).

Persons not paying fee for room are not guests and are not entitled to notice of eviction. — Trial court erred by assuming that the defendants had a continuing expectation of privacy in a hotel room because a guest services agent had the authority to evict the defendants from the room once the agent learned that the defendants had checked into the hotel using a fraudulent credit card, and because the defendants had obtained the room through a fraudulent credit card that would not be honored by the credit card company, the defendants were not paying a fee for the room and were not guests within the meaning of O.C.G.A. § 43-21-1(1); therefore, the defendants could be evicted from the room for cause, and if the defendants were being evicted from the hotel for cause, under O.C.G.A. § 43-21-3.1(b), the defendants were not entitled to notice of the eviction. State v. Delvechio, 301 Ga. App. 560, 687 S.E.2d 845, 2009 Ga. App. LEXIS 1274 (2009).

43-21-3.2. Written statement of period of occupancy signed by guest; rights of innkeeper and guest under contract.

A written statement prominently setting forth in bold type the time period during which a guest may occupy an assigned room, when separately signed or initialed by the guest, is a valid nonassignable contract. At the expiration of such time period, the guest may be restrained from entering such room and any property of the guest may be removed by the innkeeper to a secure place where the guest may recover his or her property without liability to the innkeeper, except for damages to or loss of such property attributable to its removal. If a guest vacates his or her room prior to the date contained in the written statement, that guest shall not be liable for charges for the time after the room is vacated unless the guest has agreed otherwise before occupying the room.

History.
Code 1981, § 43-21-3.2, enacted by Ga. L. 1994, p. 498, § 1.

JUDICIAL DECISIONS

Extended-stay motel was not an innkeeper under O.C.G.A. § 43–21–3.2 and therefore could not avail itself of that statute to summarily evict residents for non-payment because this Code section only referenced innkeepers and not apartment hotels. Efficiency Lodge, Inc. v. Neason, 363 Ga. App. 19, 870 S.E.2d 549, 2022 Ga. App. LEXIS 119 (2022).

43-21-4. Innkeeper as depository for hire; rules governing liability.

An innkeeper is a depository for hire; however, given the nature of his business, his liability is governed by more stringent rules, as are set out in this article.

History.

Orig. Code 1863, § 2094; Code 1868, § 2089; Code 1873, § 2115; Code 1882, § 2115; Civil Code 1895, § 2933; Civil Code 1910, § 3506; Code 1933, § 52-104.

JUDICIAL DECISIONS

History of limitation of innkeeper's liability. — See Austin v. Berlin Supply Co., 12 Ga. App. 798, 78 S.E. 723, 1913 Ga. App. LEXIS 758 (1913).

Meaning of "stringent rules". — By "stringent rules", as used in this statute, means more stringent rules than other depositaries for hire. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Innkeeper is not an insurer of guests' safety but needs only see that premises are reasonably safe. Truett v. Morgan, 153 Ga. App. 778, 266 S.E.2d 557, 1980 Ga. App. LEXIS 1978 (1980).

Innkeeper must exercise ordinary care to keep premises safe for invitee tenants. Davis v. Garden Servs., Inc., 155 Ga. App. 34, 270 S.E.2d 228, 1980 Ga. App. LEXIS 2443 (1980).

Innkeepers have lien on debtor's personalty unless voluntarily surrendered. — Policy of law as to innkeepers, boardinghouse keepers, and all pawnees and depositaries for hire is that they shall have a lien on personalty deposited or pawned with them until they are paid for their services, but that they lose such lien by voluntary surrender to the debtor of the property on which the lien is claimed. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

RESEARCH REFERENCES

ALR.

Justification of guest in leaving hotel or boarding house before expiration of contract, 10 A.L.R. 127.

Liability of innkeeper for loss or damage to property of a guest resulting from fire, 63 A.L.R.2d 495.

Liability of innkeeper, restauranteur, or tavern keeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant, 70 A.L.R.2d 628; 28 A.L.R.4th 80; 43 A.L.R.4th 281.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 A.L.R.3d 433.

Liability of hotel or motel operator for injury or death resulting to guest from defects in furniture in room or suite, 91 A.L.R.3d 483.

43-21-5. Attachment of lien on property of guests or their agents; priorities.

The keeper of every inn, boarding house, lodging house, and eating house shall have a lien on all furniture, baggage, wearing apparel, and other property brought into such inn, boarding house, lodging house, or eating house by any guest or patron of the same who has title to such property, or by an agent who has legally acquired possession of such property for the purpose of dealing therewith for the benefit of the owner and in and about the business of the owner, to secure the payment by such guest or patron of all sums due for food, lodging, or other accommodation. The lien shall attach in all cases where a liability has been created without regard to the time of furnishing such food, lodging, or other accommodation and shall be superior to other liens except liens for taxes, liens for purchase money or retention of title of record, special liens of landlords for rent, liens of laborers, and all general liens of which the keeper of such inn, boarding house, lodging house, or eating house had actual notice or constructive notice before the property claimed to be subject was brought into such inn, boarding house, lodging house, or eating house.

History.

Orig. Code 1863, § 2101; Code 1868, § 2096; Ga. L. 1873, p. 42, § 13; Code 1873, §§ 1986, 2122; Code 1882, §§ 1986, 2122; Civil Code 1895, §§ 2810, 2940; Civil Code 1910, §§ 3360, 3513; Ga. L. 1923, p. 101, § 1; Code 1933, § 52-105.

Cross references.

Liens generally, § 44-14-320 et seq.

JUDICIAL DECISIONS

State action as to enforcement. — When the sole action attributable to the state is the General Assembly's enactment of statutes announcing the circumstances under which the courts of this state will not interfere with the private enforcement of innkeepers' liens, there is no violation of due process rights. Evans v. Harley Hotels, Inc., 253 Ga. 53, 315 S.E.2d 896, 1984 Ga. LEXIS 788 (1984).

Lien given to innkeepers and boardinghouse keepers is not created by contract, but by law. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 811 (1933).

Provisions strictly construed as to boardinghouse keepers. — Statutes giving to boardinghouse keepers a lien on the goods of their boarders and the means to enforce the lien are in derogation of common law and should be strictly construed. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

Methods of enforcing boarding-house keeper's lien. — Lien of a boardinghouse keeper under former Civil Code 1910, §§ 3360 and 3513 (see now O.C.G.A. § 43-21-5) may be enforced as provided in former Civil Code 1910, § 3368 (see now O.C.G.A. § 43-21-6), by selling the property at public outcry after giving proper notice to lienee, or as provided in former Civil Code 1910, § 3366. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

Innkeepers have lien on guests' personalty until paid. — Policy of law as to innkeepers, boardinghouse keepers, and all pawnees and depositaries for hire is that they shall have a lien on personalty deposited or pawned with them, and may retain possession of the chattels in opposition to the title of the owner, until they

are paid for their services. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933); Brown v. Harmon, 59 Ga. App. 373, 1 S.E.2d 33, 1939 Ga. App. LEXIS 30 (1939).

If owner regains possession of property without fraud, lien is ended. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

Innkeeper's voluntary surrender of guest's property. — When a boarding-house keeper or innkeeper voluntarily surrenders possession of a guest's property on which the keeper has a boarding-house keeper's or innkeeper's lien for board due, the keeper thereby loses the lien thereon, and cannot afterwards retake the property. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933); Brown v. Harmon, 59 Ga. App. 373, 1 S.E.2d 33, 1939 Ga. App. LEXIS 30 (1939).

Permitting guest to drive car away from premises as voluntary surrender. — Plaintiff never established nor attempted to establish a lien by retaining possession of property levied on, and if the plaintiff ever could have been considered as having possession of the property, the plaintiff voluntarily surrendered it by allowing the defendant to drive the automobile away from the plaintiff's premises. Thus, when the plaintiff levied on the automobile, the automobile was not in the plaintiff's possession, but was parked on a public street and was in the possession of the defendant. Brown v. Harmon, 59 Ga. App. 373, 1 S.E.2d 33, 1939 Ga. App. LEXIS 30 (1939).

Abandoning boardinghouse as surrender of lien on property therein. — When a boardinghouse keeper abandoned the boardinghouse, leaving the delinquent boarder in free possession of the boarder's goods, this constituted a voluntary surrender of the goods of the boarder on which the house keeper could claim a lien for money due for the furnishing of meals to the boarder's wife and child. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

RESEARCH REFERENCES

ALR.

Automobile as subject of innkeeper's lien, 56 A.L.R. 1102.

43-21-6. Enforcement of lien created by Code Section 43-21-5.

For the enforcement of the lien created by Code Section 43-21-5, the keeper of the inn, boarding house, lodging house, or eating house claiming the lien may retain possession of the property against which the lien is claimed. At any time after 30 days after the person creating such debt or obligation has left the inn, boarding house, lodging house, or eating house, if the debt or obligation is still unpaid, the innkeeper may sell at public auction at the office of the inn, boarding house, lodging house, or eating house where such lien is claimed, to the highest bidder for cash, any and all property subject to such lien, without any further process being necessary. The proceeds of such sale shall be applied, first, to the payment of the expense of such sale; second, to the reduction or discharge of the debt or obligation due to the inn, boarding house, lodging house, or eating house; and any surplus remaining shall be held subject to the demand of the person creating such debt or obligation, provided that such sale shall be advertised by written or printed posters at the office of the inn, boarding house, lodging house, or eating house and at the courthouse door of the county in which the

inn, boarding house, lodging house, or eating house is located for at least ten days before such sale. The advertisement shall specify the time and place of sale. The keeper of the inn, boarding house, lodging house, or eating house shall give the owner or agent, or both, written notice by registered or certified mail or statutory overnight delivery addressed to him at his last known address at least ten days prior to the sale, notifying him of the time and place of sale and of the amount claimed against him. Any surplus proceeds of the sale, after payment of the amount claimed against such owner or agent and the cost of sale, if not claimed by the owner or agent within 12 months after the sale, shall be turned over to the board of education of the county in which the sale occurred for educational purposes.

History.

Ga. L. 1873, p. 42, § 17; Code 1873, § 1992; Ga. L. 1880-81, p. 63, § 4; Code 1882, § 1992; Civil Code 1895, § 2818; Civil Code 1910, § 3368; Ga. L. 1923, p. 101, § 2; Code 1933, § 52-106; Ga. L. 2000, p. 1589, § 3.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

State action as to enforcement. — When the sole action attributable to the state is the General Assembly's enactment of statutes announcing the circumstances under which the courts of this state will not interfere with the private enforcement of innkeepers' liens, there is no violation of due process rights. Evans v. Harley Hotels, Inc., 253 Ga. 53, 315 S.E.2d 896, 1984 Ga. LEXIS 788 (1984).

When the hotel management sought to collect for long distance calls from a room, it was held that an innkeeper may retain possession of any belongings which were left in a room by an indebted guest under O.C.G.A. § 43-21-6. Hall v. State, 180 Ga. App. 210, 348 S.E.2d 736, 1986 Ga. App. LEXIS 2078 (1986).

Methods of enforcing boardinghouse keeper's lien. — Lien of a boardinghouse keeper under former Civil Code 1910, §§ 3360 and 3513 (see now O.C.G.A. § 43-21-5) may be enforced by selling property at public outcry after giving to the lienee proper notice, or as provided in former Civil Code 1910, § 3366 (see now O.C.G.A. § 44-14-550). Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

Lien lost as to personalty voluntarily surrendered to guest or owner. — Lien in favor of an innkeeper or boardinghouse keeper consists in the keeper's right to retain possession of chattels in opposition to title of the owner until the charge respecting them is paid, and if possession is voluntarily surrendered, without fraud, to the guest or owner, the lien is at an end, and the innkeeper or boardinghouse keeper cannot thereafter retake the property. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933); Brown v. Harmon, 59 Ga. App. 373, 1 S.E.2d 33, 1939 Ga. App. LEXIS 30 (1939).

Permitting guest to drive car off premises as surrender of lien thereon. — Plaintiff never established nor attempted to establish a lien by retaining possession of property levied on, and if the plaintiff ever could have been considered as having possession of the property, the plaintiff voluntarily surrendered the property by allowing the defen-

dant to drive the automobile away from the plaintiff's premises, and when the automobile was levied on, the property was not in the plaintiff's possession, but was parked on the public street and was in possession of the defendant as recited. Brown v. Harmon, 59 Ga. App. 373, 1 S.E.2d 33, 1939 Ga. App. LEXIS 30 (1939).

Abandoning boardinghouse as surrender of lien on property therein. — When a boardinghouse keeper abandoned the boardinghouse, leaving the delinquent boarder in free possession of the boarder's goods, this constituted the voluntary surrender of the goods of the boarder on which the house keeper could claim a lien for money due for furnishing meals to the boarder's wife and child. Turner v. Priest, 48 Ga. App. 109, 171 S.E. 881, 1933 Ga. App. LEXIS 479 (1933).

RESEARCH REFERENCES

ALR.

Automobile as subject of innkeeper's lien, 56 A.L.R. 1102.

43-21-7. Checks or receipts for baggage.

(a) A keeper of an inn or other house of public entertainment for travelers shall give receipts or checks for all baggage delivered to such inn or house of entertainment when requested to do so by the guest owning the baggage. Such keeper shall not make any additional charge for receipting for, checking, or keeping such baggage while the owner remains a guest of the house.

(b) Any person who violates this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1864-65, p. 61, § 1; Code 1873, § 2123; Code 1882, § 2123; Civil Code 1895, § 2941; Penal Code 1895, § 603; Civil Code 1910, § 3514; Penal Code 1910, § 634; Code 1933, §§ 52-107, 52-9901.

RESEARCH REFERENCES

ALR.

Authority of clerk or other employee to waive innkeeper's regulation as to baggage or valuables, 56 A.L.R. 316.

43-21-8. Liability of innkeeper for stolen goods.

An innkeeper shall exercise extraordinary diligence in preserving the property entrusted to his care by his guests, provided that, if the loss of such entrusted property occurs through theft and if the guest has complied with all reasonable rules of the inn, the innkeeper shall be liable as an insurer of the stolen property.

History.

Orig. Code 1863, § 2096; Code 1868, § 2091; Code 1873, § 2117; Code 1882, § 2117; Civil Code 1895, § 2935; Civil Code 1910, § 3508; Code 1933, § 52-108.

JUDICIAL DECISIONS

At common law an innkeeper was insurer of goods of a guest, and could only limit liability by express contract or notice. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Distinction between liability as to thefts and other losses. — Proper construction of former Civil Code 1910, § 3508 (see now O.C.G.A. § 43-21-8) was as follows: when it is shown that property of a guest was stolen while in the custody of an innkeeper, and the guest has complied with all reasonable rules of the inn, the liability of the innkeeper is that of an insurer. In all other cases of loss, the innkeeper may excuse oneself by showing that loss was due to negligence or fault of the guest personally, or occurred after exercise by innkeeper of extraordinary diligence. By former Civil Code 1910, § 3508 (see now O.C.G.A. § 43-21-12), it was provided that in the case of loss the presumption is want of extraordinary diligence by the landlord as provided in former Civil Code 1910, § 3508. Austin v. Berlin Supply Co., 12 Ga. App. 798, 78 S.E. 723, 1913 Ga. App. LEXIS 758 (1913).

Construed with former Code 1873, § 2119 (see now O.C.G.A. § 43-21-10), former Code 1873, § 2117 (see now O.C.G.A. § 43-21-8) required that reasonable rules be posted. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

When liability attaches. — When a hotel keeper sends a porter to the cars to receive the baggage of persons traveling, and baggage is delivered to the porter, and the traveler becomes the guest of the hotel, the liability of the innkeeper as such for the baggage begins on delivery to the porter and continues until redelivery to the actual custody of the guest. Sasseen & Whitaker v. Clark, 37 Ga. 242, 1867 Ga. LEXIS 151 (1867); Coskery v. Nagle, 83 Ga. 696, 10 S.E. 491, 1889 Ga. LEXIS 138 (1889).

When liability terminates. — If the porter of the innkeeper takes charge of baggage at the hotel to deliver the baggage at the cars for the guest, the liability of the innkeeper continues until the baggage is delivered. It devolves on the innkeeper to show such facts as will discharge the innkeeper from liability on account of such baggage. Sasseen & Whitaker v. Clark, 37 Ga. 242, 1867 Ga. LEXIS 151 (1867).

Inn guest retains guest status when using restaurant facility on premises of hotel structure. Summer v. Hyatt Corp., 153 Ga. App. 684, 266 S.E.2d 333, 1980 Ga. App. LEXIS 1944 (1980).

Hotel may open unlocked items to determine owner. — It is not an unauthorized search for hotel management personnel, including security personnel, to open unlocked items found on their premises in an attempt to determine ownership so that lost or misplaced property can be returned to the proper owner. Berger v. State, 150 Ga. App. 166, 257 S.E.2d 8, 1979 Ga. App. LEXIS 2168 (1979), cert. denied, 445 U.S. 927, 100 S. Ct. 1312, 63 L. Ed. 2d 759, 1980 U.S. LEXIS 1125 (1980).

RESEARCH REFERENCES

ALR.

Liability of innkeeper for property left by departing guest who intends to return, 22 A.L.R. 1194.

What information must be given by a guest upon delivering articles into custody of innkeeper, 53 A.L.R. 1048.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 A.L.R. 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 A.L.R. 1088.

Effect of notice limiting liability for valuables or effects of guest in hotel, 9 A.L.R.2d 818.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 A.L.R.3d 433.

Construction and application of terms

"jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property, 88 A.L.R.3d 979.

43-21-9. Acts constituting entrustment of property to innkeeper.

It shall not be necessary to show actual delivery of property to the innkeeper before such property shall be deemed to have been entrusted to the innkeeper. Depositing goods in a public room set apart for such articles or leaving them in the room of the guest shall be a delivery to the innkeeper. However, if the guest shall deliver his goods to a servant under special charge to him to keep the same, the innkeeper shall not be liable therefor.

History.
Orig. Code 1863, § 2097; Code 1868, § 2092; Code 1873, § 2118; Code 1882, § 2118; Civil Code 1895, § 2936; Civil Code 1910, § 3509; Code 1933, § 52-109.

JUDICIAL DECISIONS

Presumption of entrustment not applicable to strangers. — Expressions, "depositing goods in a public room set apart for such articles," as used in this statute are to be understood as relating to such acts of a guest as distinguished from such acts by a mere intruder or stranger having no relation of guest to the innkeeper, and at no time establishing such a relation. Brewer v. Caswell, 132 Ga. 563, 64 S.E. 674, 1909 Ga. LEXIS 359 (1909).

Hotel may open unlocked items to determine owner. — It is not an unauthorized search for hotel management personnel, including security personnel, to open unlocked items found on their premises in an attempt to determine ownership so that the lost or misplaced property can be returned to the proper owner. Berger v. State, 150 Ga. App. 166, 257 S.E.2d 8, 1979 Ga. App. LEXIS 2168 (1979), cert. denied, 445 U.S. 927, 100 S. Ct. 1312, 63 L. Ed. 2d 759, 1980 U.S. LEXIS 1125 (1980).

RESEARCH REFERENCES

ALR.
Liability of innkeeper for property left by departing guest who intends to return, 22 A.L.R. 1194.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 A.L.R. 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 A.L.R. 1088.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 A.L.R.3d 433.

43-21-10. Deposit of valuables by guest with innkeeper.

The innkeeper may provide a safe or other place of deposit for valuable articles and, by posting a notice thereof, may require guests of the innkeeper to place such valuable articles therein or the innkeeper shall be relieved from responsibility for such articles. For all valuable

articles placed by a guest with an innkeeper for safekeeping, the innkeeper shall give a receipt therefor to evidence the fact of such deposit. No guest shall recover from the innkeeper more than $750.00 for loss of valuable articles deposited with the innkeeper for safekeeping unless such guest shall possess a receipt of the innkeeper for the valuable articles claimed to have been lost.

History.

Orig. Code 1863, § 2098; Code 1868, § 2093; Code 1873, § 2119; Code 1882, § 2119; Civil Code 1895, § 2937; Civil Code 1910, § 3510; Ga. L. 1922, p. 52, § 1; Code 1933, § 52-110; Ga. L. 1984, p. 924, § 1.

Cross references.

Deposits generally, § 44-12-90 et seq.

Law reviews.

For annual survey on law of torts, see 43 Mercer L. Rev. 395 (1991).

JUDICIAL DECISIONS

Statute was not intended to be exhaustive as to reasonable rules which may be adopted by innkeepers. Austin v. Berlin Supply Co., 12 Ga. App. 798, 78 S.E. 723, 1913 Ga. App. LEXIS 758 (1913).

Former Code 1873, §§ 2117 and 2120 (see now O.C.G.A. §§ 43-21-8 and 43-21-12) must be construed in pari materia with former Code 1873, § 2119 (see now O.C.G.A. § 43-21-10). Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Multiple notices sufficient to relieve innkeeper of liability. — Notice of the availability of a safe and the requirement that guests place valuables therein, to relieve the innkeeper of liability for the loss of such items, was sufficient since the notice was posted not only on the registration card, but also in the guest's room and behind the registration desk. Kates v. Brunswick Motel Enters., Inc., 187 Ga. App. 875, 371 S.E.2d 686, 1988 Ga. App. LEXIS 1005 (1988); Chapparone v. First Florence Corp., 233 Ga. App. 546, 504 S.E.2d 761, 1998 Ga. App. LEXIS 1020 (1998).

Notice on hotel register of place of deposit was not "posting" as required in this statute and was not sufficient. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Effect of innkeeper's negligence after notice. — After notice was given by posting according to the requirements of this statute, an innkeeper was not liable for articles stolen from a guest's room because of negligence in failing to provide a suitable lock on the door of the guest's room, or in placing a fire escape in such manner to afford easy access to the room. Jones v. Savannah Hotel Co., 141 Ga. 530, 81 S.E. 874, 1914 Ga. LEXIS 37 (1914).

O.C.G.A. § 43-21-10 carves out no exception for losses occasioned by the negligence or intentional torts of the innkeeper's employees. Thus, if the innkeeper posts notice in accordance with the statute, it is not liable for articles stolen from a guest's room even if the innkeeper's own employees were negligent in preventing the theft or were actually parties to the theft. Gooden v. Day's Inn, 196 Ga. App. 324, 395 S.E.2d 876, 1990 Ga. App. LEXIS 930 (1990), cert. denied, No. S90C1417, 1990 Ga. LEXIS 639 (Ga. Sept. 4, 1990).

Statute limited liability of hotel unless guest complied with requirements. Holzer Watch Co. v. Dinkler Hotel Corp., 418 F.2d 241, 1969 U.S. App. LEXIS 10024 (5th Cir. 1969).

Liability for personal effects of reasonable value despite notice. — Even if notice had been published to a guest according to the law of this statute to deposit valuables in another place, it would not apply to a reasonable amount of traveling money and a watch of reasonable value. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

RESEARCH REFERENCES

ALR.

Liability of innkeeper for property left by departing guest who intends to return, 22 A.L.R. 1194.

What information must be given by a guest upon delivering articles into custody of innkeeper, 53 A.L.R. 1048.

Authority of clerk or other employee to waive innkeeper's regulation as to baggage or valuables, 56 A.L.R. 316.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 A.L.R. 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 A.L.R. 1088.

Place of posting, and contents of, notice by innkeeper as to safety receptacle for valuables of guest, necessary to comply with statutory provisions in that regard, 119 A.L.R. 796.

Statutory limitations upon innkeeper's liability as applicable where guests' property is lost or damaged through innkeeper's negligence, 37 A.L.R.3d 1276.

Liability of hotel or motel for guest's loss of money from room by theft or robbery committed by person other than defendant's servant, 28 A.L.R.4th 120.

43-21-11. Limitation on liability of innkeeper when valuables deposited with him.

(a) No hotel, apartment hotel, or innkeeper shall be responsible in an amount in excess of $1,000.00 for the loss or theft of any valuables, including cash, jewelry, etc., which are contained in a package, box, bag, or other container left with the hotel proprietor or innkeeper to be placed in the safe or other depository of the hotel or inn, provided that the liability of the hotel or innkeeper may be increased to an amount in excess of $1,000.00 by a written contract entered into between the parties providing a greater liability; provided, further, that the contract shall not call for any additional cost to the guest.

(b) A notice containing the provisions of subsection (a) of this Code section shall be posted in a conspicuous place in all rooms of the hotel occupied by guests.

History.

Ga. L. 1943, p. 313, § 1; Ga. L. 1984, p. 924, § 2.

Cross references.

Liability of depositories for hire generally, § 44-12-92.

JUDICIAL DECISIONS

Statute spells out limitations on liability of hotel keepers whose guests place themselves within terms of these statutory provisions (see now O.C.G.A. Ch. 21, T. 43). Koch v. Block Corp., 423 F.2d 700, 1970 U.S. App. LEXIS 10980 (5th Cir. 1970).

RESEARCH REFERENCES

ALR.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 A.L.R. 1106.

Construction, scope, and application of

words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 A.L.R. 1088.

Effect of notice limiting liability for valuables or effects of guest in hotel, 9 A.L.R.2d 818.

Statutory limitations upon innkeeper's liability as applicable where guests' property is lost or damaged through innkeeper's negligence, 37 A.L.R.3d 1276.

Construction and application of terms "jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property, 88 A.L.R.3d 979.

43-21-12. Loss of or injury to property by innkeeper.

In case of loss of property entrusted by a guest to an innkeeper, it will be presumed that the innkeeper failed to exercise extraordinary diligence with regard to such property. Negligence or default by the guest, of which the loss is a consequence, shall be a sufficient defense. The liability of the innkeeper for loss of or injury to personal property placed by any guest under the innkeeper's care, other than valuable articles which must be delivered to the innkeeper to be deposited in a safe or other place of deposit, shall not exceed the sum of $1,000.00, provided that any guest may, at any time before loss, damage, or destruction of the guest's property, notify the innkeeper in writing that the property of the guest exceeds in value the sum of $1,000.00 and shall, upon demand of the innkeeper, furnish the innkeeper a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the full value of such property in case of loss, damage, or destruction because of negligence on the innkeeper's part; provided, further, that the innkeeper shall post a copy of this Code section, printed in distinct type, on the inside of the door of the guest's room. The innkeeper may adopt reasonable regulations for the innkeeper's protection, and the publication of such rules to the innkeeper's guests shall bind them to comply therewith.

History.

Orig. Code 1863, § 2099; Code 1868, § 2094; Code 1873, § 2120; Code 1882, § 2120; Civil Code 1895, § 2938; Civil Code 1910, § 3511; Ga. L. 1922, p. 52, § 2; Code 1933, § 52-111; Ga. L. 1984, p. 924, § 3.

JUDICIAL DECISIONS

Statute intended to apply only to houses of public entertainment furnishing lodging to a guest. Diplomat Restaurant, Inc. v. Towsend, 118 Ga. App. 694, 165 S.E.2d 317, 1968 Ga. App. LEXIS 1502 (1968).

Former Code 1882, § 2120 (see now O.C.G.A. § 43-21-12) referred to reasonable regulations other than those connected with the safe and their publication because former Code 1873, § 2119 (see now O.C.G.A. § 43-21-10) provided how notice to the guest of the safe, or other place of deposit, shall be given. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Necessity for posting regulations. — Former Code 1882, § 2120 (see now O.C.G.A. § 43-21-12) must be construed with former Code 1873, § 2119 (see now O.C.G.A. § 43-21-10), and when so construed it was necessary to post regula-

tions for the guest's protection. Murchison v. Sergent, 69 Ga. 206, 1882 Ga. LEXIS 198 (1882).

Innkeeper is liable for losses in absence of regulation and notice. — When an innkeeper fails to adopt reasonable regulations for the innkeeper's own protection and to provide for due publication of such to guests, a guest who sustains a loss may recover therefor, unless guilty of negligence or default of which the loss is a consequence. Watson v. Loughran, 112 Ga. 837, 38 S.E. 82, 1901 Ga. LEXIS 106 (1901).

Diligence required even after discovery of guest's negligence. — When the guest is guilty of negligence, the innkeeper will nevertheless be liable if after discovery of such negligence the innkeeper and through the innkeeper's servants do not exercise extraordinary diligence to prevent loss. Watson v. Loughran, 112 Ga. 837, 38 S.E. 82, 1901 Ga. LEXIS 106 (1901).

Contract purporting to further exculpate innkeeper is contrary to public interest and policy and cannot be enforced. Ellerman v. Atlanta Am. Motor Hotel Corp., 126 Ga. App. 194, 191 S.E.2d 295, 1972 Ga. App. LEXIS 1097 (1972).

Negligence is question for jury. — Whether given acts or omissions of a guest by whom a loss is sustained do or do not amount to such negligence on the guest's part as will constitute a sufficient defense to an action against a landlord for value of lost property is generally a question for the jury. Watson v. Loughran, 112 Ga. 837, 38 S.E. 82, 1901 Ga. LEXIS 106 (1901).

RESEARCH REFERENCES

ALR.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 A.L.R. 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 A.L.R. 1088.

Liability of innkeeper for loss or damage to property of a guest resulting from fire, 63 A.L.R.2d 495.

43-21-13. Defrauding innkeeper.

Any person who, with intent to defraud, shall obtain food, lodging, or other accommodation at any hotel, inn, boarding house, or eating house, except when credit shall be given therefor by express agreement, shall be guilty of a misdemeanor.

History.

Ga. L. 1910, p. 137, § 1; Code 1933, § 52-9903; Ga. L. 1957, p. 335, § 1.

RESEARCH REFERENCES

ALR.

What constitutes a boarding house, 19 A.L.R. 538.

43-21-14. Proof of intent to defraud.

Proof that food, lodging, or other accommodation was obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, by such person obtaining such food, lodging, or other accommodation; or that such person absconded without paying or

offering to pay for such food, lodging, or other accommodation; or that such person gave in payment for such food, lodging, or other accommodation any check or draft made payable at sight, on demand, or on a date not subsequent to the date when the same was drawn, which check or draft payment was refused on presentation; or that such person surreptitiously removed or attempted to remove therefrom his baggage or other property brought with him to such hotel, inn, boarding house, or eating house, without having paid for or having offered to pay for such food, lodging, or other accommodation so furnished him shall be prima-facie evidence of the fraudulent intent mentioned in Code Section 43-21-13. No person shall be convicted under Code Section 43-21-13 where there shall have been an agreement to delay payment for such food, lodging, or other accommodations until a date after such person shall have terminated his relation as a guest at such hotel, inn, boarding house, or eating house.

History.
Ga. L. 1910, p. 137, § 2; Code 1933, § 52-9904.

43-21-15. Posting copies of law as to fraud.

It shall be the duty of every hotel keeper, innkeeper, boarding house keeper, and eating house keeper to keep a copy of Code Sections 43-21-13 and 43-21-14 printed in distinct type, posted in the lobby, public waiting room, or that portion of his establishment most frequented by the guests thereof; and no conviction shall be had under this law until it shall be made to appear that such copy was posted, as above provided, in the hotel, inn, boarding house, or eating house, the owner or keeper of which shall claim to have been defrauded, at the time such food, lodging, or other accommodation was obtained.

History.
Ga. L. 1910, p. 137, § 3; Code 1933, § 52-9905.

43-21-16. [Repealed] Charging of excessive rates during 1996 Olympic Games; penalties; automatic repeal.

History.
Code 1981, § 43-21-16, enacted by Ga. L. 1994, p. 1364, § 1; repealed by Ga. L. 1994, p. 1364, § 1, effective December 31, 1996.

ARTICLE 2

SANITARY REGULATIONS FOR HOTELS AND INNS

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.
C.J.S.
15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-21-30. Bed linens.

It shall be the duty of every hotel keeper or innkeeper to furnish clean bed linens, unused by any other person since the last laundering thereof, on all beds assigned to the use of any guest or patron of such inn or hotel.

History.
Ga. L. 1910, p. 88, § 1; Code 1933, § 52-202.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 33.
C.J.S.
43A C.J.S., Inns, Hotels, and Eating Places, §§ 7, 24.
ALR.
Justification of guest in leaving hotel or boarding house before expiration of contract, 10 A.L.R. 127.

43-21-31. Screens on doors and windows.

It shall be the duty of every hotel keeper or innkeeper to screen properly, with wire, cloth, or gauze, the doors, windows, and other similar openings in the kitchen and dining room of such inn or hotel.

History.
Ga. L. 1910, p. 88, § 2; Code 1933, § 52-203.

43-21-32. Closets and restrooms.

It shall be the duty of every hotel keeper or innkeeper to keep the closets and restrooms used in connection with such inn or hotel in a clean and sanitary condition.

History.
Ga. L. 1910, p. 88, § 3; Code 1933, § 52-204.

RESEARCH REFERENCES

ALR.
Justification of guest in leaving hotel or boarding house before expiration of contract, 10 A.L.R. 127.
Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 A.L.R.3d 716.
Liability of hotel or motel operator for injury or death of guest or privy resulting from condition in plumbing or bathroom of room or suite, 93 A.L.R.3d 253.

43-21-33. Penalty.

Any proprietor, lessee, manager, or agent of an inn or hotel covered by this article who is authorized to control the conditions of such inn or hotel and who violates any provision of this article shall be guilty of a misdemeanor.

History.
Ga. L. 1910, p. 88, § 6; Code 1933, § 52-9902.

RESEARCH REFERENCES

ALR.
Liability for personal injury by fire escape, 42 A.L.R. 1111.
Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 A.L.R.3d 716.

ARTICLE 3

ROADHOUSES AND PUBLIC DANCE HALLS

Cross references.
Tourist courts, § 31-28-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d,

States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-21-50. License requirement.

(a) Every person, firm, or corporation engaged in the business of operating, outside the corporate limits of any municipality in this state, a roadhouse, public dance hall, or any other similar establishment by whatever name called, where travelers, transient guests, or other persons are or may be lodged, or operating restaurants, cafes, or places where food or drinks, or both, are sold to be consumed at such places, shall, before engaging in such business, apply for and obtain a license from the county commissioners or from the judge of the probate court in the county in which such business is to be carried on.

(b) It shall be unlawful for any person, firm, or corporation to engage in any business described in this Code section without first obtaining a license therefor. Any person violating this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1945, p. 326, §§ 1, 13.

Cross references.

Powers of local governments to regulate retail sales of alcoholic beverages generally, § 3-3-2.

Authorization for and regulation of private clubs selling distilled spirits, T. 3, C. 7.

RESEARCH REFERENCES

Am. Jur. 2d.

40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 25 et seq.

C.J.S.

43A C.J.S., Inns, Motels and Eating Places, § 6 et seq.

ALR.

Validity of license tax or fee on show or place of amusement, 58 A.L.R. 1340; 111 A.L.R. 778.

Public regulation of dancing, dance halls, dancing schools, 60 A.L.R. 173.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

Tax or license fee in respect of dancing or other entertainment provided in connection with service of refreshment, 142 A.L.R. 572.

Validity of statutory or other regulation of roadhouses and places of entertainment outside of incorporated cities and town, 145 A.L.R. 757.

43-21-51. Application for license.

(a) Every person, firm, or corporation making application for a license to engage in the business described in Code Section 43-21-50 shall make application to the county commissioners or the judge of the probate court of the county in which such business is to be operated. The application shall contain:

(1) The name and residence of the applicant and the length of his residence within the state;

(2) The address and place for which such license is desired;

(3) The name of the owner of the premises upon which the business licensed is to be located;

(4) A statement that the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction; and

(5) A statement that such applicant is of good moral character and has never been convicted of a felony involving moral turpitude.

(b) The application prescribed in this Code section must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant, or otherwise, that such applicant has been convicted of a felony involving moral turpitude, the license shall not be granted unless it shall appear to the satisfaction of the county commissioners or the judge of the probate court that the licensed premises will be operated in a lawful manner, in which case such official or officials may, in their discretion, issue such license. Before any such license shall be issued, the governing body of the county shall be satisfied that the statements required by this Code section are true.

History.
Ga. L. 1945, p. 326, §§ 3, 4; Ga. L. 1986, p. 449, § 1.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 A.L.R. 322.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 A.L.R.3d 891.

43-21-52. Term of licenses; fees; engaging in business under an expired license.

Licenses issued under this article shall be renewed annually on or

before June 1 of each year or at the date of engaging such business and shall expire on May 31 of each year; and license fees shall be for the full amount of the tax prescribed, regardless of the date such business is begun. Upon the expiration of a license, it shall be unlawful for any person, firm, or corporation to continue such business until a new license for the privilege of engaging in such business is applied for and obtained.

History.
Ga. L. 1945, p. 326, § 12.

43-21-53. License fee as supplemental to other licenses and taxes.

The license fee imposed pursuant to this article shall be in addition to all other licenses and taxes levied by law upon the business taxed.

History.
Ga. L. 1945, p. 326, § 11.

RESEARCH REFERENCES

ALR.
Validity of license tax or fee on show or place of amusement, 111 A.L.R. 778.

43-21-54. Revocation of license after conviction for violation of article; barring of issuance of new license after revocation.

In addition to any penalty prescribed in this article for a violation of this article the court before whom such person is tried and where a conviction is had shall have the power to revoke the license to operate the establishments licensed under this article; and whenever any person, firm, or corporation has been so convicted, the court, if it shall appear that the premises were being operated in violation of the law with the knowledge, consent, or approval of the owner thereof, shall have the authority to prohibit the issuance of any similar license for such premises to any person for a term of one year after the revocation of the license.

History.
Ga. L. 1945, p. 326, § 10.

RESEARCH REFERENCES

ALR.
Refusal of amusement license or permit as subject to judicial review, 124 A.L.R. 247.

Validity of statute or rule which makes specified conduct or condition a ground for cancellation or suspension of license, irre-

spective of licensee's personal fault, 3 A.L.R.2d 107.

43-21-55. Furnishing list of employees to sheriff; notice of change of ownership.

At any time upon request of the sheriff of the county in which such business is carried on, the operator of every establishment named in this article shall furnish the sheriff with a list of all employees who are employed by him in connection with the business; and, in every instance when such an operator goes out of business or there is a change of ownership or management thereof, such operator shall immediately file with the clerk of the county commissioners or with the judge of the probate court of the county in which such business is carried on a notice to this effect, giving the name and address of the purchaser or the new owner or manager thereof.

History.
Ga. L. 1945, p. 326, § 5.

43-21-56. Registration of guests; maintaining register.

Any person or persons occupying any room or rooms in a roadhouse, public dance hall, or any other similar establishment by whatever name called shall register or cause himself to be registered before occupying the same and, if traveling by motor vehicle, shall register at the same time the license plate of such motor vehicle and the manufacturer's name of such motor vehicle; and no person shall write or cause to be written or, if in charge of a register, knowingly permit to be written in any register in any of the establishments enumerated in this Code section, a name or designation other than the true name or names in ordinary use of the person registering or causing himself to be registered therein, or the true name of the manufacturer of such motor vehicle or the correct license plate and number thereof. Every person to whom a license is issued under this article shall provide a permanent register for the purposes set forth in this Code section.

History.
Ga. L. 1945, p. 326, § 6.

RESEARCH REFERENCES

ALR.
Liability of innkeeper for indignity to one occupying room without being registered, 29 A.L.R. 481.

43-21-57. Injunctions.

Upon application of any officer or citizen of the county wherein such establishment is located, the superior courts of the state are authorized to enjoin any licensee under this article from further operation of such

business upon proof that such licensee has violated this article or upon proof that the licensee has forfeited his license; and the superior courts and the judges thereof shall likewise have authority to and shall enjoin, at the instance of any citizen, any person, firm, or corporation from further operation of such business without first securing the license provided for in this article.

History.
Ga. L. 1945, p. 326, § 17A.

JUDICIAL DECISIONS

O.C.G.A. § 43-21-57 constitutional although title of Act does not mention injunction. — Fact that no particular reference is made in the title of Ga. L. 1945, p. 326 (see now O.C.G.A. Ch. 21, T. 43) to the penalty of an injunction provided for in Ga. L. 1945, p. 326, § 17A (see now O.C.G.A. § 43-21-57) did not render that section repugnant to the constitutional provision in Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. III, Sec. V, Para. III). Copeland v. Leathers, 206 Ga. 280, 56 S.E.2d 530, 1949 Ga. LEXIS 455 (1949).

Injunctive relief provided for is entirely harmonious with main idea and purpose of Ga. L. 1945, p. 326. Copeland v. Leathers, 206 Ga. 280, 56 S.E.2d 530, 1949 Ga. LEXIS 455 (1949).

It is not required that owner or operator be in actual charge of register; if the owner's or the operator's agents, servants, or employees are in charge thereof and fail to secure from occupants of cabins or rooms the registration and information required by Ga. L. 1945, p. 326, § 6 (see now O.C.G.A. § 43-21-56), the owner or operator is responsible therefor under former Code 1933, §§ 4-309 and 4-311 (see now O.C.G.A. §§ 10-6-58 and 10-6-60). Copeland v. Leathers, 206 Ga. 280, 56 S.E.2d 530, 1949 Ga. LEXIS 455 (1949).

Statute did not authorize court to enjoin owner from selling such premises. Copeland v. Leathers, 206 Ga. 280, 56 S.E.2d 530, 1949 Ga. LEXIS 455 (1949).

43-21-58. Authority of municipality to adopt provisions of article for establishments located in municipality.

The governing body of any municipality shall have the authority to adopt any or all of the provisions of this article for application to any establishment which is located within the limits of such municipality and which, except for its location in such municipality, fits the description of those establishments mentioned in Code Section 43-21-50.

History.
Ga. L. 1945, p. 326, § 15.

43-21-59. Applicability of article.

This article shall not apply to hotels and inns within the definition of Code Sections 43-21-1 and 43-21-2 nor to persons who, incidental to their principal business or occupation, accept from time to time seasonal boarders in their private residences.

History.
Ga. L. 1945, p. 326, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Georgia Center for Continuing Education pays no local hotel tax. — Since the Georgia Center for Continuing Education is neither licensed by nor required to pay business or occupation taxes to a city or county, the center is not subject to a hotel and motel tax imposed by those jurisdictions. 1975 Op. Att'y Gen. No. U75-39.

RESEARCH REFERENCES

ALR.
Status and rights of one renting room in club, 32 A.L.R. 1016.
Civil rights: actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like, 35 A.L.R.3d 859.

43-21-60. Supplemental nature of article.

This article shall be supplemental to and not in derogation of any other law pertaining to the licensing and regulating of public dance halls, roadhouses, and similar businesses.

History.
Ga. L. 1945, p. 326, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
73 Am. Jur. 2d, Statutes, § 1 et seq.
C.J.S.
82 C.J.S., Statutes, §§ 289, 292, 293, 316.

43-21-61. Occupying rooms for immoral purposes.

(a) Any man or woman found occupying the same room in any establishment covered by this article for any immoral purpose or any man or woman falsely registering as, or otherwise representing themselves to be, husband and wife in any such establishment shall be guilty of a misdemeanor.

(b) Any operator or keeper of any establishment covered by this article who shall knowingly permit any man or woman to occupy any room in that establishment for any immoral purposes or who shall knowingly permit any man or woman to register falsely as husband and wife in such an establishment shall be guilty of a misdemeanor.

(c) Any person who shall knowingly persuade, induce, or entice, or cause to be persuaded, induced, or enticed, any female person to enter any establishment covered by this article for the purpose of prostitution

or debauchery or for any other immoral purpose shall be guilty of a misdemeanor.

History.
Ga. L. 1945, p. 326, §§ 7-9.
Cross references.
Prostitution generally, §§ 16-6-9, 16-6-10.
Abatement of places used for unlawful sexual and drug activities, T. 41, C. 3.
Invalidity of leases of houses, buildings, and other facilities for purposes of prostitution, § 44-7-18.

43-21-62. Penalty.

Unless another penalty is provided in this article or by the laws of this state, any person violating any of the provisions of this article shall be guilty of a misdemeanor.

History.
Ga. L. 1945, p. 326, § 14.

CHAPTER 21A

INDUSTRIAL HYGIENE, HEALTH PHYSICS, AND SAFETY PROFESSION RECOGNITION AND TITLE PROTECTION

Sec.		Sec.	
43-21A-1.	Short title.	43-21A-6.	Unfair business practices.
43-21A-2.	Purpose of chapter.	43-21A-7.	State or local government regulation of the practice of industrial hygiene, health physics, and safety.
43-21A-3.	Definitions.		
43-21A-4.	Regulation of certain terms and titles.		
43-21A-5.	Identification, advertisement, or representation of business entries as providers of certain services.	43-21A-8.	Exceptions.
		43-21A-9.	Unauthorized use of certification mark.
		43-21A-10.	Penalties.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Plant and Job Safety — OSHA and State Laws, § 1 et seq.

C.J.S.
51 C.J.S., Labor Relations, § 27 et seq.

43-21A-1. Short title.

This chapter shall be known and may be cited as the "Industrial Hygiene, Health Physics, and Safety Profession Recognition and Title Protection Act."

History.
Code 1981, § 43-21A-1, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-2. Purpose of chapter.

(a) The purpose of this chapter is to provide legal recognition to the professions of industrial hygiene, health physics, and safety, as well as provide assurance to the public that individuals representing themselves as being involved in the professions of industrial hygiene, health physics, and safety have met minimum qualifications, thereby protecting the public health and safety.

(b) This chapter is also enacted for the purposes of:

(1) Prohibiting an individual from representing that the individual is a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety

technologist, or registered radiation protection technologist unless the individual meets certain qualifications;

(2) Prohibiting a business entity from identifying, representing, or advertising itself as a provider of industrial hygiene, health physics, or safety services furnished by a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety technologist, or registered radiation protection technician unless the business entity meets certain qualifications; and

(3) Providing or recognizing certain qualifications for individuals and business entities using certain titles or making certain representations relating to the provision of industrial hygiene, health physics, or safety services.

History.
Code 1981, § 43-21A-2, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-3. Definitions.

As used in this chapter, the term:

(1) "Accredited college or university" means a United States college or university that holds accreditation from one of the six regional accrediting bodies or the Distance Education and Training Council which are recognized by the Council on Higher Education and the U.S. Department of Education. A degree must be awarded during the time for which the institutional accreditation was issued. A college or university that is located outside of the United States will be considered on the basis of its accreditation status in the education system that has jurisdiction.

(2) "American Academy of Health Physics" means the nonprofit corporation established to improve the practice and educational standards of the profession of health physics through certification of individuals by the American Board of Health Physics which establishes education, experience, examination, and maintenance requirements for certification and prepares, administers, and grades the certification examinations and issues certification to successful candidates.

(3) "American Board of Industrial Hygiene" means the nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(4) "Board of Certified Safety Professionals" means the nonprofit

corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(5) "Certified associate industrial hygienist" means a person who has received the designation "certified associate industrial hygienist" by the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

(6) "Certified health physicist" means a person who has received the designation "certified health physicist" by the American Board of Health Physics and whose certification has not lapsed or been revoked.

(7) "Certified industrial hygienist" means a person who has received the designation "certified industrial hygienist" by the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

(8) "Certified safety professional" means a person who has been certified by the Board of Certified Safety Professionals and whose certification has not lapsed or been revoked.

(9) "Construction health and safety technician" means a person who, by virtue of education, experience, and examination, is recognized by the American Board of Industrial Hygiene and Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists.

(10) "Health physicist" means a person having education or experience equivalent to a baccalaureate or graduate degree from an accredited college or university in health physics, radiation safety, radiation protection, biology, chemistry, engineering, physics, or a closely related physical or biological science who, by virtue of special studies and training, has acquired competence in health physics. Such special studies and training must have been sufficient in such cognate sciences to provide the ability and competency to:

(A) Anticipate and recognize the interactions of radiation with matter and to understand the effects of radiation on animals, people, and the environment;

(B) Evaluate, on the basis of training and experience and with the aid of quantitative measurement techniques, the magnitude of radiological factors in terms of their ability to impair human and environmental health and well-being; and

(C) Prescribe methods to prevent, eliminate, control, or reduce radiation exposure to workers, patients, the public, and the environment.

(11) "Health physics" means that science and art devoted to the anticipation, recognition, evaluation, and control of radioactive material releases and potential radiation hazards in or from the workplace that may cause impaired health and well-being or injury among workers and may also impact the general community and the environment.

(12) "Industrial hygiene" means that science and practice devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers and may also impact the general community.

(13) "Industrial hygiene certification organization" means an organization which has been in existence for at least five years and which has been established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, and examination requirements. The organization shall be accredited by the National Commission of Certifying Agencies, the Council of Engineering and Scientific Specialty Boards, or a nationally recognized accrediting body which uses certification criteria equal to or greater than that of the National Commission of Certifying Agencies or the Council of Engineering and Scientific Specialty Boards. The organization shall maintain criteria at least equivalent to that of the American Board of Industrial Hygiene.

(14) "Industrial hygienist" means a person having a baccalaureate or graduate degree from an accredited college or university in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science who, by virtue of special studies and training, has acquired competence in industrial hygiene. Such special studies and training must have been sufficient in such cognate sciences to provide the ability and competency to:

(A) Anticipate and recognize the environmental factors and stresses associated with work and work operations and understand their effects on people and their well-being;

(B) Evaluate, on the basis of training and experience and with the aid of quantitative measurement techniques, the magnitude of these factors and stresses in terms of their ability to impair human health and well-being; and

(C) Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

(15) "National Registry of Radiation Protection Technologists" means the nonprofit corporation established to promote the education

and training of radiation protection technologists and, by so doing, to promote and advance the science of health physics and to provide incentives and services to encourage personnel to maintain and expand radiation protection education and training.

(16) "Occupational health and safety technologist" means a person who, by virtue of special studies and training, has acquired proficiency in one or more areas of occupational health and safety recognized by the American Board of Industrial Hygiene and Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists.

(17) "Registered radiation protection technologist" means a person who has received the designation "registered radiation protection technologist" from the National Registry of Radiation Protection Technologists, whose registration has not lapsed or been revoked, and who is engaged in providing protection to the radiation worker, the general public, and the environment from the effects of ionizing radiation.

(18) "Safety profession" means the science and art concerned with the preservation of human and material resources through the systematic application of principles drawn from such disciplines as engineering, education, psychology, physiology, enforcement, and management for anticipating, identifying, and evaluating hazardous conditions and practices; developing hazard control designs, methods, procedures, and programs; implementing, administering, and advising others on hazard controls and hazard control programs; and measuring, auditing, and evaluating the effectiveness of hazard controls and hazard control programs.

(19) "Safety profession certification organization" means an organization which has been in existence for at least five years and which has been established to improve the practice and educational standards of the safety profession by certifying individuals who meet its education, experience, and examination requirements. The organization shall be accredited by the National Commission of Certifying Agencies, the Council of Engineering and Scientific Specialty Boards, or a nationally recognized accrediting body which uses certification criteria equal to or greater than that of the National Commission of Certifying Agencies or the Council of Engineering and Scientific Specialty Boards. The organization shall maintain criteria at least equivalent to that of the Board of Certified Safety Professionals.

History.
Code 1981, § 43-21A-3, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-4. Regulation of certain terms and titles.

(a) An individual shall meet the requirements and qualifications as set out in this chapter before such individual uses the title or represents himself or herself to the public as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist.

(b) An individual shall not use the title "certified associate industrial hygienist," the initials "CAIH" or "C.A.I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as a certified associate industrial hygienist unless:

(1) The individual is designated as a certified associate industrial hygienist by the American Board of Industrial Hygiene; and

(2) The certified associate industrial hygienist designation has not lapsed or been revoked.

(c) An individual shall not use the title "certified health physicist," the initials "CHP" or "C.H.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides health physics services as a certified health physicist unless:

(1) The individual is designated as a certified health physicist by the American Board of Health Physics; and

(2) The certified health physics designation has not lapsed or been revoked.

(d) An individual shall not use the title "certified industrial hygienist," the initials "CIH" or "C.I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as a certified industrial hygienist unless:

(1) The individual is designated as a certified industrial hygienist by the American Board of Industrial Hygiene; and

(2) The certified industrial hygienist designation has not lapsed or been revoked.

(e) An individual shall not use the title "certified safety professional," the initials "CSP" or "C.S.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides safety services as a certified safety professional unless:

(1) The individual is designated as a certified safety professional by the Board of Certified Safety Professionals; and

(2) The certified safety professional designation has not lapsed or been revoked.

(f) An individual shall not use the title "construction health and safety technician," the initials "CHST" or "C.H.S.T.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene or safety services as a construction health and safety technician unless:

(1) The individual is designated as a construction health and safety technician by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists; and

(2) The construction health and safety technician designation has not lapsed or been revoked.

(g) An individual shall not use the title "health physicist," the initials "HP" or "H.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides health physics services as a health physicist unless the individual meets the definition of health physicist as stated in this chapter.

(h) An individual shall not use the title "industrial hygienist," the initials "IH" or "I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as an industrial hygienist unless the individual meets the definition of industrial hygienist as stated in this chapter.

(i) An individual shall not use the title "occupational health and safety technologist," the initials "OHST" or "O.H.S.T.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene or safety services as an occupational health and safety technologist unless:

(1) The individual is designated as an occupational health and safety technologist by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists; and

(2) The occupational health and safety technologist designation has not lapsed or been revoked.

(j) An individual shall not use the title "registered radiation protection technologist," the initials "RRPT" or "R.R.P.T.," or any variation of those terms to identify, advertise, or represent, by any means of

communication, that the individual provides radiation protection services as a registered radiation protection technologist unless:

(1) The individual is designated as a registered radiation protection technologist by the National Registry of Radiation Protection Technologists; and

(2) The registered radiation protection technologist designation has not lapsed or been revoked.

History.
Code 1981, § 43-21A-4, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-5. Identification, advertisement, or representation of business entries as providers of certain services.

(a) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene services furnished by certified associate industrial hygienists unless the industrial hygiene services are provided by or under the direct supervision of a certified associate industrial hygienist.

(b) A business entity shall not identify, advertise, or represent itself as a provider of health physics services furnished by certified health physicists unless the health physics services are provided by or under the direct supervision of a certified health physicist.

(c) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene services furnished by certified industrial hygienists unless the industrial hygiene services are provided by or under the direct supervision of a certified industrial hygienist.

(d) A business entity shall not identify, advertise, or represent itself as a provider of safety services furnished by certified safety professionals unless the safety services are provided by or under the direct supervision of a certified safety professional.

(e) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene or safety services furnished by occupational health and safety technologists unless the industrial hygiene or safety services are provided by or under the direct supervision of an occupational health and safety technologist.

(f) A business entity shall not identify, advertise, or represent itself as a provider of radiation protection services furnished by registered radiation protection technologists unless the radiation protection services are provided by or under the direct supervision of a registered radiation protection technologist.

(g) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene or safety services furnished by construction health and safety technicians unless the industrial hygiene or safety services are provided by or under the direct supervision of a construction health and safety technician.

History.
Code 1981, § 43-21A-5, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-6. Unfair business practices.

It is an unfair business practice for any person to represent himself or herself as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist unless he or she complies with the requirements of this chapter.

History.
Code 1981, § 43-21A-6, enacted by Ga. L. 2005, p. 956, § 1/HB 353.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2005, "he or she complies" was substituted for "they comply" near the end of this Code section.

43-21A-7. State or local government regulation of the practice of industrial hygiene, health physics, and safety.

No entity of state or local government shall by rule or otherwise prohibit or restrict the practice of industrial hygiene, health physics, or safety by any qualified individual who complies with the provisions established by or pursuant to this chapter, except when authorized by state statute to regulate a specific activity that may include the practice of industrial hygiene, health physics, or safety.

History.
Code 1981, § 43-21A-7, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-8. Exceptions.

This chapter does not apply to:

(1) A person employed as an apprentice under the supervision of a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety technologist, or registered radiation protection technologist;

(2) A student studying industrial hygiene, health physics, or safety

engaging in supervised activities related to industrial hygiene, health physics, or safety;

(3) Any person legally regulated in this state under any other licensing Act or regulation and engaging in the activities permitted under his or her license, provided he or she does not represent himself or herself to the public as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist; and

(4) Individuals practicing within the scope of the meaning of industrial hygiene, health physics, or safety so long as the individual does not use the title or initials of or represent themselves to the public as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist.

History.
Code 1981, § 43-21A-8, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-9. Unauthorized use of certification mark.

No person shall mislead or deceive anyone by the unauthorized use of any industrial hygiene, health physics, or safety certification mark that has been awarded by the U.S. Patent and Trademark Office.

History.
Code 1981, § 43-21A-9, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

43-21A-10. Penalties.

Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding $1,000.00.

History.
Code 1981, § 43-21A-10, enacted by Ga. L. 2005, p. 956, § 1/HB 353.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — A violation of O.C.G.A. § 43-21A-10 is not one for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

CHAPTER 22

JUNK DEALERS

Sec.		Sec.	
43-22-1.	Definitions.	43-22-4.	Written consent to enter another's property.
43-22-2.	Registration with judge of probate court.	43-22-5.	Penalty.
43-22-3.	Registration fee.		

Cross references.

Maintenance of records by secondary metals recyclers regarding purchase of copper wire or cable, § 10-1-350 et seq.

Restrictions on location of junkyards and screening and fencing requirements for junkyards, § 32-6-240 et seq.

Scrap metal processors, T. 43, C. 43.

Used motor vehicle dealers, parts dealers, T. 43, C. 47.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Regulation of junk dealers, 30 A.L.R. 1427; 45 A.L.R.2d 1391.

43-22-1. Definitions.

As used in this chapter, the term:

(1) "Junk" means any used article of commerce which is composed principally of iron, steel, brass, copper, zinc, or their alloys, or any other base metals and which is commonly bought for the purpose of resale or refabrication, or both.

(2) "Junk dealer" means any person, firm, or corporation or officer, agent, or employee of any person, firm, or corporation who engages in the purchase of junk for the purpose of resale or refabrication, or both.

History.
Ga. L. 1939, p. 337, §§ 4, 5.

OPINIONS OF THE ATTORNEY GENERAL

Person selling used automobile parts is a junk dealer and subject to junk dealer's tax. 1950-51 Ga. Op. Att'y Gen. 187.

43-22-2. Registration with judge of probate court.

No person, firm, or corporation or employee of any person, firm, or corporation shall engage in the business of purchasing junk in any county of this state without first registering his name with the judge of the probate court of the county in which he intends to engage in such business, the name to be entered upon a book in the judge's office, to be known as the junk dealers' book, and paying to the judge the registration fee as provided in Code Section 43-22-3.

History.
Ga. L. 1939, p. 337, § 2.

RESEARCH REFERENCES

ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-22-3. Registration fee.

The registration fee provided for in Code Section 43-22-2 shall be $1.00, which shall be paid to the judge of the probate court at the time of registration by each person, firm, or corporation and by the individual agent and employee of any person, firm, or corporation engaged in the business of purchasing junk in such county. After the initial payment, a registration fee of $1.00 shall be paid annually by each junk dealer. All fees paid to the judge of the probate court under this chapter shall be and remain the property of the judge of the probate court, and the judge of the probate court shall issue to the person making such payment a proper receipt therefor.

History.
Ga. L. 1939, p. 337, § 3.

43-22-4. Written consent to enter another's property.

It shall be unlawful for any person, firm, or corporation or officer thereof or agent or employee of such person, firm, or corporation who is engaged in business as a junk dealer to enter upon the lands of another

person, without the written consent of the owner or tenant in possession of such land, for the purpose of buying junk, or soliciting for the purpose of buying junk, or, after entering upon such land, to purchase or offer to purchase junk in any manner whatsoever.

History.
Ga. L. 1939, p. 337, § 1.
Cross references.
Right of action for interference with enjoyment of property, § 51-9-1.

43-22-5. Penalty.

Any person, firm, or corporation or officer, agent, or employee thereof who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50.00 nor more than $100.00, or imprisonment not to exceed six months, or both.

History.
Ga. L. 1939, p. 337, § 6.

CHAPTER 22A

LACTATION CONSULTANT PRACTICE

Sec.		Sec.	
43-22A-1.	Short title.	43-22A-9.	License as property; display; address changes; renewal; inactive status.
43-22A-2.	Purpose of chapter; legislative findings.	43-22A-10.	Sanction.
43-22A-3.	Definitions.	43-22A-11.	Use of title "licensed lactation consultant" or "licensed L.C."
43-22A-4.	Lactation Consultant Advisory Group; membership.	43-22A-12.	Licensing authority of Secretary; investigations; fines.
43-22A-5.	Duties of advisory group.	43-22A-13.	Compliance with state and federal regulations.
43-22A-6.	Application; license.		
43-22A-7.	Requirements for application for licensure.		
43-22A-8.	Notification to applicant of acceptance or rejection.		

43-22A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Lactation Consultant Practice Act."

History.

Code 1981, § 43-22A-1, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

Cross references.

Newborn Baby and Mother Protection Act, § 33-24-58.2.

Medicaid coverage for lactation and postpartum care, § 49-4-159.

OPINIONS OF THE ATTORNEY GENERAL

Access to database. — Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

43-22A-2. Purpose of chapter; legislative findings.

The General Assembly acknowledges that the application of specific knowledge and skills relating to breastfeeding is important to the health of mothers and babies and acknowledges further that the rendering of sound lactation care and services in hospitals, physician practices, private homes, and other settings requires trained and competent professionals. It is declared, therefore, to be the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in lactation care and services.

History.
Code 1981, § 43-22A-2, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-3. Definitions.

As used in this chapter, the term:

(1) "Advisory group" means the group appointed pursuant to Code Section 43-22A-4.

(2) "Applicant" means any person seeking a license under this chapter.

(3) "International Board Certified Lactation Consultant (IBCLC)" means a person who holds current certification from the International Board of Lactation Consultant Examiners (IBLCE) after demonstrating the appropriate education, knowledge, and experience necessary for independent clinical practice.

(4) "International Board of Lactation Consultant Examiners (IBLCE)" means the international organization that certifies IBCLCs and is independently accredited by the National Commission of Certifying Agencies.

(5) "Lactation care and services" means the clinical application of scientific principles and a multidisciplinary body of evidence for evaluation, problem identification, treatment, education, and consultation to childbearing families regarding lactation care and services. Lactation care and services shall include, but not be limited to:

(A) Lactation assessment through the systematic collection of subjective and objective data;

(B) Analysis of data and creation of a lactation care plan;

(C) Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;

(D) Evaluation of outcomes;

(E) Provision of lactation education to parents and health care providers; and

(F) The recommendation and use of assistive devices.

(6) "Lactation consultant" means:

(A) A person duly licensed under this chapter to practice lactation care and services; or

(B) A health care professional duly licensed pursuant to such health care professional's licensing requirements to perform lacta-

tion care and services who is also an IBCLC in good standing with the IBLCE, or its successor organization; provided, however, that such health care professional shall not be deemed to be licensed under this chapter nor be entitled to use the title "licensed lactation consultant" or "licensed L.C." without having met the requirements of Code Section 43-22A-7.

(7) "License" means a license to practice as a lactation consultant pursuant to this chapter.

(8) "Office" means the office of the Secretary of State.

(9) "Practice"' means rendering or offering to render any lactation care and services to any individual, family, or group of individuals.

(10) "Secretary" means the Secretary of State or his or her designee.

History.
Code 1981, § 43-22A-3, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-4. Lactation Consultant Advisory Group; membership.

(a) There is created within the office a Lactation Consultant Advisory Group which shall consist of five members.

(b) The Secretary shall appoint all members of the advisory group. The advisory group shall consist of persons familiar with the practice of lactation care and services to provide the Secretary with expertise and assistance in carrying out his or her duties pursuant to this chapter.

(c) The Secretary shall appoint members of the advisory group to serve for terms of four years. The Secretary shall appoint four members who are lactation consultants in this state and one member who is a consumer.

(d) Members shall serve without compensation.

(e) Members may serve consecutive terms at the will of the Secretary. Any vacancy shall be filled in the same manner as the regular appointments. The Secretary may remove members of the advisory group for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

History.
Code 1981, § 43-22A-4, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-5. Duties of advisory group.

(a) The advisory group shall meet at least once per year or as otherwise called by the Secretary.

(b) The Secretary shall consult with the advisory group prior to setting or changing fees as provided for in this chapter.

(c) The advisory group may facilitate the development of materials that the Secretary may utilize to educate the public concerning lactation consultant licensure, the benefits of lactation care and services, and utilization of lactation care and services by individuals and in facilities or institutional settings.

(d) The advisory group may act as a facilitator of state-wide dissemination of information between lactation consultants, the International Board of Lactation Consultant Examiners or its successor organization, and the Secretary.

(e) The advisory group shall provide analysis of disciplinary actions taken, appeals and denials, and revocation of licenses at least once per year.

(f) The Secretary shall seek the advice of the advisory group for issues related to lactation care and services.

History.
Code 1981, § 43-22A-5, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-6. Application; license.

The Secretary may grant, upon application and payment of proper fees, a license without examination to a person who, at the time of application, either:

(1) Holds a valid license to practice lactation care and services issued by another state, political territory, or jurisdiction acceptable to the Secretary if, in the Secretary's opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter; or

(2) Presents evidence satisfactory to the Secretary that the applicant is an IBCLC in good standing with the IBLCE, or its successor organization.

History.
Code 1981, § 43-22A-6, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

OPINIONS OF THE ATTORNEY GENERAL

Exempt persons. — The types of people exempt from the Georgia Lactation Consultant Practice Act, O.C.G.A. § 43-22A-1 et seq., can broadly be categorized as: (1) other licensed health care professionals who provide lactation care and services within the scope of their respective professions; (2) doulas, perinatal and childbirth educators acting within the scope of their respective professions; (3) students preparing for the practice of lactation care and services who are practicing under the supervision of a lactation consultant or one of the specified health care professions; (4) federal employees working within a federal installation; (5) state, municipal, and county employees whose official duties include lactation care and services; (6) individual volunteers who receive no compensation for their services; and (7) non-resident IBCLCs for a limited duration of time dependent upon their licensure status in another state. Based on the foregoing, to the extent that a certified lactation consultant or any other person is practicing lactation care and services in the context of one of the Act's enumerated exceptions, that person does not need to be a licensed lactation consultant. 2018 Op. Att'y Gen. No. 18-1.

43-22A-7. Requirements for application for licensure.

Except as provided in paragraph (4) of this Code section, each applicant for a license as a lactation consultant shall be at least 18 years of age, shall have submitted a completed application upon a form and in such manner as the Secretary prescribes, accompanied by applicable fees, and shall be in compliance with the following requirements:

(1) Meeting the international education and clinical standards established for IBCLCs by the IBLCE, or its successor organization;

(2) Providing proof of successful completion of the IBLCE examination or the examination of any successor organization;

(3) Having satisfactory results from a criminal background check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the Secretary. Application for a license under this Code section shall constitute express consent and authorization for the Secretary to perform a criminal background check. Each applicant who submits an application to the Secretary for licensure agrees to provide the Secretary with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) Completing such other requirements as may be prescribed by the Secretary.

History.
Code 1981, § 43-22A-7, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

JUDICIAL DECISIONS

Constitutionality. — Lactation care provider's due process and equal protection challenge to the Georgia Lactation Consultant Practice Act, O.C.G.A. § 43-22A-1 et seq., which required such providers to obtain a state license, was improperly dismissed; the Georgia Constitution recognized a substantive due process right to work in one's chosen profession. Jackson v. Raffensperger, 308 Ga. 736, 843 S.E.2d 576, 2020 Ga. LEXIS 344 (2020).

43-22A-8. Notification to applicant of acceptance or rejection.

After evaluation of an application and other evidence submitted, the Secretary shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

History.
Code 1981, § 43-22A-8, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-9. License as property; display; address changes; renewal; inactive status.

(a) A license issued by the Secretary is the property of the Secretary and must be surrendered on demand.

(b) The licensee shall display the license in an appropriate and public manner.

(c) The licensee shall inform the Secretary of any change of address.

(d) The license shall be renewed biennially if the licensee is not in violation of this chapter at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the Secretary.

(e) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(f) Under procedures and conditions established by the Secretary, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time, and upon meeting the conditions set by the Secretary, such license shall be declared active.

History.
Code 1981, § 43-22A-9, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-10. Sanction.

The Secretary, in consultation with the advisory group, may impose on a licensed lactation consultant any sanction authorized under

subsection (c) of Code Section 43-22A-12 upon a finding of any conduct specified in subsection (a) of Code Section 43-22A-12.

History.
Code 1981, § 43-22A-10, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-11. Use of title "licensed lactation consultant" or "licensed L.C."

On and after July 1, 2018, no person without a license as a lactation consultant issued pursuant to this chapter shall use the title "licensed lactation consultant" or "licensed L.C." or practice lactation care and services, provided that this chapter shall not prohibit any practice of lactation care and services that is exempt pursuant to the provisions set forth in Code Section 43-22A-13.

History.
Code 1981, § 43-22A-11, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-12. Licensing authority of Secretary; investigations; fines.

(a) The Secretary may revoke, suspend, deny, or refuse to issue or renew a license; place a licensee on probation; or issue a letter of admonition upon proof that the licensee or applicant:

(1) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(2) Has been convicted of a felony or of any crime involving moral turpitude as provided under state law;

(3) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under such licensee's care;

(4) Has had a license to practice a business or profession suspended or revoked or has otherwise been subject to discipline related to such licensee's practice of a business or profession in any other jurisdiction;

(5) Has committed a fraudulent act that materially affects the fitness of the licensee or applicant to practice a business or profession;

(6) Excessively or habitually uses alcohol or drugs, provided that the Secretary shall not discipline a licensee under this paragraph if such licensee is enrolled in a substance abuse program approved by the office; or

(7) Has a physical or mental disability that renders such licensee incapable of safely administering lactation care and services.

(b) The Secretary is authorized to conduct investigations into allegations of conduct described in subsection (a) of this Code section.

(c) In addition to revoking, suspending, denying, or refusing to renew a license, the Secretary may fine a licensee found to have violated any provision of this chapter or any rule adopted by the Secretary under this chapter not less than $100.00 nor more than $500.00 for each violation.

(d) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the Secretary and the provisions of this chapter.

History.
Code 1981, § 43-22A-12, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

43-22A-13. Compliance with state and federal regulations.

Nothing in this chapter shall be construed to affect or prevent:

(1) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of lactation care and services when incidental to the practice of their profession, except such persons shall not use the title "licensed lactation consultant" or "licensed L.C.";

(2) Doulas and perinatal and childbirth educators from performing education functions consistent with the accepted standards of their respective occupations, except such persons shall not use the title "licensed lactation consultant" or "licensed L.C." or designate themselves by any other term or title which implies that such person has the clinical skills and education comparable to a licensed lactation consultant;

(3) The practice of lactation care and services by students, interns, or persons preparing for the practice of lactation care and services under the qualified supervision of a lactation consultant or any licensed professional listed in paragraph (1) of this Code section;

(4) Employees of the United States government or any bureau, division, or agency thereof from engaging in the practice of lactation care and services within the discharge of the employees' official duties so long as such employees are performing their duties within the recognized confines of a federal installation regardless of whether jurisdiction is solely federal or concurrent;

(5) Employees of a department, agency, or division of state, county,

or local government from engaging in the practice of lactation care and services within the discharge of the employees' official duties, including, but not limited to, peer counselors working within the Special Supplemental Nutrition Program for Women, Infants, and Children;

(6) Individual volunteers from providing lactation care and services, provided that:

(A) Such volunteers shall not use the title "licensed lactation consultant" or "licensed L.C.," shall not state that they are licensed to practice lactation care and services, and shall not designate themselves by any other term or title which implies that such volunteers have the clinical skills and education comparable to a licensed lactation consultant;

(B) Their volunteer service is performed without fee or other form of compensation, monetary or otherwise, from the individuals or groups served; and

(C) Such volunteers receive no form of compensation, monetary or otherwise, except for administrative expenses, such as mileage;

(7) A nonresident IBCLC from practicing lactation care and services in this state for five days without licensure or up to 30 days with licensure from another state if the requirements for licensure in such other state are substantially equal to the requirements contained in this chapter; or

(8) Other health care related professionals from seeking licensure for their professions.

History.
Code 1981, § 43-22A-13, enacted by Ga. L. 2016, p. 357, § 1/HB 649.

CHAPTER 23

LANDSCAPE ARCHITECTS

Sec.		Sec.	
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43-23-6.	Application for licenses.	43-23-15.	Injunctions.
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43-23-10.	Temporary licenses.	43-23-19.	Penalty.
43-23-11.	Form of licenses and certificates; seal on certificates;	43-23-20.	[Repealed] Termination.

Cross references.
Architects generally, T. 43, C. 4.

Administrative rules and regulations.
Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-1.

OPINIONS OF THE ATTORNEY GENERAL

Persons offering services solely as city, regional, or urban planners exempt from licensure requirements. — Person providing services within the definition of the practice of landscape architecture is not required to comply with the licensure requirements of landscape architects if that person offers services solely as a city, regional, or urban planner and does not use the title "landscape architect." 1980 Op. Att'y Gen. No. 80-4.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d,

States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-23-1. Definitions.

As used in this chapter the term:

(1) "Board" means the Georgia Board of Landscape Architects.

(2) "Landscape architect" means a person who is licensed pursuant to this chapter to practice or teach landscape architecture.

(3) "Landscape architecture" means the performance of professional services, including, but not limited to, consultation, investigation, planning, design, preparation of drawings and specifications, and responsible supervision, all in connection with the preservation or determination of proper land uses, natural land features, esthetics, planting plans, the shaping of land to produce the best functional and esthetic effect, and grading plans with determination of drainage. This term shall also include the consideration of environmental problems involving land areas, as such problems relate to the public health, safety, and welfare.

History.

Ga. L. 1958, p. 400, § 1; Code 1933, § 84-4001, enacted by Ga. L. 1976, p. 1730, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Landscape architects may prepare drainage plans for design and arrangement of land forms and nonhabitable features. 1974 Op. Att'y Gen. No. 74-2.

County may not restrict drainage plans to engineers. — County ordinance requiring that registered professional engineers prepare drainage plans submitted to the county is erroneous in light of the statutes which provide that landscape architects may prepare drainage plans for the design and arrangement of land forms and nonhabitable features. 1974 Op. Att'y Gen. No. 74-2.

Definition of "landscape architecture" in O.C.G.A. § 43-23-1(3) does not appear to be significantly different from the definition of "landscape architect" in the 1958 Act; the definitions in the 1976 Act and the 1958 Act appear to be functionally indistinguishable with respect to the types of plans that can be prepared by a landscape architect. Both Acts permit licensed landscape architects to design and arrange land forms for the preservation and determination of proper land uses including the preparation of grading plans for the determination of drainage. 1990 Op. Att'y Gen. No. 90-7.

RESEARCH REFERENCES

C.J.S.
6 C.J.S., Architects, § 2 et seq.

43-23-2. Georgia Board of Landscape Architects; members.

(a) The Georgia Board of Landscape Architects is created and shall be under the jurisdiction of the Secretary of State and the division director. The board shall be composed of five members, each of whom shall be appointed by the Governor. Four of the five members shall be licensed landscape architects who shall be residents of this state and actively engaged in the practice of landscape architecture. The fifth member of the board shall be a resident of this state and shall have no connection whatsoever with the practice of landscape architecture. The four members of the board in office on July 1, 1993, shall serve the remainder of their terms of office, as provided by the law under which each was appointed. The additional member to be added to the board in 1993 shall be appointed for an initial term of four years. Upon the expiration of each member's term of office, a successor shall be appointed for a term of four years, and all succeeding appointments made under this subsection shall be for four-year terms.

(b) Members of the board shall serve until their successors are appointed and qualified. Vacancies on the board shall be filled by appointment of the Governor and, in the same manner as provided in subsection (a) of this Code section, for the unexpired term of the member creating such vacancy.

(c) The board shall select from its members a chairman.

(d) The board may do all things necessary and convenient for its own government and for carrying into effect the provisions of this chapter and may promulgate necessary rules and regulations to carry out the provisions of this chapter, not otherwise inconsistent with this chapter, including regulations governing the professional conduct of persons licensed by the board. The board shall be authorized to meet as often as necessary in order to conduct its business, but in no event shall the board meet less than twice during every calendar year.

(e) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1958, p. 400, § 2; Code 1933, § 84-4005, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1979, p. 378, §§ 1, 2; Ga. L. 1980, p. 591, § 1; Ga. L. 1993, p. 1023, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 1706, § 19.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Landscape Architects, Chapter 310-1 et seq.

43-23-3. Seal.

The board shall adopt a seal, which may be either an engraved or an ink stamped seal, with the words "Board of Landscape Architects, State of Georgia" or such other device as the board may desire included thereon, by which it shall authenticate the acts of the board.

History.
Code 1933, § 84-4006, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 2011, p. 99, § 69/HB 24.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-23-4. Power of board to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees.

The board shall have the full power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees.

History.
Code 1933, § 84-4008, enacted by Ga. L. 1976, p. 1730, § 1.

43-23-5. License requirement for persons engaged in landscape architecture; enjoining unauthorized use of title or term "landscape architect."

(a) No person shall perform or offer, attempt, or agree to perform any act which would constitute the practice of landscape architecture, as defined in paragraph (3) of Code Section 43-23-1, whether as a part of a transaction or as an entire transaction, unless such person has received a license as a landscape architect pursuant to this chapter.

(b) The commission of a single act by a person required to be licensed under this chapter and who is not licensed shall constitute a violation of this chapter.

(c) Notwithstanding any provisions for criminal liability, any person who, without possessing a valid unsuspended, unrevoked license as provided in this chapter, uses the title or term "landscape architect" in any sign, card, listing, advertisement, or in any other manner that would imply or indicate that he is a landscape architect as defined in this chapter may be enjoined from using such title or term in such manner.

History.
Ga. L. 1958, p. 400, § 6; Code 1933, § 84-4002, enacted by Ga. L. 1976, p. 1730, § 1.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Persons employed by state agencies as landscape architects must be licensed. 1977 Op. Att'y Gen. No. 77-6.

RESEARCH REFERENCES

ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-23-6. Application for licenses.

Any person desiring to act as a landscape architect must file an application for a license with the board. The application shall be in such form and detail as the board shall prescribe.

History.
Ga. L. 1958, p. 400, § 10; Code 1933, § 84-4009, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 1.

43-23-7. Qualifications of applicants; examinations.

(a) Each applicant for initial licensure as a landscape architect shall:

(1) Be at least 18 years of age;

(2) Hold a Bachelor of Landscape Architecture degree or a Bachelor of Science degree in landscape architecture from a college or school of landscape architecture, environmental design, or its equivalent approved by the board; and

(3)(A) Have at least 18 months of training in the actual practice of landscape architecture as may be approved by the board, provided that at least one year of such actual practice shall be subsequent to receiving such undergraduate degree; or

(B) Have earned a postgraduate degree in landscape architecture from a college or school of landscape architecture or environmental design approved by the board.

(b) Persons who, on July 1, 1993, held licenses as landscape architects issued under the laws of this state shall not be required to obtain additional licenses under this chapter but shall otherwise be subject to

all applicable provisions of this chapter, including those pertaining to renewal of such license; and such licensee shall be considered licensed for all purposes under this chapter and subject to the provisions hereof.

(c) The applicant for initial licensure must have passed a written examination generally covering the matters confronting landscape architects, provided that persons holding a Bachelor of Landscape Architecture degree or a Bachelor of Science of Landscape Architecture degree in landscape architecture from approved colleges or schools of landscape architecture, environmental design, or their equivalent shall be permitted to take such examination upon furnishing proof of completion of the 18 months' experience requirement or the educational equivalent and proof of their graduation to the board. The examination shall cover such matters as are reasonably calculated to test the knowledge and skill of the applicant in the field of landscape architecture. Failure to pass the examination shall be grounds for denial of a license without a further hearing.

History.
Ga. L. 1958, p. 400, §§ 10, 11; Code 1933, § 84-4010, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1982, p. 2378, §§ 3, 5; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 1023, § 2.

43-23-7.1. Continuing education requirement.

(a) The board shall be authorized to require persons holding a license under this chapter to complete board approved continuing education of six hours per year. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

History.
Code 1981, § 43-23-7.1, enacted by Ga. L. 1993, p. 1023, § 3.

43-23-8. License fee; renewal.

(a) Every applicant for licensure as a landscape architect shall submit with his or her application for such licensure a fee in an amount established by the board. If the applicant successfully passes the examination and is otherwise qualified for licensure as a landscape architect, the board shall thereafter, upon payment of a license fee to be

determined by the board, issue a license to the applicant, which shall be valid for up to two years and shall be renewable biennially. All licenses shall expire on the renewal date established by the division director. The biennial license renewal fees shall be an amount established by the board.

(b) Any check presented to the board as a fee for either an original or renewal license which is returned unpaid shall be cause for revocation or denial of the license.

History.
Ga. L. 1958, p. 400, §§ 16, 17; Ga. L. 1971, p. 559, § 1; Code 1933, § 84-4011, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 30/SB 195.

Cross references.
Bank deposits and collections, T. 11, A. 4.

43-23-9. Reciprocity.

The board may certify an applicant for registration without examination if such applicant is legally registered as a landscape architect in any state, country, or political entity whose requirements for registration are substantially equivalent to the requirements provided in this chapter and which state, country, or political entity extends the same privilege of reciprocity to landscape architects registered in this state. Such application shall be accompanied by the same licensing fee as required of other landscape architects, provided that such fee shall be returned if the license is not granted.

History.
Code 1933, § 84-4013, enacted by Ga. L. 1976, p. 1730, § 1.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

Administrative rules and regulations.
Reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-6.

43-23-10. Temporary licenses.

Any landscape architect who is duly registered in any other state or country may be issued a temporary license as a landscape architect for a stipulated site and project within this state, provided that such person:

(1) Requests a temporary license on a form provided by the board;

(2) Presents evidence satisfactory to the board that he is competent to practice landscape architecture as the term is defined in this state;

(3) Has attained the age of 18 years; and

(4) Pays a fee to be determined by the board for such temporary license.

History.
Ga. L. 1958, p. 400, § 8; Code 1933, § 84-4014, enacted by Ga. L. 1976, p. 1730, § 1.

Administrative rules and regulations.
Temporary license, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-5.

43-23-11. Form of licenses and certificates; seal on certificates; delivery of license to licensee; display of certificate.

(a) The board shall prescribe the form of licenses issued under this chapter. The license of each landscape architect shall be delivered or mailed to the landscape architect.

(b) The board shall provide certificates to each licensed landscape architect. The board shall prescribe the form of certificates issued. The certificate shall have placed thereon the seal of the board. The certificate of each landscape architect shall be delivered or mailed to the landscape architect. It shall be the duty of the landscape architect to display his certificate conspicuously in his place of business.

History.
Code 1933, § 84-4015, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 2.

43-23-12. Investigations; censure of licensees; revocation or suspension of licenses.

The board may, upon its own motion, and shall, upon the complaint in writing of any person, initiate investigations into the actions of any licensed landscape architect and shall have the power to censure the licensee or to revoke or suspend any license issued under this chapter whenever the board concludes that the licensee has violated any provision of this chapter or whenever the board has determined that the licensee:

(1) Has obtained a license by false or fraudulent representations;

(2) Has impersonated another landscape architect or former landscape architect with the same or similar name, or is practicing under an assumed or misleading name, to include practicing under a partnership, limited liability company, or corporate name in which any person who is not a landscape architect is named;

(3) Has aided or abetted an unlicensed person in the practice of landscape architecture;

(4) Has been convicted of a felony or other crime involving moral turpitude;

(5) Has, in the practice of landscape architecture, been guilty of fraud, deceit, negligence, or incompetence;

(6) Has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her or under his or her immediate and responsible direction or has permitted his or her name to be used for the purpose of assisting any person who is not a landscape architect to evade the provisions of this chapter; or

(7) Has violated the provisions of subsection (a) of Code Section 43-1-19.

History. Ga. L. 1958, p. 400, § 13; Code 1933, § 84-4017, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 3; Ga. L. 1993, p. 123, § 41.

RESEARCH REFERENCES

ALR. Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-23-13. Applicability of the "Georgia Administrative Procedure Act."

Any action taken by the board with respect to any license issued under this chapter shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. Ga. L. 1958, p. 400, § 13A; Code 1933, § 84-4018, enacted by Ga. L. 1976, p. 1730, § 1.

43-23-14. Practice of landscape architecture by partnerships, limited liability companies, and corporations; restricted use of term; advertising.

Any partnership, firm, limited liability company, or corporation may engage in the practice of landscape architecture, as defined in this chapter, provided that any service which constitutes the practice of landscape architecture shall be supervised by a duly licensed landscape architect who shall be responsible for the services furnished by the partnership, firm, limited liability company, or corporation which would otherwise fall within the purview of this chapter. In no event shall the other members of the partnership, limited liability company, firm, or corporation be designated or described as landscape architects if they are not so licensed; and the term landscape architect or any abbreviation thereof or any other designation which conveys the meaning of landscape architect shall not appear in any partnership, firm, limited liability company, or corporate name in which any person is identified who is in fact not a licensed landscape architect. Upon approval of the board, any partnership, limited liability company, firm, or corporation may operate branch offices in this state to provide landscape architectural services, provided that each branch office has a resident landscape

architect licensed under this chapter. All classified directory listings, advertisements, signs, and broadcast commercials, except letterheads and business cards, of corporations, firms, limited liability companies, or partnerships offering landscape architectural services shall include the name and license number of a duly licensed landscape architect providing such services.

History. Code 1933, § 84-4012, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1993, p. 123, § 42; Ga. L. 1993, p. 1023, § 4.

RESEARCH REFERENCES

ALR. Right of corporation to engage in business, trade, or activity requiring license from public, 165 A.L.R. 1098.

43-23-15. Injunctions.

Whenever, in the judgment of the board, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may bring an action in the name of the state to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with this chapter. The board shall not be required to give bond in any such action.

History. Ga. L. 1958, p. 400, § 6; Code 1933, § 84-4007, enacted by Ga. L. 1976, p. 1730, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Injunctions, § 145.

43-23-16. Applicability of chapter to qualified registered architects and professional engineers.

Nothing in this chapter shall be construed as excluding a qualified registered architect or professional engineer from such landscape architectural practice as may be incidental to the practice of his profession or as excluding a landscape architect registered under this chapter from such architectural or engineering practice as may be incidental to the practice of landscape architecture.

History. Ga. L. 1958, p. 400, § 9; Code 1933, § 84-4003, enacted by Ga. L. 1976, p. 1730, § 1.

43-23-17. Exceptions to operation of chapter; restricted use of term.

(a) Except as otherwise provided in this chapter, this chapter shall not apply to:

(1) A contractor engaging in the business of or acting in the capacity of a contractor or landscape contractor in this state, provided that he or she is the prime contractor for the installation of his or her design. A contractor or landscape contractor may not perform design services without also performing the installation of said design;

(2) Any person whose services are offered solely as a gardener or nurseryman;

(3) Any person qualified by training or experience or by both training and experience whose services are offered solely as a municipal, regional, or urban planner; or

(4) Any person employed by a state agency, county, or municipality who engages in the business of or acts in the capacity of a landscape architect, insofar as such acts are performed in the course of employment with the respective governmental entity on lands owned by the jurisdiction by which employed.

(b) None of the persons mentioned in subsection (a) of this Code section shall use the title "landscape architect" without complying with this chapter.

History.
Ga. L. 1958, p. 400, § 9; Code 1933, § 84-4004, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1978, p. 1526, § 1; Ga. L. 1981, p. 781, § 1; Ga. L. 1982, p. 2378, §§ 1, 6; Ga. L. 1993, p. 1023, § 5.

Administrative rules and regulations.
Exceptions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-10.

OPINIONS OF THE ATTORNEY GENERAL

Landscape contractors exempt from licensure requirements. — Person engaging in the business of landscape contracting in its various forms or acting in the capacity of a landscape contractor is not required to be licensed by the Georgia Board of Landscape Architects even though the person provides services within the definition of the practice of landscape architecture so long as that person does not use the title "landscape architect." 1982 Op. Att'y Gen. No. U82-3.

Gardeners and nurserymen exempt from licensure requirements. — Person whose services are offered solely as a gardener or nurseryman is not required to be licensed by the Georgia Board of Landscape Architects even though the person provides services within the definition of the practice of landscape architecture so long as that person does not use the title "landscape architect." 1982 Op. Att'y Gen. No. U82-7.

43-23-18. Practicing without a license.

Any person who shall practice the profession of landscape architecture or represent himself as a landscape architect or act as such, as defined in this chapter, without first obtaining a license to do so as provided in this chapter, or when such license is revoked, shall be guilty of a misdemeanor.

History.
Ga. L. 1958, p. 400, § 14A; Code 1933, § 84-4016, enacted by Ga. L. 1976, p. 1730, § 1.

43-23-19. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor.

History.
Ga. L. 1958, p. 400, § 14A; Code 1933, § 84-4019, enacted by Ga. L. 1976, p. 1730, § 1.

RESEARCH REFERENCES

ALR.
Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 A.L.R. 915.

43-23-20. [Repealed] Termination.

History.
Ga. L. 1982, p. 2378, §§ 3, 7; Ga. L. 1986, p. 430, § 4; and Ga. L. 1992, p. 3137, § 1; repealed by Ga. L. 1992, p. 3137, § 18, effective July 1, 1992.

CHAPTER 24

LIBRARIANS

Sec.		Sec.	
43-24-1.	Definitions.		funds from noncomplying libraries.
43-24-2.	State Board for the Certification of Librarians; members.	43-24-5.	Certification of librarians by board.
43-24-3.	Division director as secretary of board.	43-24-6.	Application for certificate; fees; biennial renewal; duplicate certificate.
43-24-4.	Employment of certified librarians by state operated libraries; withholding public	43-24-7.	Continuing education requirements.

Cross references.
Public libraries generally, T. 20, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.
C.J.S.
15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.
ALR.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-24-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board for the Certification of Librarians.

(2) "Librarian" means a person with specialized training as identified in this chapter and in the administrative rules and regulations applicable to this chapter and possessing the necessary training and qualifications to plan, organize, communicate, and administer successfully the use of the library's materials and services.

(3) "Library" means an organization providing services and infor-

mational materials in a variety of formatting, including, but not limited to, books, films, tapes, microforms, and periodicals and having no fewer than 3,000 items which have been selected, acquired, and organized for dissemination.

History.
Ga. L. 1982, p. 1493, §§ 2, 5.

43-24-2. State Board for the Certification of Librarians; members.

(a) The State Board for the Certification of Librarians is created, to consist of six persons as follows:

(1) Three librarians certified under this chapter, including one public librarian, one special librarian, and one other currently practicing librarian, and one person who shall be a trustee of a public library;

(2) A member to be appointed from the public at large who shall have no connection whatsoever with the library profession; and

(3) The director of public library services of the Board of Regents of the University System of Georgia.

(b) The members referred to in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor and shall be confirmed by the Senate.

(c) The terms of the five members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be five years. The term of the director of public library services of the Board of Regents of the University System of Georgia shall be coextensive with the term of office of this position.

(d) Members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(e) If there is a vacancy on the board, the Governor shall appoint a member to serve the unexpired term.

History.
Ga. L. 1937, p. 245, §§ 1, 2; Ga. L. 1978, p. 918, § 1; Ga. L. 1980, p. 1075, § 1; Ga. L. 1982, p. 1493, §§ 1, 6; Ga. L. 1987, p. 355, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1996, p. 167, § 14; Ga. L. 2000, p. 618, § 95.

Editor's notes.
Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Law reviews.
For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring

Governor's appointments to Composite State Board of Medical Examiners (now Georgia Composite Medical Board) be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-24-3. Division director as secretary of board.

The same jurisdiction, duties, powers, and authority which the division director has with reference to other professional licensing boards is conferred upon that director with respect to the board.

History.
Ga. L. 1937, p. 245, § 5; Ga. L. 2000, p. 1706, § 12.

43-24-4. Employment of certified librarians by state operated libraries; withholding public funds from noncomplying libraries.

Any public library serving a political subdivision or subdivisions having a population of over 5,000 according to the United States decennial census of 1970 or any future such census and every library operated by the state or its authority, including libraries of institutions of higher learning, shall not employ in the position of librarian a person who does not hold a librarian's certificate issued by the board. No public funds shall be paid to any library failing to comply with this chapter, provided that nothing in this chapter shall apply to law libraries of counties and municipalities, to libraries of public elementary and high schools, or to libraries of the University System of Georgia.

History.
Ga. L. 1937, p. 245, § 4; Ga. L. 1982, p. 1493, §§ 3, 7.

OPINIONS OF THE ATTORNEY GENERAL

Librarians employed by the University System of Georgia's libraries are required to be certified by the State Board for the Certification of Librarians under O.C.G.A. § 43-24-4. 1981 Op. Att'y Gen. No. U81-60 (decided prior to 1982 amendment).

Graduation from American Library Association accredited schools. — It is within a legislative or regulatory body's discretion to conclude that graduation from an American Library Association accredited school is a proper requirement for state certification. 1995 Op. Att'y Gen. No. U95-24.

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-24-5. Certification of librarians by board.

The board shall have authority to establish grades of certificates for librarians, to prescribe and hold examinations, to require submission of credentials to establish the qualifications of those seeking certificates as librarians, and to issue certificates of librarianship to qualified persons in accordance with such rules and regulations as it may prescribe.

History.
Ga. L. 1937, p. 245, § 3.
Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board for the Certification of Librarians, Chapter 320-1 et seq.

43-24-6. Application for certificate; fees; biennial renewal; duplicate certificate.

(a) All applicants for a librarian's certificate shall file an application with the division director, accompanied by a fee which shall be set by the board.

(b) Each certificate issued shall be renewable biennially.

(c) Any certified librarian requesting a duplicate certificate shall be charged a fee as shall be set by the board.

History.
Ga. L. 1937, p. 245, § 5; Ga. L. 1978, p. 918, § 2; Ga. L. 1980, p. 1075, § 1; Ga. L. 2000, p. 1706, § 19.

43-24-7. Continuing education requirements.

(a) The board shall be authorized to require persons holding a certificate under this chapter to complete board approved continuing education of not less than ten hours biennially as a condition of certificate renewal. The board shall be authorized to approve programs offered by professional associations, educational institutions, government agencies, and bibliographic utilities, and others as it deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) The board shall have the authority to appoint a committee or committees composed of certified librarians, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter relating to continuing education.

History.

Code 1981, § 43-24-7, enacted by Ga. L. 2001, p. 864, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "not less than" was substituted for "not less that" in the first sentence of subsection (a).

Editor's notes.

This Code section formerly pertained to provisions terminating the State Board for the Certification of Librarians and laws relating to such board. The former Code section was based on Ga. L. 1982, p. 1493, §§ 1, 8 and Ga. L. 1987, p. 355, § 2.

CHAPTER 24A

MASSAGE THERAPY PRACTICE

Article 1

General Provisions

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43-24A-1. Short title.
43-24A-2. Legislative findings and intent.
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Local Regulation

43-24A-30. Licensing or regulation of massage therapy businesses; limitation on naming and labels.
43-24A-31. Prohibited elements of ordinance or regulation; no prohibition on impeding practice.
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43-24A-33. Enforcement by prosecuting attorney; issuance of injunctions.

Administrative rules and regulations.

Georgia Board of Massage Therapy, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 345-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

58 Am. Jur. 2d, Occupations, Trades, and Professions, § 40 et seq.

C.J.S.

16C C.J.S., Constitutional Law, § 1361.

ARTICLE 1
GENERAL PROVISIONS

Editor's notes.
Ga. L. 2019, p. 591, § 1/HB 242, effective May 6, 2019, designated Code Sections 42-24A-1 through 43-24A-24 as Article 1.

43-24A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Massage Therapy Practice Act."

History.
Code 1981, § 43-24A-1, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-2. Legislative findings and intent.

The General Assembly acknowledges that the practice of massage therapy is a therapeutic health care service delivered by health care professionals that affects the public health, safety, and welfare of Georgians. Massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is in the interest of the public to set standards of qualifications, education, training, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons and entities licensed to practice or teach massage therapy.

History.
Code 1981, § 43-24A-2, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-3. Definitions.

As used in this chapter, the term:

(1) "Advertise" means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or announcement on radio, or announcement or display on television, computer network, or electronic or telephonic medium.

(2) "Applicant" means any person seeking a license or renewal under this chapter.

(3) "Board" means the Georgia Board of Massage Therapy established by this chapter.

(4) "Board recognized massage therapy educational program" means an educational program located within or outside the State of Georgia that receives compensation for training two or more persons in massage therapy or its modalities, which has submitted an application and fee, been approved by a national massage therapy certifying organization or entity approved by the board, and meets the standards for training and curriculum as set out by the board in its rules, including, but not limited to, standards for training and curriculum that are consistent with:

(A) The Nonpublic Postsecondary Education Commission as provided in Code Section 20-3-250.4;

(B) A postsecondary institution of the Technical College System of Georgia that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or

(C) A postsecondary institution that is accredited by an accrediting agency recognized by the United States Department of Education and that is authorized or approved by a professional licensing board, department, or agency in another state, jurisdiction, or territory whose standards have been determined by the board to be equivalent to the Nonpublic Postsecondary Education Commission.

(5) "Entity" means the owner or operator of a business where massage therapy for compensation is performed.

(6) "License" means a valid and current certificate of registration issued by the board pursuant to this chapter to practice massage therapy.

(7) "Licensee" means any person holding a license.

(8) "Massage therapist" means a person licensed under this chapter as a massage therapist who administers or teaches massage or massage therapy for compensation.

(9) "Massage therapy" or "massage" means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. Such term includes complementary methods, including without limitation cupping therapy, taping techniques, the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands; the term also includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appro-

priate. Such term shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities.

(10) "Massage therapy business" means an entity where the practice of or engagement in massage therapy is performed by a licensed massage therapist.

(11) "Person" means a natural person only.

(12) "Provisionally permitted massage therapist" means a person issued a provisional permit under this chapter.

History.

Code 1981, § 43-24A-3, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 1/SB 364; Ga. L. 2019, p. 591, § 1/HB 242; Ga. L. 2022, p. 498, § 1/HB 305.

The 2022 amendment, effective July 1, 2022, substituted "which has submitted an application and fee, been approved by a national massage therapy certifying organization or entity approved by the board, and meets" for "that has submitted an application and fee, and which meets", and "curriculum that" for "curriculum which" in the introductory language of paragraph (4).

Editor's notes.

Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-4. Georgia Board of Massage Therapy; creation; members; terms; reimbursement.

(a) There is created the Georgia Board of Massage Therapy which shall consist of five members. The board shall be assigned to the Office of the Secretary of State for administrative purposes and shall be under the jurisdiction of the division director and shall operate in accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable.

(b) The Governor shall appoint, subject to confirmation by the Senate, all members of the board for initial terms of office beginning July 1, 2005. The Governor shall appoint two initial members of the board to serve for terms of two years and three initial members of the board, including the public member, to serve for terms of four years. After the initial terms specified in this subsection, members of the board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of four years and until their successors are appointed and qualified. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two full consecutive terms. Any vacancy due to death, resignation, removal, or otherwise shall be filled for the remainder of the unexpired term in the same manner as regular appointments.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) An appointee to the board shall qualify by taking an oath of office within 15 days from the date of his or her appointment. On presentation of the oath, the Secretary of State shall issue a commission to each appointee as evidence of his or her authority to act as a member of the board.

History. Code 1981, § 43-24A-4, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-5. Qualifications of board members; removal.

(a)(1) There shall be four professional members of the board who shall:

(A) Be citizens of the United States and residents of this state for at least three years prior to the date of appointment;

(B) Have been engaged in massage therapy practice for compensation for at least five years immediately preceding their appointment; and

(C) Be licensed under this chapter.

(2) No more than one professional member of the board may be an owner of or affiliated with any massage therapy school.

(b) There shall be one consumer member of the board who shall be appointed by the Governor from the public at large, shall be a citizen of the United States and resident of this state, and shall be a person to whom neither this state nor any other state or jurisdiction or organization has ever issued a certificate, registration, license, or permit to engage in the practice of massage therapy nor be an owner of or affiliated with any massage therapy school or massage therapy business.

(c) The Governor, after notice and opportunity for hearing, may remove any member of the board for incompetence, neglect of duty, unprofessional conduct, conviction of a felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

History. Code 1981, § 43-24A-5, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-6. Meetings of the board; officers and committees.

The board shall meet at least once each year at a time fixed by the board. At its annual meeting, the board shall elect from its members a

chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office for a term of one year. Additionally, the board may appoint such committees as it considers necessary to fulfill its duties. In addition to its annual meeting, the board may hold additional meetings at the call of the chairperson or at the request of any two members of the board or as approved by the division director.

History. Code 1981, § 43-24A-6, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-7. Powers of the board.

(a)(1) On and after July 1, 2019, the Georgia Board of Massage Therapy shall regulate the practice of massage therapy in this state. The board shall promulgate rules and regulations governing the practice of massage therapy and massage therapy educational programs pursuant to this chapter. Such rules and regulations shall be adopted no later than July 1, 2020.

(2) Any person who holds a license as a massage therapist issued under this chapter as its provisions existed on June 30, 2019, shall not be required to undergo recertification under this chapter but shall otherwise be subject to all applicable provisions of this chapter effective on and after July 1, 2019.

(b) The board shall have the power to:

(1) Examine and determine the qualifications and fitness of applicants for licenses to practice massage therapy in this state;

(2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage therapy in this state or otherwise discipline licensed massage therapists;

(3) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining persons or entities acting in violation of this chapter;

(4) Upon reasonable notice, request on-site inspections of the facility, equipment, policies, and practices of a massage therapy business or board recognized massage therapy educational program by appropriate inspectors in the Office of the Secretary of State for the purpose of determining compliance with the standards established pursuant to this chapter;

(5) Hold hearings on all matters properly brought before the board and, in conjunction therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members as its hearing officer;

(6) Adopt, revise, and enforce rules concerning advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(7) Periodically evaluate board recognized massage therapy educational programs and license such programs that meet the board's requirements;

(8) Develop and enforce standards for continuing education courses required of licensed massage therapists which may include courses in massage therapy or any of the modalities described in paragraphs (5) through (8) of subsection (a) of Code Section 43-24A-19;

(9) Develop and enforce reasonable and uniform standards for massage therapy educational programs and massage therapy practice;

(10) Deny or withdraw recognition of noncompliant massage therapy educational programs that do not meet standards established pursuant to this chapter;

(11) Appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns of the massage therapy profession and to facilitate communication amongst the board, licensees under this chapter, and the community, which may include nonmembers of the board;

(12) Collect and publish data regarding existing massage therapy resources in Georgia without violation of any state or federal privacy laws and coordinate planning for board recognized massage therapy educational programs and practice;

(13) Adopt an official seal; and

(14) Bring proceedings to the courts for the enforcement of this chapter or any rules and regulations promulgated pursuant to this chapter.

(c) In addition to the enumerated powers in subsection (b) of this Code section, the board has the authority to conduct its business pursuant to the provisions of Code Section 43-1-19 which is incorporated herein and made a part of this chapter by specific reference.

History.

Code 1981, § 43-24A-7, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 2/SB 364; Ga. L. 2019, p. 591, § 1/HB 242.

Editor's notes.

Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-8. Licensure of massage therapists; application and requirements.

(a) No person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the division director pursuant to this chapter.

(b) Any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant has a high school diploma or its recognized equivalent;

(3) The applicant is a citizen of the United States or a permanent resident of the United States;

(4) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(5) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. Such applicant shall be responsible for all fees associated with the performance of such background check;

(6) The applicant has completed successfully a board recognized massage therapy educational program consisting of a minimum of 500 hours of course and clinical work;

(7) The applicant has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, the Massage and Bodywork Licensing Exam administered by the Federation of State Massage Therapy Boards, an equivalent test approved by the board, or an examination administered by another state, territory, or jurisdiction whose license requirements meet or exceed those of this state; and

(8) The applicant has and agrees to maintain continuously during

the term of licensure liability insurance coverage for bodily injury, property damage, and professional liability in coverages and amounts of not less than $1 million per occurrence, with not less than a minimum annual aggregate of $3 million for all occurrences, as determined by the board.

History.

Code 1981, § 43-24A-8, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 1/SB 143; Ga. L. 2019, p. 591, § 1/HB 242.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, double quotes were substituted for single quotes in paragraph (c)(4) (now paragraph (b)(4)).

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 04.20.20.01, 04.23.20.02, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, and 03.12.21.01.

43-24A-9. Provisional permits.

(a) A provisional permit to practice as a provisionally permitted massage therapist shall, upon proper application, be issued for a six-month period to an applicant who meets the following criteria:

(1) Holds and maintains a valid license as a massage therapist in another state;

(2) Is not a resident of this state as confirmed in a secure and verifiable document, as defined in Code Section 50-36-2;

(3) Has not had a license or permit to practice as a massage therapist voided, revoked, suspended, denied, or annulled by this state or another state, territory, or jurisdiction; and

(4) Has not been convicted of a felony in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to such charge or the affording of first offender treatment to any such charge in the same manner as provided in paragraph (4) of subsection (a) of Code Section 43-1-19.

(b) A provisional permit shall require the applicant to work under the supervision of a licensed massage therapist in good standing with the board. If an applicant has met the requirements of subsection (a) of this Code section and submits the applicable license fee, the applicant shall be granted a provisional permit to practice massage therapy in this state. Upon receipt of such application and fee, a provisional permit shall be administratively issued.

(c) A provisional permit may be voided if the board determines that

the person holding such permit no longer meets one or more of the criteria set forth in subsection (a) of this Code section.

(d) A provisional permit issued pursuant to subsection (a) of this Code section shall have the same force and effect as a permanent license until the time of its expiration.

(e) A provisional permit issued pursuant to subsection (a) of this Code section shall expire on the same date as a license issued under this chapter to a holder of a provisional permit who has passed the examination pursuant to Code Section 43-24A-8.

History.
Code 1981, § 43-24A-9, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 2/SB 143; Ga. L. 2013, p. 830, § 4A/HB 315; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-10. Applications under oath.

The board may require that all applications be made under oath.

History.
Code 1981, § 43-24A-10, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-11. Licensing examinations.

(a) Examinations shall be administered to qualified applicants for massage therapy licensure at least twice each calendar year.

(b) Applicants may obtain their examination scores in accordance with such rules and regulations as the board may establish.

History.
Code 1981, § 43-24A-11, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-12. [Reserved] License by reciprocity.

History.
Ga. L. 2005, p. 1251, § 1/SB 110; repealed by Ga. L. 2008, p. 1112, § 16, effective July 1, 2008.

Editor's notes.
Ga. L. 2019, p. 591, § 1/HB 242, effective May 6, 2019, reenacted the reservation of this Code section without change.

43-24A-13. License by endorsement.

(a) Any applicant for a license by endorsement as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and

a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(3) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by endorsement agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) The applicant is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter.

(b) The board may establish by rule procedures for an applicant for licensure by endorsement to supplement his or her application to satisfy any standards for licensure pursuant to this chapter that are greater than those of another state, territory, or jurisdiction.

History.
Code 1981, § 43-24A-13, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2008, p. 1112, § 17/HB 1055; Ga. L. 2012, p. 1032, § 3/SB 143; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-14. Display of the license certificate; expiration and renewal of licenses; liability insurance coverage; change of address; inactive status.

(a) The licensee shall display the license certificate or a photocopy thereof in an appropriate and public manner at each location at which he or she practices.

(b) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the division director prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board and certifying that all current requirements of continuing education as determined by the board have been fulfilled. The board shall provide for penalty fees for late registration. The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only after application and payment of the prescribed reinstatement fee within the time period established by the division director, provided

that the applicant meets such requirements as the board may establish by rule.

(c) A licensee shall provide evidence of current liability insurance coverage as required in Code Section 43-24A-8 upon request by the board at any time during such licensee's term of licensure.

(d) The licensee shall inform the board of any change of address within 30 days.

(e) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(f) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set forth by the board shall be declared active.

History. Code 1981, § 43-24A-14, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-15. Unlawful acts.

(a) It shall be a violation of this chapter for any person, entity, or board recognized massage therapy educational program to advertise:

(1) Massage therapy services or to advertise the offering of massage therapy services unless such services are provided by a person who holds a valid license under this chapter; or

(2) Massage therapy services through any form of media or representation through the use of pictorial representations unless the persons depicted in such representations are attired and posed in a manner so as to avoid appealing to the prurient interest.

(b) It shall be a violation of this chapter for any person to advertise:

(1) As a massage therapist unless the person holds a valid license under this chapter in the classification so advertised; or

(2) Massage therapy services combined with escort or dating services or adult entertainment.

(c) It shall be a violation of this chapter for a person or entity, or the employees, agents, or representatives of such person or entity, to practice massage therapy or to use in connection with such person's or entity's name or business activity the terms "massage," "massage therapy," "massage therapist," "massage practitioner," or the letters "M.T.," "L.M.T.," or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless such massage therapy is provided by a

massage therapist licensed and practicing in accordance with this chapter.

(d) It shall be a violation of this chapter for any entity to:

(1) Advertise the offering of massage therapy services combined with escort or dating services, adult entertainment, or illegal acts relating to sex related crimes; or

(2) Employ unlicensed massage therapists to perform massage therapy.

(e) It shall be a violation of this chapter for any person to practice massage therapy without holding a current or provisional license as a massage therapist in accordance with subsection (a) of Code Section 43-24A-8.

(f) It shall be a violation of this chapter for any person or entity, or the employees, agents, or representatives of such person or entity, to render or offer massage therapy services for compensation unless such massage therapy is provided by a licensed massage therapist.

History.

Code 1981, § 43-24A-15, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 3/SB 364; Ga. L. 2019, p. 591, § 1/HB 242.

Editor's notes.

Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of subsection (d) of O.C.G.A. § 43-24A-15 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 43-24A-15 are offenses for which fingerprinting is required. 2019 Op. Att'y Gen. No. 19-3.

43-24A-16. Practice of massage therapy without a license; injunctions.

The practice of massage therapy is declared to be an activity that affects the public health, safety, and welfare of Georgians. Such practice by a person who is not licensed to practice massage therapy in this state is declared to be a public nuisance, harmful to the public health, safety, and welfare. Any citizen of this state, the board, or the appropriate prosecuting attorney of a jurisdiction where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides or works. It shall not be necessary in order to obtain an injunction under this Code section to

allege or prove that there is no adequate remedy at law or to allege or prove any special injury.

History.
Code 1981, § 43-24A-16, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-17. Disciplinary action.

(a) The board may take any one or more of the following actions against a person, entity, or board recognized massage therapy educational program found by the board to have committed a violation of this chapter:

(1) Reprimand or place the licensee on probation;

(2) Revoke or suspend the license or deny the issuance or renewal of a license;

(3) Impose an administrative fine not to exceed $500.00 for each violation; and

(4) Assess costs against the violator for expenses relating to the investigation and administrative action.

(b) The board may assess collection costs and interest for the collection of fines imposed under this chapter against any person, entity, or board recognized massage therapy educational program that fails to pay a fine as directed by the board.

History.
Code 1981, § 43-24A-17, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 4/SB 364; Ga. L. 2019, p. 591, § 1/HB 242.
Editor's notes.
Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-18. Administrative procedures.

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 43-24A-18, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-19. Exceptions.

(a) Nothing in this chapter shall be construed to affect, restrict, or prevent the practice, services, or activities of:

(1) A person licensed, registered, or certified under any other chapter or article under Title 43 while engaged in the professional or

trade practices properly conducted under authority of such other licensing laws, provided that such person shall not use the title of massage therapist;

(2) A person pursuing a course of study leading to a degree or certificate as a massage therapist in a board recognized massage therapy educational program if such person is designated by title indicating student status and is fulfilling uncompensated work experiences required for the attainment of the degree or certificate;

(3) A nonresident person rendering massage therapy up to 60 days during a 12 month period for treatment of a temporary sojourner only, provided that such nonresident massage therapist holds a license, registration, or certification from another state, jurisdiction, or country if the requirements as determined by the board for licensure, registration, or certification are substantially equal to the requirements contained in this chapter or provided that such nonresident massage therapist is currently nationally certified in therapeutic massage and bodywork;

(4) A person duly licensed, registered, or certified in another jurisdiction, state, territory, or a foreign country when incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event with which he or she comes into the state;

(5) A person who restricts his or her practice to the manipulation of the soft tissue of the human body to hands, feet, or ears who does not have the client disrobe and does not hold himself or herself out as a massage therapist;

(6) A person who uses touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy;

(7) A person who uses touch and movement education to effect change in the structure of the body while engaged in the practice of structural integration, provided that he or she is a member of, or whose training would qualify for membership in, the International Association of Structural Integrators and provided that his or her services are not designated or implied to be massage or massage therapy;

(8) A person who uses touch to affect the energy systems, polarity, acupoints, or Qi meridians, also known as channels of energy, of the human body while engaged within the scope of practice of a profes-

sion with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy;

(9) A person who was engaged in massage therapy practice prior to July 1, 2005; provided, however, that the prohibition of subsection (c) of Code Section 43-24A-15 shall apply to such a person on and after July 1, 2007; or

(10) A person licensed under other chapters of this title providing cupping therapy or taping techniques that are authorized within the scope of practice of such person.

(b) Nothing in this chapter shall prohibit a licensed massage therapist from practicing any of the modalities described in paragraphs (5) through (8) of subsection (a) of this Code section.

History.
Code 1981, § 43-24A-19, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-20. Continuing education requirements.

(a) The board shall establish continuing education requirements not to exceed 25 hours per biennium in massage therapy, its complementary methods as defined by the board, or any of the modalities described in paragraphs (5) through (8) of subsection (a) of Code Section 43-24A-19. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the requirements for continuing education programs or courses.

(b) Continuing education requirements or credits used for license renewal shall be approved by the board and provided by an instructor approved by and in good standing with a national massage therapy certifying organization or entity approved by the board.

History.
Code 1981, § 43-24A-20, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242; Ga. L. 2022, p. 498, § 2/HB 305.

The 2022 amendment, effective July 1, 2022, added "and provided by an instructor approved by and in good standing with a national massage therapy certifying organization or entity approved by the board" at the end of subsection (b).

Administrative rules and regulations.
Continuing education hours, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Massage Therapy, License Renewal, Continuing Education, Inactive Status, and Reinstatement of License, R. 345-4-.02.

43-24A-21. Proceedings for a restraining order, injunction, or writ of mandamus.

As cumulative to any other remedy or criminal prosecution, the board may file a proceeding in the name of the state seeking issuance of a

restraining order, injunction, or writ of mandamus against any person, entity, or board recognized massage therapy educational program that is or has been violating any of the provisions of this chapter or the lawful rules or orders of the board.

History.
Code 1981, § 43-24A-21, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-22. Local regulation.

(a) This chapter shall not be construed to prohibit a county or municipality from enacting any regulation of persons not licensed pursuant to this chapter. Any place of business where massage therapy for compensation is performed shall also be subject to any regulation by local governing authorities which elect to enact regulations in accordance with this chapter.

(b) No provision of any ordinance enacted by a county, municipality, or other local jurisdiction that requires an individual professional license by such county, municipality, or local jurisdiction of a massage therapist may be enforced against a person who is issued a license by the board under this chapter.

History.
Code 1981, § 43-24A-22, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 5/SB 364; Ga. L. 2019, p. 591, § 1/HB 242.
Editor's notes.
Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-23. Taxation as a health care activity.

Notwithstanding any provision of law to the contrary, the act of a duly licensed massage therapist in performing a massage shall be deemed to be the act of a health care professional and shall not be subject to the collection of any form of state or local taxation regulations or fees not also imposed on other licensed health care professionals.

History.
Code 1981, § 43-24A-23, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-24. Fines and punishments for violations.

(a) Any person, entity, or board recognized massage therapy educational program that acts in violation of Code Section 43-24A-15, upon conviction thereof, shall be punished as provided in this Code section.

(b) Each act of unlawful practice under this Code section shall constitute a distinct and separate offense.

(c) Upon being convicted a first time under this Code section, such person, entity, or board recognized massage therapy educational program shall be guilty of and shall be punished as for a misdemeanor for each offense which is punishable by a fine of not less than $500.00 nor more than $5,000.00. Upon being convicted a second time under this Code section, such person, entity, or board recognized massage therapy educational program shall be guilty of and shall be punished as for a misdemeanor of a high and aggravated nature punishable by a fine of not less than $5,000.00 nor more than $10,000.00, or imprisonment for not less than six months nor more than one year, at the discretion of the court. Upon being convicted a third or subsequent time under this Code section, such person, entity, or board recognized massage therapy educational program shall be guilty of a felony and shall be punished by a fine of not more than $25,000.00 for each offense, imprisonment for not less than one nor more than five years, or both, and shall be precluded from owning, operating, or working for or with an entity that offers massage therapy.

History.

Code 1981, § 43-24A-24, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 6/SB 364; Ga. L. 2019, p. 591, § 1/HB 242.

Editor's notes.

Ga. L. 2010, p. 401, § 7/SB 364, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

ARTICLE 2

LOCAL REGULATION

43-24A-30. Licensing or regulation of massage therapy businesses; limitation on naming and labels.

(a) A county, municipality, or other local jurisdiction may by ordinance or resolution license or regulate massage therapy businesses. Any ordinance or resolution adopted pursuant to this subsection may include, but is not limited to, at least the following requirements on such businesses:

(1) Current liability insurance coverage for bodily injury, property damage, and professional liability for the massage therapy business;

(2) Compliance with state and local fire and safety requirements;

(3) Provision for extermination of vermin, insects, termites, and rodents in any property or location used by the massage therapy business;

(4) Maintenance of equipment in a safe and sanitary condition;

(5) Adequate toilet and lavatory facilities with running water,

toilet tissue, soap dispenser with soap or other hand-cleansing materials, sanitary towels or other hand drying devices, waste receptacles, and adequate lighting and ventilation sufficient to remove objectionable odors on the premises of the business or entity or within reasonable proximity to such business or entity when it is located in a space or facilities also used by other businesses;

(6) Adequate and sanitary shower facilities if the massage therapy business maintains a whirlpool bath, sauna, hot tub, spa, steam cabinet, or steam room, including soap and sanitary cloth towels and adequate lighting and ventilation;

(7) Prequalification processes, state licensure checks, interviews, or other procedures prior to approval of application for a business license for a person or entity proposing to offer massage therapy services or for a massage therapy business;

(8) Requirement that a licensed massage therapist is present on the premises of a massage therapy business at any time when massage therapy is being performed for a client of the massage therapy business; and

(9) Evidence of license to practice massage therapy.

(b) A county, municipality, or other local jurisdiction may limit or prohibit a massage therapy business from using labels or names including the words "spa establishment," "massage parlor," "personal service," or "adult entertainment."

History.
Code 1981, § 43-24A-30, enacted by Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-31. Prohibited elements of ordinance or regulation; no prohibition on impeding practice.

(a) A county, municipality, or other local jurisdiction that licenses or regulates massage therapy businesses may not adopt any ordinance or regulation that includes any of the following:

(1) Conditions or requirements required as of July 1, 2019, for licensure as a massage therapist under this chapter, including, but not limited to, criminal background checks, education, and training; provided, however, that a county, municipality, or other local jurisdiction may require a criminal background check of any employee, independent contractor, or other person working on the premises of a massage therapy business who is not a licensed massage therapist; provided, further, that a county, municipality, or other local jurisdiction may require evidence of licensure pursuant to paragraph (9) of subsection (a) of Code Section 43-24A-30;

(2) Limitations on the location of a massage therapy business relating to its proximity to other massage therapy businesses that directly or indirectly prohibit massage therapy businesses from locating in the jurisdiction;

(3) Prohibition of off-premises or mobile services by a licensed massage therapist;

(4) Limitations on the operation of the massage therapy business from engaging licensed massage therapists as contractors of such business or lessees of the premises of the massage therapy business for the performance of massage therapy; or

(5) Conditions or requirements that are in any manner inconsistent with the federal Health Insurance Portability and Accountability Act of 1996.

(b) A county, municipality, or other local jurisdiction shall not impose any requirements relating to massage therapy for the purpose of impeding the lawful practice of massage therapy pursuant to this chapter.

History.
Code 1981, § 43-24A-31, enacted by Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-32. Regulation and licensing of other businesses.

Nothing in this article shall prohibit a county, municipality, or other local jurisdiction from:

(1) Licensing or regulating other businesses that are not massage therapy businesses;

(2) Enacting advertising restrictions on massage therapy businesses to protect the public; provided, however, that this shall not include any restrictions on the content of advertising beyond what is included in Code Section 43-24A-15;

(3) Inspecting massage therapy businesses; provided, however, that this shall not be construed to authorize the review of client records protected by the federal Health Insurance Portability and Accountability Act of 1996; or

(4) Prohibiting and prosecuting illicit, immoral, prurient, or illegal activities or sexual activity in the operation or on the premises of a massage therapy business.

History.
Code 1981, § 43-24A-32, enacted by Ga. L. 2019, p. 591, § 1/HB 242.

43-24A-33. Enforcement by prosecuting attorney; issuance of injunctions.

(a) The appropriate prosecuting attorney may cause appropriate proceedings to be commenced in order to enforce the provisions of this article.

(b) The board, in addition to the remedies set forth in this chapter, may bring an action in a court of competent jurisdiction to enjoin violations of this article. Such injunction may be issued by such court notwithstanding the existence of an adequate remedy at law.

History.
Code 1981, § 43-24A-33, enacted by Ga. L. 2019, p. 591, § 1/HB 242.

CHAPTER 25

OPERATORS OF MOTOR VEHICLE RACETRACKS

Sec.		Sec.	
43-25-1.	"Motor vehicle" defined.	43-25-6.	Duration of licenses.
43-25-2.	Requirement of license for persons conducting motor vehicle races.	43-25-7.	Suspension or revocation of licenses.
43-25-3.	Application for license; fee.	43-25-8.	Promulgation of rules and regulations by Safety Fire Commissioner.
43-25-4.	Compliance with Safety Fire Commissioner's regulations; insurance or bond.	43-25-9.	Reports of damage to guardrails, posts, or other safety devices.
43-25-5.	Cancellation of insurance or bonds.	43-25-10.	Penalty.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Automobile racetrack or drag strip as nuisance, 41 A.L.R.3d 1273.

Liability for injury or death of participant in automobile or horse race at public track, 13 A.L.R.4th 623.

43-25-1. "Motor vehicle" defined.

As used in this chapter, the term "motor vehicle," shall not be construed to include any motorcycle or other two-wheeled, self-propelled vehicle, nor shall it be construed to include any motor vehicle weighing less than 500 pounds.

History.

Ga. L. 1969, p. 870, § 8.

RESEARCH REFERENCES

C.J.S.

60 C.J.S., Motor Vehicles, § 1.

ALR.

Judicial review of administrative ruling

affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 A.L.R.4th 1169.

43-25-2. Requirement of license for persons conducting motor vehicle races.

It shall be unlawful for any person, firm, or corporation to operate or conduct any motor vehicle race on any permanent racetrack or other place where such races are to be held unless there shall first be obtained a license to operate or conduct such races from the Safety Fire Commissioner.

History.
Ga. L. 1969, p. 870, § 1; Ga. L. 1993, p. 725, § 1.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, § 571.
ALR.
Validity of license tax or fee on show or place of amusement, 58 A.L.R. 1340; 111 A.L.R. 778.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

43-25-3. Application for license; fee.

Application for a license to operate or conduct a racetrack or other place for the holding of motor vehicle races or exhibitions shall be made in writing to the Safety Fire Commissioner on a form prescribed by or furnished by the Safety Fire Commissioner. The application form shall require a full and complete address of the track or other place desired to be licensed, the name and address of the licensee, and the name and address of the promoter of such race or exhibition and shall contain such further information as the Safety Fire Commissioner may require in order to comply with Code Section 43-25-4. Such application shall be accompanied by a nonrefundable fee of $150.00.

History.
Ga. L. 1969, p. 870, § 4; Ga. L. 1993, p. 725, § 1; Ga. L. 2010, p. 9, § 1-83/HB 1055.

43-25-4. Compliance with Safety Fire Commissioner's regulations; insurance or bond.

No license for operating or conducting a motor vehicle racetrack shall be issued by the Safety Fire Commissioner until the applicant has complied with the rules and regulations of the Safety Fire Commissioner pursuant to Code Section 43-25-8 and has a valid public liability insurance policy with minimum limits of $1 million per accident and $100,000.00 per person per accident, or $1 million combined single

limit, or in lieu thereof a valid public liability bond in like amount. The policy or bond shall be designed to provide coverage for the protection of the licensee from any legal liability arising out of bodily injury, including death, to any member of the general public, resulting from any racing event. The insurance policy or bond shall not be designed to provide coverage for bodily injuries or death of drivers of motor vehicles which are engaged in any race, any pit area personnel, or any person who is involved in the conduct of a race. The policy or bond shall be written by a company which is licensed to do business in this state or which is considered to be acceptable by the Safety Fire Commissioner.

History.
Ga. L. 1969, p. 870, § 2; Ga. L. 1971, p. 562, § 1; Ga. L. 1993, p. 725, § 1.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, §§ 571, 573, 577.

ALR.
Liability of operators or sponsors of soapbox derby for personal injury, 72 A.L.R.2d 1137.

Liability for injury or death of participant in automobile or horse race at public track, 13 A.L.R.4th 623.

43-25-5. Cancellation of insurance or bonds.

No insurance policy or bond may be canceled for any reason unless and until the Safety Fire Commissioner has received notice by certified or registered letter, return receipt requested, that the policy or bond is going to be canceled effective on a date at least 14 days from the date such notice is received by the Safety Fire Commissioner.

History.
Ga. L. 1969, p. 870, § 3; Ga. L. 1993, p. 725, § 1.

43-25-6. Duration of licenses.

All licenses granted by the Safety Fire Commissioner pursuant to this chapter shall expire December 31 of each year.

History.
Ga. L. 1969, p. 870, § 5; Ga. L. 1993, p. 725, § 1.

43-25-7. Suspension or revocation of licenses.

The Safety Fire Commissioner is authorized to suspend or revoke the license of any person who operates or conducts motor vehicle races or exhibitions without complying with this chapter.

History.
Ga. L. 1969, p. 870, § 6; Ga. L. 1993, p. 725, § 1.

43-25-8. Promulgation of rules and regulations by Safety Fire Commissioner.

The Safety Fire Commissioner is authorized and directed to create and promulgate rules and regulations which are to be designed to prevent injury and loss of life to spectators while they are observing and viewing motor vehicles engaged in contests of speed or endurance. Such rules and regulations shall provide for certificates of occupancy; periodic inspections by fire inspectors and other experts; corrections of deficiencies in racetrack facilities; standards for grandstands; guardrails; spectator areas; nonspectator areas; flagmen; track surfaces; fences; ambulance service; access highways or roads; fire extinguishers and other fire suppression equipment and personnel; plans for fire evacuation; accident reporting; damage reporting; storage of flammable and combustible liquids; restricted areas; concession areas; and such other areas of coverage as, in the opinion of the Safety Fire Commissioner, are deemed necessary.

History.
Ga. L. 1971, p. 562, § 2.

Administrative rules and regulations.
Rules and regulations for fire safety inspection and certification of motor vehicle racetracks and grand stands, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Safety Fire Commissioner, Chapter 120-3-18.

RESEARCH REFERENCES

C.J.S.
61A C.J.S., Motor Vehicles, § 571.

ALR.
Liability of owner or operator of auto race track for injury to patron, 37 A.L.R.2d 391.

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 A.L.R.4th 1169.

43-25-9. Reports of damage to guardrails, posts, or other safety devices.

The owner or lessee of any real property upon which exists a motor vehicle racetrack or other place subject to this chapter shall inform the Safety Fire Commissioner within ten days of any damage caused to any guardrail, post, or other device which has for its purpose the prevention of injury or loss of life to spectators at the racetrack or other place. Until any such damage is repaired and the repairs are approved by fire inspectors, there shall be no racing or endurance event permitted on such racetrack or other place.

History.
Ga. L. 1971, p. 562, § 2.

43-25-10. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Ga. L. 1969, p. 870, § 7; Ga. L. 1971, p. 562, § 3.

CHAPTER 25A

MUSIC THERAPY

Sec.		Sec.	
43-25A-1.	Definitions.	43-25A-6.	Biennial renewal of license; address changes; failure to renew; inactive status of license.
43-25A-2.	Creation of Music Therapy Advisory Group; membership; terms; service.	43-25A-7.	Limited waiver of examination.
43-25A-3.	Meetings; public education; consultation.	43-25A-8.	Authority of Secretary of State to investigate and act upon conduct.
43-25A-4.	Use of title "music therapist."		
43-25A-5.	Application for music therapy license.		

43-25A-1. Definitions.

As used in this chapter, the term:

(1) "Advisory group" means the Music Therapy Advisory Group.

(2) "Board certified music therapist" means an individual who has completed the education and clinical training requirements established by the American Music Therapy Association, has passed the Certification Board for Music Therapists certification examination or transitioned into board certification, and remains actively certified by the Certification Board for Music Therapists.

(3) "Music therapist" means a person licensed to practice music therapy pursuant to this chapter.

(4) "Music therapy" means the clinical and evidence based use of music interventions to accomplish individualized goals within a therapeutic relationship through an individualized music therapy treatment plan for the client that identifies the goals, objectives, and potential strategies of the music therapy services appropriate for the client using music therapy interventions, which may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music, and movement to music. This term may include:

(A) Accepting referrals for music therapy services from physicians, psychologists, speech-language pathologists, occupational therapists, physical therapists, audiologists, or other medical, developmental, or mental health professionals; education professionals; family members; clients; or caregivers. Before providing music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client's physician, psychologist, or mental health professional to review the client's diagnosis, treatment needs, and

treatment plan. During the provision of music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client's speech-language pathologist, occupational therapist, physical therapist, audiologist, or other medical or developmental professional to review the client's diagnosis, treatment needs, and treatment plan;

(B) Conducting a music therapy assessment of a client to collect systematic, comprehensive, and accurate information necessary to determine the appropriate type of music therapy services to provide for the client;

(C) Developing an individualized music therapy treatment plan for the client;

(D) Carrying out an individualized music therapy treatment plan that is consistent with any other medical, developmental, mental health, or educational services being provided to the client;

(E) Evaluating the client's response to music therapy and the individualized music therapy treatment plan and suggesting modifications, as appropriate;

(F) Developing a plan for determining when the provision of music therapy services is no longer needed in collaboration with the client, any physician, or other provider of health care or education of the client, any appropriate member of the family of the client, and any other appropriate person upon whom the client relies for support;

(G) Minimizing any barriers so that the client may receive music therapy services in the least restrictive environment; and

(H) Collaborating with and educating the client and the family or caregiver of the client or any other appropriate person about the needs of the client that are being addressed in music therapy and the manner in which the music therapy addresses those needs.

(5) "Office" means the office of the Secretary of State.

(6) "Secretary" means the Secretary of State or his or her designee.

History.
Code 1981, § 43-25A-1, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

Cross references.
Inform Consumers Act, § 10-1-930 et seq.

43-25A-2. Creation of Music Therapy Advisory Group; membership; terms; service.

(a) There is created within the office of the Secretary of State a Music Therapy Advisory Group which shall consist of five members.

(b) The Secretary shall appoint all members of the advisory group. The advisory group shall consist of persons familiar with the practice of music therapy to provide the Secretary with expertise and assistance in carrying out his or her duties pursuant to this chapter.

(c) The Secretary shall appoint members of the advisory group to serve for terms of four years. The Secretary shall appoint three members who practice as music therapists in this state; one member who is a licensed health care provider who is not a music therapist; and one member who is a consumer.

(d) Members shall serve without compensation.

(e) Members may serve consecutive terms at the will of the Secretary. Any vacancy shall be filled in the same manner as the regular appointments.

History.
Code 1981, § 43-25A-2, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-3. Meetings; public education; consultation.

(a) The advisory group shall meet at least once per year or as otherwise called by the Secretary.

(b) The Secretary shall consult with the advisory group prior to setting or changing fees in this chapter.

(c) The advisory group may facilitate the development of materials that the Secretary may utilize to educate the public concerning music therapist licensure, the benefits of music therapy, and utilization of music therapy by individuals and in facilities or institutional settings.

(d) The advisory group may act as a facilitator of state-wide dissemination of information between music therapists, the American Music Therapy Association or any successor organization, the Certification Board for Music Therapists or any successor organization, and the Secretary.

(e) The advisory group shall provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least once per year.

(f) The Secretary shall seek the advice of the advisory group for issues related to music therapy.

History.
Code 1981, § 43-25A-3, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-4. Use of title "music therapist."

After January 1, 2014, no person without a license as a music therapist shall use the title "music therapist" or similar title, or perform the duties of a music therapist, provided that this chapter shall not prohibit any practice of music therapy that is an integral part of a program of study for students enrolled in an accredited music therapy program. Nothing in this Code section shall be construed as preventing or restricting the practice, services, or activities of any profession including occupational therapists, speech-language pathologists, physical therapists, or audiologists that may also use music in the scope of their practice.

History.
Code 1981, § 43-25A-4, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-5. Application for music therapy license.

The Secretary shall issue a license to an applicant for a music therapy license when such applicant has completed and submitted an application upon a form and in such manner as the Secretary prescribes, accompanied by applicable fees, and evidence satisfactory to the Secretary that:

(1) The applicant is at least 18 years of age;

(2) The applicant holds a bachelor's degree or higher in music therapy, or its equivalent, from a program approved by the American Music Therapy Association or any successor organization within an accredited college or university;

(3) The applicant successfully completes a minimum of 1,200 hours of clinical training, with at least 180 hours in preinternship experiences and at least 900 hours in internship experiences, provided that the internship shall be approved by an academic institution, the American Music Therapy Association or any successor organization, or both;

(4) The applicant is in good standing based on a review of the applicant's music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant;

(5) The applicant provides proof of passing the examination for board certification offered by the Certification Board for Music Therapists or any successor organization or provides proof of being

transitioned into board certification, and provides proof that the applicant is currently a board certified music therapist; and

(6) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the Secretary. Application for a license under this Code section shall constitute express consent and authorization for the Secretary or his or her representative to perform a criminal background check. Each applicant who submits an application to the Secretary for licensure by examination agrees to provide the Secretary with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check.

History.
Code 1981, § 43-25A-5, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-6. Biennial renewal of license; address changes; failure to renew; inactive status of license.

(a) Every license issued under this chapter shall be renewed biennially. A license shall be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of this chapter at the time of application for renewal. The following shall also be required for license renewal:

(1) Proof of maintenance of the applicant's Certification Board for Music Therapists credentials; and

(2) Proof of completion of a minimum of 40 hours of continuing education in a program approved by the Certification Board of Music Therapists or any successor organization and any other continuing education requirements established by the Secretary.

(b) A licensee shall inform the Secretary of any changes to his or her address. Each licensee shall be responsible for timely renewal of his or her license.

(c) Failure to renew a license shall result in forfeiture of the license. Licenses that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and the Secretary may require the individual to reapply for licensure as a new applicant.

(d) Upon written request of a licensee, the Secretary may place an

active license on an inactive status subject to an inactive status fee established by the Secretary. The licensee, upon request and payment of the inactive license fee, may continue on inactive status for a period up to two years. An inactive license may be reactivated at any time by making a written request to the Secretary and by fulfilling requirements established by the Secretary.

History.
Code 1981, § 43-25A-6, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-7. Limited waiver of examination.

The Secretary shall waive the examination requirement for an applicant until January 1, 2014, who is:

(1) Certified as a music therapist and in good standing with the Certification Board for Music Therapists; or

(2) Designated as a registered music therapist, certified music therapist, or advanced certified music therapist and in good standing with the National Music Therapy Registry.

History.
Code 1981, § 43-25A-7, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

43-25A-8. Authority of Secretary of State to investigate and act upon conduct.

(a) The Secretary may revoke, suspend, deny, or refuse to issue or renew a license; place a licensee on probation; or issue a letter of admonition upon proof that the licensee:

(1) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(2) Has been convicted of a felony as provided under state law;

(3) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under the individual's care;

(4) Has had a license to practice music therapy suspended or revoked or has otherwise been subject to discipline related to the individual's practice of music therapy in any other jurisdiction;

(5) Has committed a fraudulent insurance act;

(6) Excessively or habitually uses alcohol or drugs, provided that the Secretary shall not discipline an individual under this paragraph

if the individual is enrolled in a substance abuse program approved by the office; or

(7) Has a physical or mental disability that renders the individual incapable of safely administering music therapy services.

(b) The Secretary is authorized to conduct investigations into allegations of conduct described in subsection (a) of this Code section.

(c) In addition to suspension, revocation, denial, or refusal to renew a license, the Secretary shall fine a person found to have violated any provision of this chapter or any rule adopted by the Secretary under this chapter not less than $100.00 nor more than $1,000.00 for each violation.

(d) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the Secretary of State and the provisions of this chapter.

History.
Code 1981, § 43-25A-8, enacted by Ga. L. 2012, p. 884, § 1/SB 414.

CHAPTER 26

NURSES

Article 1

Georgia Registered Professional Nurse Practice Act

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43-26-1. Short title.
43-26-2. Legislative intent.
43-26-3. Definitions.
43-26-4. Georgia Board of Nursing; membership; meetings; officers.
43-26-5. General powers and responsibilities of board.
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43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.
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Article 2

Licensed Practical Nurses

Sec.
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43-26-35. [Reserved] Duties of board generally.
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43-26-40. Refusal to grant license; revocation of license; disciplining of licensees.
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43-26-43. [Repealed] Termination.

Article 3

Mandatory Reporting Requirements for Nurses

43-26-50. Definitions.
43-26-51. Mandatory reporting requirement for violations of grounds for discipline; no reporting requirement for knowledge obtained via privileged communications.

Sec.
43-26-52. Institutional reporting requirements; voluntary submission to alternative to discipline program not subject to reporting requirement.
43-26-53. Reportable incidents.
43-26-54. Court order; citation for civil contempt.
43-26-55. Immunity from liability for good-faith reporting.

Article 4

Nurse Licensure Compact

43-26-60. Short title.
43-26-61. Compact enacted and entered into by the State of Georgia; text of compact.
43-26-62. Rules and regulations.
43-26-63. Nurse Licensure Compact administrator.
43-26-64. Statutes applicable to nurses practicing under multistate license.
43-26-65. [Repealed] Applicability of article to nurses whose states have substantially similar licensure requirements.

OPINIONS OF THE ATTORNEY GENERAL

Licensed nurses performing nursing services in private home are not performing "domestic services". — Licensed nurses (registered professional nurses or licensed practical nurses) performing nursing services within the scope of their statutory authority in a private home for wages are not performing "domestic services" nor do the services constitute employment within the meaning of O.C.G.A. Ch. 8, T. 34. 1980 Op. Att'y Gen. No. 80-34.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Applicability, in action against nurse in her professional capacity, of statute of limitations applicable to malpractice, 8 A.L.R.3d 1336.

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice, 12 A.L.R.5th 1.

ARTICLE 1

GEORGIA REGISTERED PROFESSIONAL NURSE PRACTICE ACT

Editor's notes.

Ga. L. 1990, p. 747, § 1, effective April 4, 1990, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 43-26-1 through 43-26-13. Former Article 1 of this chapter was based on Ga. L. 1927, p. 247, §§ 1, 2, 4-6, 8, 11, 13, 14; Code 1933, §§ 84-1001—1009, 84-1011—1015, 84-9915, 84-9916; Ga. L. 1946, p. 89, § 1; Ga. L. 1956, p. 193, §§ 1, 4; Ga. L. 1956, p. 691, §§ 4, 5; Ga. L. 1966, p. 289, § 1; Ga. L. 1973, p. 433, §§ 1-3; Ga. L. 1974, p. 496, §§ 1, 2; Ga. L. 1976, p. 1361, § 1; Ga. L. 1978, p. 1635, § 1; Ga. L. 1979, p. 380, §§ 1, 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 2500, §§ 1-3; Ga. L. 1983, p. 3, § 32; Ga. L. 1985, p. 3, § 32; Ga. L. 1988, p. 530, § 4.

43-26-1. Short title.

This article shall be known and may be cited as the "Georgia Registered Professional Nurse Practice Act."

History.

Code 1981, § 43-26-1, enacted by Ga. L. 1990, p. 747, § 1.

Administrative rules and regulations.

Organization and administration, general requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Nursing, Chapter 410-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 84-9 and § 84-1001 are included in the annotations for this Code section.

Nurse may perform some acts considered practice of medicine when so directed by physician. — Unless specifically precluded by law, a nurse may perform a multitude of acts which may be construed as practice of medicine as long as those acts are prescribed by a physician practicing medicine. 1979 Op. Att'y Gen. No. 79-32 (decided under former Code 1933, § 84-1001).

Nurse may give medical treatments and medication. — Administration of medication and medical treatments by licensed nurse, when prescribed by a physician practicing medicine, does not constitute proscribed practice of medicine. 1979 Op. Att'y Gen. No. 79-2 (decided under former Code 1933, Ch. 84-9).

Nurses may telephone prescription orders into pharmacy after receiving order from practitioner of healing arts. 1979 Op. Att'y Gen. No. 79-32 (decided under former Code 1933, § 84-1001).

Nurses may not write or telephone in prescriptions by referring to written protocol. 1988 Op. Att'y Gen. No. 88-9 (decided under former law).

Licensed nurses acting within scope of statutory authority are not performing "domestic services". — It does not appear that licensed nurses (registered professional nurses or licensed practical nurses) acting within the scope of their statutory authority are performing "domestic services" within the meaning of Ga. L. 1937, p. 806, § 19 (see now O.C.G.A. § 34-8-40). 1980 Op. Att'y Gen. No. 80-34 (decided under former Code 1933, § 84-1001).

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 7 et seq.
C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.
ALR.
Validity and construction of domestic service provisions of fair labor standards act (29 U.S.C.A. § 201 et seq.), 165 A.L.R. Fed. 163.

43-26-2. Legislative intent.

The purpose of this article is to protect, promote, and preserve the public health, safety, and welfare through legislative regulation and control of registered professional nursing education and practice. This article ensures that any person practicing or offering to practice nursing or using the title registered professional nurse, as defined in this article, within the State of Georgia, shall be licensed as provided in this article.

History.
Code 1981, § 43-26-2, enacted by Ga. L. 1990, p. 747, § 1.
Editor's notes.
For application of this statute in 2021, see Executive Orders 01.22.21.07, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

43-26-3. Definitions.

As used in this article, the term:

(1) "Advanced nursing practice" means practice by a registered professional nurse who is licensed by the board under this article or who holds a multistate license under Article 4 of this chapter who meets those educational, practice, certification requirements, or any combination of such requirements as specified by the board, and includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists in psychiatric/mental health, and others recognized by the board.

(1.1) "Advanced practice registered nurse" means a registered professional nurse who is licensed by the board under this article or who holds a multistate license under Article 4 of this chapter, who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice, and who holds a master's degree or other graduate degree from an approved nursing education program and national board certification in his or her area of specialty, or a person who was recognized as an advanced practice registered nurse by the board on or before June 30, 2006. This paragraph shall not be construed to require a certified registered nurse anesthetist who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master's

degree or other graduate degree. Further, this paragraph shall not be construed to require a registered professional nurse who holds a multistate license under Article 4 of this chapter authorizing such nurse to practice in another party state under a multistate licensure privilege to obtain a single-state license from the board as a condition of receiving authorization by the board to practice in this state as an advanced practice registered nurse.

(1.2) "Approved nursing education program" located in this state means a nursing education program approved by the board as meeting criteria established by the board. An "approved nursing education program" located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) "Board" means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) "Consumer member" means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person's primary livelihood from the practice of nursing, and shall neither be, nor ever have been, a health care provider or enrolled in any health related educational program.

(4) "License" means a current document, issued by the board, permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse. This term shall also include a multistate license issued by another state in accordance with Article 4 of this chapter permitting a person to practice nursing as a

registered professional nurse in this state under a multistate licensure privilege.

(5) "Licensure" means the bestowing of a current license by the board permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(6) "Practice nursing" or "practice of nursing" means to perform for compensation or the performance for compensation of any act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span. It requires substantial specialized knowledge of the humanities, natural sciences, social sciences, and nursing theory as a basis for assessment, nursing diagnosis, planning, intervention, and evaluation. It includes, but is not limited to, provision of nursing care; administration, supervision, evaluation, or any combination thereof, of nursing practice; teaching; counseling; and the administration of medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(7) "Practice nursing as a licensed undergraduate nurse" means to practice nursing by performing for compensation selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse, a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(8) "Practice nursing as a registered professional nurse" means to practice nursing by performing for compensation any of the following:

(A) Assessing the health status of individuals, groups, or both throughout the life span;

(B) Establishing a nursing diagnosis;

(C) Establishing nursing goals to meet identified health care needs;

(D) Planning, implementing, and evaluating nursing care;

(E) Providing for safe and effective nursing care rendered directly or indirectly;

(F) Managing and supervising the practice of nursing;

(G) Collaborating with other members of the health care team in the management of care;

(H) Teaching the theory and practice of nursing;

(I) Administering, ordering, and dispensing medications, diagnostic studies, and medical treatments authorized by protocol, when such acts are authorized by other general laws and such acts are in conformity with those laws;

(J) Administering medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title; or

(K) Performing any other nursing act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span.

(9) "Registered professional nurse" means a person who is authorized by a license issued under this article to practice nursing as a registered professional nurse.

History.

Code 1981, § 43-26-3, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 3/SB 480; Ga. L. 2007, p. 460, § 1/SB 222; Ga. L. 2009, p. 210, § 1/HB 475; Ga. L. 2011, p. 779, § 1/SB 100; Ga. L. 2012, p. 19, § 1/HB 675; Ga. L. 2019, p. 219, § 1/SB 168; Ga. L. 2021, p. 922, § 43/HB 497.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, in paragraph (6), in the third sentence, substituted "counseling; and the" for "counseling; the" in the middle, and substituted "a dentist" for "or a dentist" near the end.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, "specialty" was substituted for "speciality" in paragraph (1.1).

Editor's notes.

For application of this statute in 2021, see Executive Orders 01.22.21.07, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 209 (2006).

JUDICIAL DECISIONS

Definition of practice of nursing. — Administration of doctors' orders regarding medication is the province of registered nurses; in fact, O.C.G.A. § 43-26-3 (6) specifically includes within the definition of the practice of nursing "the administration of medication and treatments as prescribed by a physician practicing medicine". Nowak v. High, 209 Ga. App. 536, 433 S.E.2d 602, 1993 Ga. App. LEXIS 931 (1993), cert. denied, No. S93C1693, 1993 Ga. LEXIS 956 (Ga. Oct. 12, 1993).

Administration of medication. — Trial court properly dismissed a wrongful death claim by a deceased nursing home resident's children, alleging that the nursing home staff failed to administer properly the resident's medications, as such task involved the professional skill and judgment of a nurse, and nurses were

licensed professionals with specialized knowledge pursuant to O.C.G.A. § 43-26-3(6) to which O.C.G.A. § 9-11-9.1 explicitly applied; as the children failed to comply with the expert affidavit requirement, dismissal of that aspect of the claim was proper. Williams v. Alvista Healthcare Ctr., Inc., 283 Ga. App. 613, 642 S.E.2d 232, 2007 Ga. App. LEXIS 137 (2007).

Trial court erred in denying a hospital's motion to dismiss a medical malpractice complaint in a simple negligence action after the complainant failed to attach an expert witness affidavit pursuant to O.C.G.A. § 9-11-9.1, as a nurse's administration of medication to a patient, which was the subject matter of the suit, involved professional skill and judgment to comply with a standard within the professional's area of expertise. Grady Gen. Hosp. v. King, 288 Ga. App. 101, 653 S.E.2d 367, 2007 Ga. App. LEXIS 1147 (2007).

Expert's allegations of standard of care pertained to conduct beyond the scope of nursing care and was excluded. — In a medical malpractice case against a hospital and emergency room doctor and nurses, expert testimony against the nurses was properly excluded under O.C.G.A. § 24-7-702 because the deviations from the standard of care alleged pertained to conduct that was beyond the scope of nursing care allowed by Georgia law under O.C.G.A. § 43-26-3(8) (defining the practice of nursing). Everson v. Phoebe Sumter Med. Ctr., Inc., 341 Ga. App. 182, 798 S.E.2d 667, 2017 Ga. App. LEXIS 165, rev'd in part, 302 Ga. 364, 806 S.E.2d 533, 2017 Ga. LEXIS 884 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Access to Georgia Prescription Drug Monitoring Program. — Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

43-26-4. Georgia Board of Nursing; membership; meetings; officers.

(a) The Georgia Board of Nursing existing immediately prior to July 1, 2014, is continued in existence and shall be constituted as provided in this Code section. Those persons serving as members of the board immediately prior to July 1, 2014, shall continue to serve out their respective terms of office and until their successors are appointed. Members shall serve three-year terms and until their successors are duly appointed and qualified. No member shall be appointed to more than two consecutive full terms, and for purposes of this limitation, an appointment to fill a vacancy for an unexpired term of two or more years shall constitute an appointment for a full term.

(b) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor with the confirmation of the Senate. In the event a board member changes employment which causes a conflict with this Code section, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.

(c) The 13 members of the board shall be appointed by the Governor with the confirmation of the Senate and shall consist of two registered nursing educators, one practical nursing educator, two registered nurses employed in nursing service administration, one registered nurse employed in nursing home administration or nursing service administration, two advanced practice registered nurses, one additional registered nurse, three licensed practical nurses, and one consumer member.

(d) The board shall meet annually and shall elect from its members a president, vice president, and other officers as deemed necessary. All officers shall serve for terms of one year and until their successors have been elected. The board may hold such other meetings during the year as necessary to transact its business.

History.

Code 1981, § 43-26-4, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 643, § 1/HB 332.

Editor's notes.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

43-26-5. General powers and responsibilities of board.

(a) The board shall:

(1) Be responsible for the enforcement of the provisions of this chapter and shall be specifically granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Be authorized to draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) Enforce qualifications for licensure under this article or Article 2 or Article 4 of this chapter;

(4) Develop and enforce reasonable and uniform standards for nursing education and nursing practice;

(5) Periodically evaluate nursing education programs and approve such programs as meet the board's requirements;

(6) Deny or withdraw approval from noncompliant nursing education programs;

(7) License duly qualified applicants under this article or Article 2 of this chapter by examination, endorsement, or reinstatement;

(8) Be authorized to issue temporary permits;

(9) Renew licenses of registered professional nurses, licensed undergraduate nurses, and licensed practical nurses in accordance with this article or Article 2 of this chapter;

(10) Be authorized to set standards for competency of licensees under this article or Article 2 of this chapter continuing in or returning to practice;

(11) Set standards for and regulate advanced nursing practice;

(12) Be authorized to enact rules and regulations for registered professional nurses in their performing acts under a nurse protocol as authorized in Code Section 43-34-23 and enact rules and regulations for advanced practice registered nurses in performing acts as authorized in Code Section 43-34-25;

(13) Implement the disciplinary process;

(14) Be authorized to issue orders when a license under this article or Article 2 of this chapter is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(15) Issue a limited license to practice nursing or licensed practical nursing subject to such terms and conditions as the board may impose;

(16) Provide consultation and conduct conferences, forums, studies, and research on nursing education and nursing practice;

(17) Approve the selection of a qualified person to serve as executive director;

(18) Be authorized to appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns and to facilitate communication amongst the board, licensees under this article or Article 2 of this chapter, and the community;

(19) Maintain membership in the national organization which develops and regulates the nursing licensing examination and the practical nursing licensing examination;

(20) Be authorized to collect data regarding existing nursing and licensed practical nursing resources in Georgia and coordinate planning for nursing education and nursing practice;

(21) Determine fees;

(22) Adopt a seal which shall be in the care of the executive director and shall be affixed only in such a manner as prescribed by the board;

(23) Be authorized to enforce all investigative and disciplinary orders issued by the former Georgia Board of Examiners of Licensed Practical Nurses;

(24) Issue and renew multistate licenses pursuant to Article 4 of this chapter;

(25) Take any action with respect to a multistate license issued by this state pursuant to Article 4 of this chapter and with respect to the privilege to practice in this state under a multistate license issued by another party state pursuant to the compact in Code Section 43-26-61 in the same manner as is authorized with respect to a license issued pursuant to this article or Article 2 of this chapter; and

(26) Provide notice to nurses holding multistate licenses pursuant to Article 4 of this chapter who are employed in this state and to health care providers and entities that employ such nurses that if such nurses change their primary state of residence to Georgia, they are required to apply for licensure in Georgia pursuant to the compact contained in Article 4 of this chapter.

(b) The board shall be the sole professional licensing board for determining if a registered professional nurse, licensed practical nurse, or any other person has engaged illegally in the practice of nursing. If a registered professional nurse or licensed practical nurse is charged with the unauthorized practice of any other health profession by any other board, such board shall notify the Georgia Board of Nursing before conducting any hearing. Nothing contained in this chapter shall be construed to limit any powers of any other board.

(c) Chapter 1 of this title is expressly adopted and incorporated by reference into this chapter as if all the provisions of such chapter were included in this chapter.

History.

Code 1981, § 43-26-5, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2000, p. 1706, § 13; Ga. L. 2006, p. 125, § 4/SB 480; Ga. L. 2009, p. 859, § 12/HB 509; Ga. L. 2013, p. 643, § 2/HB 332; Ga. L. 2015, p. 954, § 1/HB 394; Ga. L. 2017, p. 364, § 2/SB 109; Ga. L. 2019, p. 219, § 2/SB 168.

Editor's notes.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

Administrative rules and regulations.

Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Chapter 410-1 et seq.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 209 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Selection process for executive director. — The Secretary of State and the Georgia Board of Nursing have related but separate, distinguishable roles with respect to the selection of the executive director of the Board. The Secretary of State has the authority to select which candidate or candidates to submit to the Board for its approval, and the Board has the authority to approve who may be appointed to serve as its executive director. Only a qualified person who has been submitted for approval by the Secretary of State and approved by the Board can be appointed to serve as the Board's executive director. 2016 Op. Att'y Gen. No. 16-4.

RESEARCH REFERENCES

ALR.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 A.L.R.3d 487.

Revocation of nurse's license to practice profession, 55 A.L.R.3d 1141.

43-26-6. Use of certain titles and abbreviations by licensed nurses.

(a) Any person who is licensed as a registered professional nurse shall have the right to use the title "registered professional nurse" and the abbreviation "R.N." Any person recognized by the board as an advanced practice registered nurse shall have the right to use the title "advanced practice registered nurse" and the abbreviation "A.P.R.N." No other person shall assume such titles or use such abbreviations or any other words, letters, signs, or symbols to indicate that such person is a registered professional nurse or an advanced practice registered nurse in Georgia. Nothing in this subsection shall be construed to repeal the right of any person who is licensed as a registered professional nurse or recognized by the board as an advanced practice registered nurse on June 30, 2006, to be licensed and to use the title "registered professional nurse" or to use the title "advanced practice registered nurse," respectively.

(b) Any person holding a license to practice nursing as a licensed undergraduate nurse, which license was issued by the board and valid on July 1, 1975, shall be deemed to be licensed to practice nursing as a licensed undergraduate nurse under this article and shall have the right to use the title "licensed undergraduate nurse" and the abbreviation "L.U.N." No other person shall assume such title or use such abbreviation or any other words, letters, signs, or symbols to indicate that such person is licensed to practice nursing as a licensed undergraduate nurse. After July 1, 1975, there shall be no new certificates issued for licensure to practice nursing as a licensed undergraduate nurse.

(c) Any person who is licensed as a registered professional nurse

shall identify that he or she is so licensed by displaying either the title "registered professional nurse" or "registered nurse," the abbreviation "R.N.," the title "advanced practice registered nurse," or the abbreviation "A.P.R.N." on a name tag or other similar form of identification during times when such person is providing direct patient care. An advanced practice registered nurse shall meet the identification requirements of this subsection by displaying the title or abbreviation of his or her area of specialization.

(d) No person shall use the title "nurse" or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing unless the person is licensed or otherwise authorized under this article or Article 2 of this chapter.

History.

Code 1981, § 43-26-6, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1997, p. 979, § 1; Ga. L. 2006, p. 125, § 5/SB 480; Ga. L. 2007, p. 460, § 2/SB 222; Ga. L. 2008, p. 378, § 1/HB 1041; Ga. L. 2011, p. 779, § 1A/SB 100.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 209 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 7.

C.J.S.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 165 et seq.

43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.

(a) Any applicant who meets the requirements of this Code section shall be eligible for licensure as a registered professional nurse.

(b) An applicant for licensure by examination shall:

(1) Submit a completed written application and fee;

(2)(A) Have graduated from an approved nursing education program, as defined in Code Section 43-26-3;

(B)(i) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section; and

(ii)(I) If the applicant entered the nontraditional nursing education program as a licensed practical nurse and had an academic education as a licensed practical nurse that included

clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have at least two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse, as approved by the board. Such clinical experience shall be documented in writing by the applicant's immediate supervisor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities that would indicate the ability to work as a beginning registered professional nurse;

(II) If the applicant entered the nontraditional nursing education program as a licensed practical nurse, had an academic education as a licensed practical nurse that included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, and has at least two years of experience as a licensed practical nurse in any setting, although such experience shall be exclusive of night duty in a skilled nursing facility, but less than two years of experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility, as approved by the board, have completed a 320 hour postgraduate preceptorship. If the applicant can show that he or she cannot find a preceptorship in an acute care inpatient facility or a long-term acute care facility, the board may authorize a preceptorship pursuant to this subdivision in a skilled nursing facility, if such facility has 100 beds or more and such facility ensures to the board that the applicant will be providing health care to patients with similar health care needs as those patients in a long-term acute care facility;

(III) If the applicant entered the nontraditional nursing education program as (1) a paramedic with at least two years of experience as a paramedic or (2) a licensed practical nurse with less than two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse whose academic training as a licensed practical nurse did not include clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have completed a 480 hour postgraduate preceptorship. Such preceptorship shall be in the area or areas as determined by the board on a case-by-case basis, which may include pediatrics, obstetrics and gynecology, medical-surgical, mental illness, and transition into the role of a registered professional nurse;

(IV) If the applicant entered the nontraditional nursing

education program as a military medical corpsman and has at least two years of experience as a military medical corpsman, have completed a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board; or

(V) If the applicant does not meet the requirements of subdivision (I), (II), (III), or (IV) of this division and the applicant entered a nontraditional nursing education program before July 1, 2008, which meets the requirements of subsection (e) of this Code section and completes such program no later than June 30, 2015, have completed a 640 hour postgraduate preceptorship arranged by the applicant under the supervision of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor. The preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship pursuant to this subdivision in other facilities to obtain specialized experience in certain areas.

All preceptorships required pursuant to this division shall be arranged by the applicant under the close supervision of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse and the applicant performs duties typically performed by registered professional nurses. Except as otherwise provided in subdivision (II) of this division, a preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship in other facilities to obtain specialized experience in certain areas. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be documented in writing by the preceptor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities necessary to practice as a beginning registered professional nurse. No later than August 1, 2011, the board shall develop and make available one or more standard forms for use by and assistance to applicants in securing and completing preceptorships. Such form or forms shall include information relating to the specific requirements for preceptorships, including the minimum qualifications of the preceptor, the type of training required, and the documentation required upon completion of the preceptorship. The board shall make the determinations required by this division in accordance with its established guidelines; or

(C) Have graduated from a nursing education program located outside of the United States that is determined by the board to be equivalent to and not less stringent than an approved nursing education program as defined in Code Section 43-26-3;

(3) Pass a board recognized licensing examination; provided, however, that such examination may not be taken prior to graduation from the approved nursing education program. In no way shall the passage of such examination by a graduate of a nontraditional nursing education program who does not meet the other requirements of this subsection be construed to authorize such individual to practice nursing, to require the board to license such individual as a registered professional nurse other than to issue in its sole discretion a temporary permit pursuant to Code Section 43-26-8, or to be endorsed from another state as a registered professional nurse;

(4) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check;

(5) Complete further education and training if the applicant has not passed the examination within a time period established by the board, which shall not exceed three years. Such education and training may include the successful completion of an approved nursing education program as defined in Code Section 43-26-3; and

(6) Meet such other criteria as established by the board.

(c) An applicant for licensure by endorsement shall:

(1) Submit a completed written application and fee;

(2)(A) Have passed a board recognized licensing examination following graduation from an approved nursing education program, as defined in Code Section 43-26-3; or

(B) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section;

(3) Submit verification of initial and current licensure in any other

licensing jurisdiction administering a board recognized licensing examination;

(4)(A) Meet continuing competency requirements as established by the board;

(B) If the applicant entered a nontraditional nursing education program as a licensed practical nurse whose academic education as a licensed practical nurse included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have practiced nursing as a registered professional nurse in a health care facility for at least one year in the three years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant who does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a 320 hour postgraduate preceptorship arranged by the applicant under the oversight of a registered nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor; or

(C) If the applicant entered a nontraditional nursing education program as anything other than a licensed practical nurse whose academic education as a licensed practical nurse included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have graduated from such program and practiced nursing as a registered professional nurse in a health care facility for at least two years in the five years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant who does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board, arranged by the applicant under the oversight of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor.

For purposes of this paragraph, the term "health care facility" means an acute care inpatient facility, a long-term acute care facility, an ambulatory surgical center or obstetrical facility as defined in Code Section 31-6-2, and a skilled nursing facility, so long as such skilled nursing facility has 100 beds or more and provides health care to patients with similar health care needs as those patients in a long-term acute care facility;

(5) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by endorsement agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(6) Meet such other criteria as established by the board.

(d) An applicant for reinstatement who has previously held a valid license in Georgia shall:

(1) Submit a completed written application and fee;

(2) Meet continuing competency requirements as established by the board;

(3) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) Meet such other criteria as established by the board.

(e) A nontraditional nursing education program shall meet the following requirements:

(1) Is part of an institution of higher education that is approved by the appropriate regulatory authorities of its home state;

(2) Holds regional and specialty accreditation by an accrediting body or bodies recognized by the United States Secretary of Education or the Council for Higher Education Accreditation;

(3) Requires its students to pass faculty determined program outcomes, including competency based assessments of nursing knowledge and a summative performance assessment of clinical competency of a minimum of 2 ½ days developed by faculty subject matter experts that follows nationally recognized standards for educational testing; and

(4) Its graduates pass a board recognized licensing examination at a rate equivalent to the minimum rate required for board approved traditional nursing education programs.

History.

Code 1981, § 43-26-7, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2008, p. 378, § 2/HB 1041; Ga. L. 2009, p. 210, § 2/HB 475; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2011, p. 779, § 1C/SB 100; Ga. L. 2015, p. 954, § 2/HB 394; Ga. L. 2020, p. 493, § 43/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "licensure by endorsement" for "licensure by examination" in the third sentence of paragraph (c)(5).

Editor's notes.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendments to subparagraphs (c)(4)(B) and (c)(4)(D) by Ga. L. 2011, p. 752, § 43/HB 142, were not given effect.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-1008 are included in the annotations for this Code section.

Board may not license nurses without examination. — Georgia Board of Nursing is without statutory authority to issue permanent nursing licenses to any nurse unless that nurse has passed the Georgia nursing examination. Skrine v. Kim, 242 Ga. 185, 249 S.E.2d 534, 1978 Ga. LEXIS 1134 (1978) (decided under former Code 1933, § 84-1008).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-1008 are included in the annotations for this Code section.

Admission by comity. — Applicant may be licensed to practice nursing as a registered professional nurse in Georgia by endorsement, without examination, if the nurse is licensed to practice in another state or territory of the United States and if, at the time the nurse was licensed within that particular state, the nurse met the statutory qualifications for licensure as presently written. 1978 Op. Att'y Gen. No. 78-10 (decided under former Code 1933, § 84-1008).

RESEARCH REFERENCES

Am. Jur. 2d.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 26 et seq.

C.J.S.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 12.

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-26-8. Temporary permits.

(a) A temporary permit may be issued to an applicant for licensure by examination, endorsement, or reinstatement in accordance with criteria established by the board.

(b) A six-month temporary permit may be issued to a graduate of a nontraditional nursing education program that meets the requirements of subsection (e) of Code Section 43-26-7 to practice nursing only as a part of his or her board approved preceptorship. A temporary permit issued pursuant to this subsection may be renewed only one time for an additional six-month period.

History.
Code 1981, § 43-26-8, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2009, p. 210, § 3/HB 475; Ga. L. 2010, p. 878, § 43/HB 1387.

Editor's notes.
For application of this statute in 2020 and 2021, see Executive Orders 03.23.20.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 133.

C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 32.

43-26-9. Biennial renewal of licenses; continuing competency requirements; voluntary surrender or failure to renew license; restoration and reissuance of license.

(a) Licenses issued under this article shall be renewed biennially according to schedules and fees approved by the board.

(b) A renewed license shall be issued to a registered professional nurse or licensed undergraduate nurse who remits the required fee and complies with requirements established by the board.

(b.1) Beginning with the 2016 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 30 continuing education hours by a board approved provider;

(2) Maintenance of certification or recertification by a national certifying body recognized by the board;

(3) Completion of an accredited academic program of study in nursing or a related field, as recognized by the board;

(4) Verification of competency by a health care facility or entity licensed under Chapter 7 of Title 31 or by a physician's office that is

part of a health system and at least 500 hours practiced as evidenced by employer certification on a form approved by the board; or

(5) Other activities as prescribed and approved by the board that show competency in the nursing field.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant's initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 or 43-26-11.

History.
Code 1981, § 43-26-9, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 830, § 1/HB 315.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 133.

C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 32.

ALR.
Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-26-9.1. Inactive status; restoration of inactive license; nurses on inactive status barred from practicing.

(a) A registered professional nurse, subject to rules of the board and on forms prescribed by the board, may request that his or her license be placed on inactive status and to be excused from payment of renewal fees until he or she resumes active status.

(b) A licensee on inactive status may have his or her license restored by submitting an application to the board on a form prescribed by the board and paying the required restoration fee. The board shall require evidence of competency to resume the practice of nursing as a registered professional nurse in order to restore the license to active status.

(c) A registered professional nurse or advanced practice registered nurse whose license is on inactive status shall not practice nursing as

a registered professional nurse or an advanced practice registered nurse in this state.

History.
Code 1981, § 43-26-9.1, enacted by Ga. L. 2013, p. 830, § 2/HB 315.

43-26-10. Practicing as a registered professional nurse without a license prohibited.

It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

(1) Practice nursing as a registered professional nurse, without a valid, current license, except as otherwise permitted under Code Section 43-26-12;

(2) Practice nursing as a registered professional nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practice nursing as a registered professional nurse during the time the license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Use any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a registered professional nurse or advanced practice registered nurse unless such person is duly licensed or recognized by the board so to practice under the provisions of this article;

(5) Fraudulently furnish a license to practice nursing as a registered professional nurse;

(6) Knowingly employ any person to practice nursing as a registered professional nurse who is not a registered professional nurse;

(7) Conduct a nursing education program preparing persons to practice nursing as registered professional nurses unless the program has been approved by the board; or

(8) Knowingly aid or abet any person to violate this article.

History.
Code 1981, § 43-26-10, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 6/SB 480.

Editor's notes.
For application of this statute in 2021, see Executive Orders 01.22.21.07, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

Law reviews.
For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 209 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-9915, as it read prior to revision of this chapter by Ga. L. 1975, p. 501, are included in the annotations for this Code section.

Nursing permitted without certificate if no representation of registered status made. — While certificate of Board of Examiners of Nurses (now Georgia Board of Nursing) is necessary to practice professional nursing as a graduate or registered nurse, any person may engage in nursing if no such representation is made. 1948-49 Ga. Op. Att'y Gen. 324 (decided under former Code 1933, § 84-9915).

Wearing "RDN" badge and representing self as registered or licensed nurse violates section. — Wearing of badge "RDN," which is supposed to stand for "Registered Doctor's Nurse," alone and of itself does not violate the law; it would be a violation of law to wear such insignia for purpose of representing that the wearer thereof is a licensed undergraduate nurse, or a graduate or registered nurse. 1958-59 Ga. Op. Att'y Gen. 268 (decided under former Code 1933, § 84-9915).

Jury question. — It is for the jury to decide whether the wearer of insignia "RDN" violates the law; in order to sustain a conviction, however, it is necessary to prove that the wearer of such insignia did so for purpose of deceiving the public into believing that the wearer was a licensed undergraduate nurse, or a graduate registered nurse. 1958-59 Ga. Op. Att'y Gen. 268 (decided under former Code 1933, § 84-9915).

RESEARCH REFERENCES

ALR.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

43-26-11. Denial or revocation of licenses; other discipline.

In addition to the authority granted in Code Section 43-1-19, the board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a licensee, or to discipline a licensee upon a finding by the board that the applicant or licensee has:

(1) Been convicted of any felony, crime involving moral turpitude, or crime violating a federal or state law relating to controlled substances or dangerous drugs in the courts of this state, any other state, territory, or country, or in the courts of the United States, including but not limited to a plea of nolo contendere entered to the charge; or

(2)(A) Displayed an inability to practice nursing as a registered professional nurse or licensed undergraduate nurse with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcement of this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a board approved health care

professional. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary law or rule. Every person who is licensed to practice nursing as a registered professional nurse or licensed undergraduate nurse in this state or who shall file an application shall be deemed to have given such person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond that person's control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin to practice with reasonable skill and safety nursing as a registered professional nurse or licensed undergraduate nurse.

(C) In enforcement of this paragraph the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute. Every person who is licensed as a registered professional nurse or licensed undergraduate nurse in this state or who shall file an application shall be deemed to have given such person's consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication.

History.

Code 1981, § 43-26-11, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2002, p. 415, § 43.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "board approved" was substituted for "board-approved" in the first sentence of subparagraph (2)(A) (now subparagraph (2)(B)).

43-26-11.1. Administration of anesthesia by certified registered nurse anesthetist.

In any case where it is lawful for a duly licensed physician practicing medicine under the laws of this state to administer anesthesia, such anesthesia may be administered by a certified registered nurse anesthetist, provided that such anesthesia is administered under the direction and responsibility of a duly licensed physician.

History.
Code 1981, § 43-26-11.1, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43.

Cross references.
Use of general anesthesia by dentists, § 43-11-21.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 43-26-9 have been included in the annotations for this Code Section.

Student cannot lawfully administer anesthesia under supervision of a physician's assistant. Central Anesthesia Assocs. v. Worthy, 254 Ga. 728, 333 S.E.2d 829, 1985 Ga. LEXIS 894 (1985) (decided under former O.C.G.A. § 43-26-9).

Violation of O.C.G.A. § 43-26-11.1 may constitute negligence per se. — Although former subsection (b) of former O.C.G.A. § 43-26-9 did not establish a standard of conduct as to what anesthesia plan shall be used under which conditions, the statute nevertheless established a standard of conduct constituting ordinary care, the breach of which may have constituted negligence per se. Central Anesthesia Assocs. v. Worthy, 254 Ga. 728, 333 S.E.2d 829, 1985 Ga. LEXIS 894 (1985) (decided under former O.C.G.A. § 43-26-9).

Violation of O.C.G.A. § 43-26-11.1 negligence per se. — If, had former O.C.G.A. § 43-26-9 been followed, and had the anesthesia been administered by a certified registered nurse anesthetist (CRNA) under an anesthesia-qualified physician's supervision, it is possible that no injury or at least lesser injury would have resulted to the patient, and if the unauthorized and unsupervised administration of anesthesia could have caused injury to the patient, the violation of that section constituted negligence per se. Central Anesthesia Assocs. P.C. v. Worthy, 173 Ga. App. 150, 325 S.E.2d 819, 1984 Ga. App. LEXIS 2749 (1984), aff'd, 254 Ga. 728, 333 S.E.2d 829, 1985 Ga. LEXIS 894 (1985) (decided under former O.C.G.A. § 43-26-9).

Purpose of former O.C.G.A. § 43-26-9 is to protect patients from the dangers of improperly administered anesthesia by those unqualified by a lack of what public policy regards as minimum education in the field, and by a lack of specified supervision. The statute sets threshold qualifications which have to be met before a person is permitted under the law to apply anesthesia. These qualifications do not establish how the anesthesia is to be administered, or what methods or instruments may be used, but rather who may do it with whose supervision. Thus it prohibits anyone not meeting these qualifications from performing, and it further prohibits even a statutorily qualified person from performing without prescribed supervision. The "direction" referred to in the statute equates with "supervision." Doctors Hosp. v. Bonner, 195 Ga. App. 152, 392 S.E.2d 897, 1990 Ga. App. LEXIS 442 (1990), cert. denied, No. S90C0950, 1990 Ga. LEXIS 724 (Ga. May 9, 1990) (decided under former O.C.G.A. § 43-26-9).

RESEARCH REFERENCES

ALR.
Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

43-26-12. Exceptions to operation of article; burden of proof.

(a) No provision in this article shall be construed to require licensure in Georgia as a registered professional nurse in:

(1) The practice of nursing by students that is an integral part of a curriculum in a board approved nursing education program leading to initial licensure;

(2) The rendering of assistance by anyone in the case of an emergency or disaster;

(3) The incidental care of the sick by members of the family, friends, or persons primarily utilized as housekeepers, provided that such care does not constitute the practice of nursing within the meaning of this article;

(4) Caring for the sick in accordance with tenets or practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;

(5) The performance of auxiliary services in the care of patients when such care and activities do not require the knowledge and skill required of a person practicing nursing as a registered professional nurse and when such care and activities are performed under orders or directions of a licensed physician, licensed dentist, licensed podiatrist, or person licensed to practice nursing as a registered professional nurse;

(6) The practice of nursing as a registered professional nurse, by a person licensed so to practice in another state, who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that person's official duties;

(7) The practice of nursing as a registered professional nurse, by a person currently licensed so to practice in another state, who is employed by an individual, agency, or corporation located in another state and whose employment responsibilities include transporting patients into, out of, or through this state for a period not to exceed 24 hours;

(8) The practice of nursing as a registered professional nurse by a person currently licensed so to practice in another state, who is visiting Georgia as a nonresident, in order to provide specific, nonclinical, short-term, time limited services including, but not limited to, consultation, accreditation site visits, and the participation in continuing education programs;

(9)(A) The performance of health maintenance activities by a proxy caregiver pursuant to a written plan of care for a disabled individual when:

(i) Such individual or a person legally authorized to act on behalf of such individual has executed a written informed consent designating a proxy caregiver and delegating responsibility

to such proxy caregiver to receive training and to provide health maintenance activities to such disabled individual pursuant to the written orders of an attending physician, or an advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description, respectively, pursuant to Code Section 43-34-25 or 43-34-23;

(ii) Such health maintenance activities are provided outside of a hospital or nursing home and are not provided by a medicare-certified home health agency or hospice organization and if alternative sources are available, Medicaid is the payor of last resort; and

(iii) The written plan of care implements the written orders of the attending physician, advanced practice registered nurse, or physician assistant and specifies the frequency of training and evaluation requirements for the proxy caregiver, including additional training when changes in the written plan of care necessitate added duties for which such proxy caregiver has not previously been trained. A written plan of care may be established by a registered professional nurse.

Rules, regulations, and policies regarding training for proxy caregivers pursuant to this paragraph shall be promulgated by the Department of Behavioral Health and Developmental Disabilities or the Department of Community Health, as applicable. Such rules shall include selection by the Department of Behavioral Health and Developmental Disabilities and the Department of Community Health for approval of training curricula specifically designed for the purpose of implementing the health maintenance activity of medication administration to be implemented by such proxy caregivers employed or contracted to providers of home and community based services, community residential alternative services, or community living services. With such rules, providers shall train proxy caregivers in accordance with the selected curriculum or otherwise provided for in rules, regulations, and policies.

(B) An attending physician, advanced practice registered nurse, or physician assistant whose orders or written plan of care provide for the provision of health maintenance activities to a disabled person shall not be vicariously liable for a proxy caregiver's negligent performance of health maintenance activities unless the proxy caregiver is an employee of the physician, advanced practice registered nurse, or physician assistant. Any person who trains a proxy caregiver to perform health maintenance activities for a disabled individual may be held liable for negligently training that proxy caregiver if such training deviated from the applicable standard of care and was a proximate cause of injury to the disabled individual.

(C) For purposes of this paragraph, the term:

(i) "Disabled individual" means an individual who has a physical or mental impairment that substantially limits one or more major life activities and who meets the criteria for a disability under state or federal law.

(ii) "Health maintenance activities" are limited to those activities that, but for a disability, a person could reasonably be expected to do for himself or herself. Such activities are typically taught by a registered professional nurse, but may be taught by an attending physician, advanced practice registered nurse, physician assistant, or directly to a patient and are part of ongoing care. Health maintenance activities are those activities that do not include complex care such as administration of intravenous medications, central line maintenance, and complex wound care; do not require complex observations or critical decisions; can be safely performed and have reasonably precise, unchanging directions; and have outcomes or results that are reasonably predictable. Health maintenance activities conducted pursuant to this paragraph shall not be considered the practice of nursing.

(iii) "Proxy caregiver" means an unlicensed person or a licensed health care facility who has been selected by a disabled individual or a person legally authorized to act on behalf of such individual to serve as such individual's proxy caregiver, provided that such person shall receive training and shall demonstrate the necessary knowledge and skills to perform documented health maintenance activities, including identified specialized procedures, for such individual.

(iv) "Training" means teaching proxy caregivers the necessary knowledge and skills to perform health maintenance activities for disabled individuals.

(D) Good faith efforts by an attending physician, advanced practice registered nurse, physician assistant, registered professional nurse, or providers of home and community based services and other persons approved by the department to provide training to a proxy caregiver to perform health maintenance activities shall not be construed to be professional delegation.

(E) Such rules and regulations shall be promulgated pursuant to this paragraph no later than January 1, 2018; and

(10) The administration of liquid morphine by a certified medication aide pursuant to subparagraph (g)(7)(G) of Code Section 31-7-12.2.

(b) In a civil or administrative proceeding under this chapter, a person claiming an exemption or an exception pursuant to subsection (a) of this Code section has the burden of proving this exemption or exception. In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception pursuant to subsection (a) of this Code section is on the person claiming the exemption or exception.

History.
Code 1981, § 43-26-12, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2010, p. 1153, § 1/HB 1040; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2017, p. 564, § 1/HB 486; Ga. L. 2019, p. 1052, § 2/HB 374.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1991, "include" was substituted for "including" following "responsibilities" in paragraph (a)(7).

43-26-13. Certain information given to the board by licensees.

A licensee may, in lieu of providing his or her home address, provide the board a legitimate business address for purposes of the public information made available by the board with regard to licensed registered professional nurses.

History.
Code 1981, § 42-26-13, as enacted by Ga. L. 2006, p. 125, § 7/SB 480.
Editor's notes.
The former Code section, concerning termination, was based on Ga. L. 1990, p. 747, § 1 and was repealed by Ga. L. 1992, p. 3137, § 20, effective July 1, 1992.
Law reviews.
For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 209 (2006).

ARTICLE 2

LICENSED PRACTICAL NURSES

Editor's notes.
Ga. L. 1992, p. 2151, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 43-26-30 through 43-26-39 and was based on Ga. L. 1953, Jan.-Feb. Sess., p. 333, §§ 2, 3, 5, 6, 7, 8, 9, 11, 12; Ga. L. 1956, p. 691, § 6; Ga. L. 1965, p. 455, § 1; Ga. L. 1967, p. 593, §§ 1, 2; Ga. L. 1974, p. 494, §§ 1, 2; Ga. L. 1977, p. 1200, §§ 2, 3, 4, 6, 7; Ga. L. 1980, p. 58, § 1; Ga. L. 1981, p. 1815, §§ 1, 2, 4, 5, 6, 7, 9, 12; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 2222, §§ 1, 2; Ga. L. 1983, p. 3, § 32; Ga. L. 1983, p. 465, §§ 1, 2; Ga. L. 1988, p. 530, § 5; Ga. L. 1990, p. 891, § 1. Former Code Section 43-26-36 was amended by Ga. L. 1992, p. 6, § 43. Former Code Section 43-26-39 was also repealed by Ga. L. 1992, p. 3137, § 21.
Administrative rules and regulations.
Licensed Practical Nursing Education Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Chapter 410-9.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.
C.J.S.
15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-26-30. Short title.

This article shall be known and may be cited as the "Georgia Practical Nurses Practice Act."

History.
Code 1981, § 43-26-30, enacted by Ga. L. 1992, p. 2151, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Nurses may not write or telephone in prescriptions by referring to written protocol. 1988 Op. Att'y Gen. No. 88-9.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 7 et seq.
C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.
ALR.
Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

43-26-31. Purpose of article.

The purpose of this article is to protect, promote, and preserve the public health, safety, and welfare through regulation and control of practical nursing education and practice. This article ensures that any person practicing or offering to practice practical nursing or using the title "Licensed Practical Nurse," as defined in this article, within the State of Georgia, shall be licensed as provided in this article.

History.
Code 1981, § 43-26-31, enacted by Ga. L. 1992, p. 2151, § 1.

Administrative rules and regulations.
Licensed Practical Nursing Education Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Chapter 410-9.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 373, § 11 are included in annotations for this Code section.

Board of Examiners cannot change statutory provisions as to qualifications of licensed practical nurses. 1970 Op. Att'y Gen. No. U70-15 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 11).

43-26-32. Definitions.

As used in this article, the term:

(1) "Active practice as a licensed practical nurse" means to practice practical nursing as a licensed practical nurse by performing for compensation acts authorized by the board.

(1.1) "Approved nursing education program" located in this state means a nursing education program approved by the board as meeting criteria established by the board. An "approved nursing education program" located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) "Board" means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) Reserved.

(4) "License" means a current document, issued by the board, permitting a person to practice practical nursing as a licensed practical nurse. This term shall also include a multistate license issued by another state in accordance with Article 4 of this chapter permitting a person to practice practical nursing as a licensed practical nurse in this state under a multistate licensure privilege.

(5) "Licensed practical nurse" means a person who has completed a board approved nursing program necessary to qualify for examination for licensure and who is authorized by a license issued under this article to practice practical nursing.

(6) "Licensure" means the bestowing of a current license by the board permitting a person to practice practical nursing as a licensed practical nurse.

(7) "The practice of licensed practical nursing" means the provision of care for compensation, under the supervision of a physician practicing medicine, a dentist practicing dentistry, a podiatrist practicing podiatry, or a registered nurse practicing nursing in accordance with applicable provisions of law. Such care shall relate to the maintenance of health and prevention of illness through acts authorized by the board, which shall include, but not be limited to, the following:

(A) Participating in the assessment, planning, implementation, and evaluation of the delivery of health care services and other specialized tasks when appropriately trained and consistent with board rules and regulations;

(B) Providing direct personal patient observation, care, and assistance in hospitals, clinics, nursing homes, or emergency treatment facilities, or other health care facilities in areas of practice including, but not limited to: coronary care, intensive care, emergency treatment, surgical care and recovery, obstetrics, pediatrics, outpatient services, home health care, or other such areas of practice;

(C) Performing comfort and safety measures;

(D) Administering treatments and medication; and

(E) Participating in the management and supervision of unlicensed personnel in the delivery of patient care.

History.

Code 1981, § 43-26-32, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 1; Ga. L. 2009, p. 210, § 4/HB 475; Ga. L. 2012, p. 19, § 2/HB 675; Ga. L. 2013, p. 643, § 3/HB 332; Ga. L. 2019, p. 219, § 3/SB 168.

Editor's notes.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, pro-

vides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

For application of this statute in 2021, see Executive Orders 01.22.21.07, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2 are included in the annotations for this Code section.

Board of Examiners cannot change statutory provisions as to qualifications of licensed practical nurses. 1970 Op. Att'y Gen. No. U70-15 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2).

Applicants must submit proof of their successful completion of course of training in approved school. — Since the use of the words "successfully" and "completed" clearly implies that an applicant must submit proof not only of having undertaken the required course of training, but also of having successfully completed such training, the Georgia Board of Examiners of Licensed Practical Nurses may not accept or approve projected applications for examination for licensure unless proof is properly submitted that an applicant has successfully completed a course of training in an approved school. 1980 Op. Att'y Gen. No. 80-32 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2).

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-26-33. Use of titles and abbreviations by licensed practical nurses.

(a) Any person who is licensed as a practical nurse shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N." and shall identify that he or she is so licensed by displaying either such title or abbreviation on a name tag or similar form of identification during times when such person is providing direct patient care. No other person shall assume such title or use such abbreviation or any other words, letters, signs, or symbols to indicate that such person is a licensed practical nurse in Georgia.

(b) No person shall use the title "nurse" or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing unless the person is licensed or otherwise authorized under this article or Article 1 of this chapter.

History.

Code 1981, § 43-26-33, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2000, p. 1154, § 1; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2011, p. 779, § 1B/SB 100; Ga. L. 2015, p. 954, § 3/HB 394.

43-26-34. [Reserved] Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses.

History.
Code 1981, § 43-26-34, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2008, p. 335, § 7/SB 435; repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.
Editor's notes.
Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

43-26-35. [Reserved] Duties of board generally.

History.
Code 1981, § 43-26-35, enacted by Ga. L. 1992, p. 2151, § 1; repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.
Editor's notes.
Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

43-26-36. Application for licensure; examination.

(a) All applicants for a license to practice as a licensed practical nurse shall make application through the board. An applicant for licensure who has not been duly examined according to the prescribed examination approved by the board and who does not otherwise qualify for licensure under this article must apply by examination. Such applicants shall submit to the board a designated fee and written evidence verifying that the applicant:

(1) Is at least 18 years of age;

(2) Has graduated from high school or the equivalent thereof;

(3) Has graduated from an approved nursing education program, as defined in Code Section 43-26-32 or from a nursing education program located outside of the United States that is determined by the board to be equivalent to and not less stringent than an approved nursing education program as defined in Code Section 43-26-32;

(4) Is in good physical and mental health;

(5) In the case of an applicant who has graduated from a program conducted in a foreign country, has demonstrated the ability to speak, write, and understand the English language; and

(6) Meets such other criteria as established by the board.

(b) A person who is at least 17 years of age and meets all of the criteria set forth in subsection (a) of this Code section may apply to the board for special consideration to take the examination for licensure.

History.
Code 1981, § 43-26-36, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 2; Ga. L. 2009, p. 210, § 5/HB 475; Ga. L. 2013, p. 643, § 6/HB 332; Ga. L. 2015, p. 954, § 4/HB 394.

Cross references.
Immunity from liability for persons providing information to medical peer review organization, § 31-7-132.

Editor's notes.
Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: "For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014." The Governor approved this Act on May 6, 2013.

Administrative rules and regulations.
Licensed Practical Nursing Education Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Chapter 410-9.

43-26-36.1. Fingerprint record and criminal background checks for applicants for licensure; fees.

Any applicant for licensure under this article shall have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this article shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check.

History.
Code 1981, § 43-26-36.1, enacted by Ga. L. 2011, p. 437, § 1/HB 99.

43-26-37. Issuance of license upon passing examination; further educational and training requirements for applicants failing to pass examination within certain period of time.

(a) Any applicant who meets the license requirements stated in Code Section 43-26-36 or subsection (b) of Code Section 43-26-38 and passes the required exam may be issued a license to practice as a licensed practical nurse.

(b) An applicant who has not passed the examination within a time period established by the board, which shall not exceed three years, shall be required to complete further education and training which may

include the successful completion of an approved nursing education program as defined in Code Section 43-26-32.

History.
Code 1981, § 43-26-37, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 3; Ga. L. 2015, p. 954, § 5/HB 394.

RESEARCH REFERENCES

ALR.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

43-26-38. License by endorsement; temporary permit.

(a) The board, at its discretion, may issue a license to practice as a licensed practical nurse, without examination, to any person who has a high school diploma or state approved high school equivalency (HSE) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of an approved nursing education program, as defined in Code Section 43-26-32, and passage of an examination, which examination has been determined by the board to be substantially equal to or greater than the requirements for licensure as a licensed practical nurse in this state, and if such person has met continuing competency requirements as established by the board.

(b) The board, at its discretion, may issue a license to practice as a licensed practical nurse, with examination, to any person who has a high school diploma or state approved high school equivalency (HSE) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of an approved nursing education program, as defined in Code Section 43-26-32, except however, such applicant has not been duly examined according to the prescribed examination approved by this board and if such person meets continuing competency requirements as established by the board.

(c) Applicants for endorsement who have not been engaged in the active practice of practical nursing as licensed practical nurses for a period which exceeds a period of time established by the board shall be required to complete additional education and training as provided in the rules and regulations of the board, which may include but not be

limited to returning to school for full training and taking the licensing examination.

(d) The approval or denial of a license by endorsement under this Code section shall be in the sole discretion of the board, and a denial thereof shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The applicant shall be allowed to appear before the board if the applicant so desires.

(e) Nothing in this Code section shall be construed to prevent an applicant who is denied a license by endorsement from taking the examination for licensure, provided that such applicant is otherwise eligible to take the examination and meets the requirements specified.

(f) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination.

History.

Code 1981, § 43-26-38, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 4; Ga. L. 1995, p. 354, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 210, § 6/HB 475; Ga. L. 2015, p. 954, § 6/HB 394; Ga. L. 2022, p. 168, § 10(7)/SB 397.

The 2022 amendment, effective July 1, 2022, substituted "state approved high school equivalency (HSE)" for "general educational development (GED)" near the beginning of subsections (a) and (b).

Cross references.

Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 03.23.20.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

43-26-39. Renewal of license; continuing competency requirements; voluntary surrender; application for reinstatement; temporary permit.

(a) Licenses issued under this article shall be renewed biennially prior to the expiration of the license according to schedules and fees decided by the board and approved by the division director.

(b) A license shall be renewed for any licensed practical nurse who remits the required fee and complies with the requirements established by the board.

(b.1) Beginning with the 2017 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 20 continuing education hours by a board approved provider; or

(2) Completion of an accredited academic program of study in registered professional nursing, as recognized by the board.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant's initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established renewal period shall have the same effect as revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 upon such grounds as specified in Code Sections 43-1-19 and 43-26-40.

(d) Any license that is not renewed by the end of the renewal period may not thereafter be renewed, and the licensee must apply for reinstatement. Applicants for reinstatement shall meet continuing competency requirements as established by the board.

(e) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination.

(f) Other criteria for reinstatement may be determined by the rules of the board, including, but not limited to, additional coursework, a refresher course, supervised clinical practice, or examination by the board.

History.
Code 1981, § 43-26-39, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 830, § 3/HB 315; Ga. L. 2015, p. 954, § 7/HB 394.

43-26-40. Refusal to grant license; revocation of license; disciplining of licensees.

(a) In addition to the authority granted in Code Section 43-1-19, the board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a licensee, or to discipline a licensee upon a finding by the board that the applicant or licensee has:

(1) Been convicted of a felony, a crime involving moral turpitude, or any crime violating a federal or state law relating to controlled

substances or dangerous drugs or marijuana in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge;

(2) Had a license to practice nursing revoked, suspended, or annulled by any lawful licensing authority, had other disciplinary action taken by any lawful licensing authority, or was denied a license by any lawful licensing authority;

(3) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" includes the improper charting of medication and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice;

(4) Violated or attempted to violate a law or any lawfully promulgated rule or regulation of this state, any other state, the board, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of nursing, when the licensee or applicant knows or should know that such action is violative of such law or rule;

(5) Violated a lawful order of the board previously entered by the board in a disciplinary hearing; or

(6) Displayed an inability to practice nursing as a licensed practical nurse with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other types of material, or as a result of any mental or physical condition:

(A) In enforcement of this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a board approved health care professional. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under contrary law or rule. Every person who is licensed to practice practical nursing as a licensed practical nurse in this state, or an applicant for examination, endorsement, or reinstatement, shall be deemed to have given such person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly

directed to do so by the board, unless such failure was due to circumstances beyond that person's control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin to practice practical nursing as a licensed practical nurse with reasonable skill and safety; and

(B) In enforcement of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule, law, or statute. Every person who is licensed in this state or who shall file an application for said license shall be deemed to have given such person's consent to the board's obtaining such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication.

(b) Neither denial of an initial license, the issuance of a private reprimand, the denial of a license by endorsement under Code Section 43-26-38, nor the denial of a request for reinstatement of a license on the grounds that the applicant or licensee has failed to meet the minimum requirements shall be considered a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests.

History.
Code 1981, § 43-26-40, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2015, p. 954, § 8/HB 394.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, in the introductory language of paragraph (a)(6), a comma was inserted following "material" and a colon was substituted for a period at the end, and "; and" was substituted for a period at the end of subparagraph (a)(6)(A).

43-26-41. Exceptions to licensure requirements; burden of proof.

(a) No provision in this article shall be construed to require licensure in Georgia as a licensed practical nurse in:

(1) The practice of practical nursing by students when such practice is an integral part of a curriculum in a board approved practical nursing education program leading to initial licensure;

(2) The rendering of assistance by anyone in the case of an emergency or disaster;

(3) The incidental care of the sick by members of the family, friends, or persons primarily utilized as housekeepers, provided that such care does not constitute the practice of practical nursing within the meaning of this article and individuals do not hold themselves out as being licensed practical nurses;

(4) Caring for the sick in accordance with tenets or practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;

(5) The performance of auxiliary services in the care of patients when such care and activities do not require the knowledge and skill required of a person practicing practical nursing as a licensed practical nurse and when such care and activities are performed under orders or directions of a licensed physician, licensed dentist, licensed podiatrist, or person licensed to practice nursing as a registered professional nurse;

(6) The practice of practical nursing as a licensed practical nurse by a person so licensed to practice in another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that person's official duties; and

(7) The practice of practical nursing as a licensed practical nurse by a person currently licensed to practice in another state who is employed by an individual, agency, or corporation located in another state, whose employment responsibilities include transporting patients into, out of, or through this state for a period not to exceed 24 hours.

(b) In a civil or administrative proceeding under this article, a person claiming an exemption or an exception pursuant to subsection (a) of this Code section has the burden of proving this exemption or exception. In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception pursuant to subsection (a) of this Code section is on the person claiming the exemption or exception.

History.
Code 1981, § 43-26-41, enacted by Ga. L. 1992, p. 2151, § 1.

43-26-42. Criminal violations.

It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

(1) Practice practical nursing as a licensed practical nurse without a valid current license, except as otherwise permitted under Code Section 43-26-41;

(2) Practice practical nursing as a licensed practical nurse under

cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practice practical nursing as a licensed practical nurse during the time the license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Use any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a licensed practical nurse unless such person is duly licensed to practice under the provisions of this article;

(5) Fraudulently furnish a license to practice nursing as a licensed practical nurse;

(6) Knowingly employ any person to practice practical nursing as a licensed practical nurse who is not a licensed practical nurse;

(7) Conduct a nursing education program in this state unless the program has been approved by the board; or

(8) Knowingly aid or abet any person to violate this article.

History.
Code 1981, § 43-26-42, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2015, p. 954, § 9/HB 394.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

43-26-43. [Repealed] Termination.

History.
Ga. L. 1992, p. 2151, § 1; repealed by Ga. L. 1993, p. 91, § 43, effective March 22, 1993.

ARTICLE 3

MANDATORY REPORTING REQUIREMENTS FOR NURSES

Editor's notes.
Ga. L. 2013, p. 830, § 5/HB 315, not codified by the General Assembly, provided that this article shall become effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to this Act. Funds were appropriated at the 2014 session of the General Assembly.

The former article consisted of Code Sections 43-26-50 through 43-26-60, relating to qualified medication aides, and was based on Code 1981, §§ 43-6-50 — 43-26-60, enacted by Ga. L. 2006, p. 125, § 1/SB 480; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, §§ 1-45, 1-46/HB 228, and was repealed by Ga. L. 2006, p. 125, § 1/SB 480, effective July 1, 2011.

43-26-50. Definitions.

As used in this article, the term:

(1) "Board" means the Georgia Board of Nursing.

(2) "Nurse" means a registered professional nurse licensed or

authorized pursuant to Article 1 or Article 4 of this chapter, an advanced practice registered nurse, as defined in paragraph (1.1) of Code Section 43-26-3, or a licensed practical nurse licensed or authorized pursuant to Article 2 or Article 4 of this chapter.

History. Code 1981, § 43-26-50, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2019, p. 219, § 4/SB 168.

43-26-51. Mandatory reporting requirement for violations of grounds for discipline; no reporting requirement for knowledge obtained via privileged communications.

A nurse shall report names of subject individuals to the board if the nurse has reasonable cause to believe that any other nurse has violated any of the grounds for discipline provided for in Code Section 43-26-53. A nurse need not duplicate a report if he or she has reasonable cause to believe that such report has been made to the board. A licensed health care professional shall not be required to report a nurse to the board under this Code section as a result of professional knowledge obtained in the course of the health care professional-patient relationship when the nurse is the patient.

History. Code 1981, § 43-26-51, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.

43-26-52. Institutional reporting requirements; voluntary submission to alternative to discipline program not subject to reporting requirement.

(a) Hospitals, nursing homes, temporary staffing agencies, and other employers of registered professional nurses, advanced practice registered nurses, or licensed practical nurses shall report to the board, or ensure that such report has in fact been made to the board, the name of any nurse whose employment has been terminated or who has resigned in order to avoid termination for any reasons stipulated in Code Section 43-26-53.

(b) A state agency that licenses, registers, or certifies hospitals, nursing homes, home health agencies, or other types of health care facilities, or surveys one of these facilities or agencies, shall report to the board when such state agency has evidence that a nurse has violated Code Section 43-26-53 or ensure that such a report has in fact been made to the board.

(c) In the event a nurse enters a voluntary alternative to discipline program approved by the board, reporting to the board shall not be required for such nurse by a person under this Code section. The board may approve alternative to discipline programs for monitoring of

nurses who agree to seek treatment for impairment by chemical dependency or mental illness that could lead to disciplinary action by the board. The costs for any treatment programs shall be borne by the nurse.

(d) The board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this article.

History. Code 1981, § 43-26-52, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.

43-26-53. Reportable incidents.

(a) The following incidents shall be reported to the board in the event any person is:

(1) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse, without a valid, current license, except as otherwise permitted under Code Section 43-26-12 or 43-26-41, as applicable;

(2) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse during the time the applicable license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Using any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse unless such person is duly licensed or recognized by the board to practice as such under the provisions of this chapter;

(5) Fraudulently furnishing a license to practice nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse;

(6) Knowingly aiding or abetting any person in violating this chapter;

(7) While holding a license as a nurse, convicted of any felony, crime involving moral turpitude, or crime violating a federal or state law relating to controlled substances or dangerous drugs in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge; or

(8) While holding a license as a nurse, currently or previously displaying an inability to practice nursing as a registered professional nurse, an advanced practice registered nurse, a licensed undergraduate nurse, or a licensed practical nurse with reasonable skill and safety due to use of alcohol, drugs, narcotics, or chemicals.

(b) Minor incidents, as defined by the board, shall not be required to be reported pursuant to this article when the continuing practice by the subject nurse does not pose a risk of harm to a patient or others and can be addressed through corrective action by the nurse's employer. The board shall adopt rules governing reporting of minor incidents. The board may evaluate a complaint and determine that it is a minor incident under this Code section.

History.
Code 1981, § 43-26-53, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2015, p. 5, § 43/HB 90.

43-26-54. Court order; citation for civil contempt.

The board may seek an order from a court of competent jurisdiction for a report from a nurse as required by Code Section 43-26-51 if one is not forthcoming voluntarily. The board may seek a citation for civil contempt if a court order for a report is not obeyed by such nurse.

History.
Code 1981, § 43-26-54, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.

43-26-55. Immunity from liability for good-faith reporting.

(a) No nurse, hospital, nursing home, temporary staffing agency, employer, state agency, or other person required to report a nurse to the board under this article, who, in good faith, either reports or fails to report, shall be subject to civil or criminal liability or discipline for unprofessional conduct for such action or inaction.

(b) A physician or other licensed health care professional who, at the request of the board, examines a nurse shall be immune from suit for damages by the nurse examined if the examining physician or examining health care professional conducted the examination and made findings or diagnoses in good faith.

History.
Code 1981, § 43-26-55, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.

ARTICLE 4

NURSE LICENSURE COMPACT

Editor's notes.
Ga. L. 2017, p. 364, § 3/SB 109 provides that this article becomes effective on the earlier date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. The requisite number of states approved this compact on July 20, 2017.

43-26-60. Short title.

This article shall be known and may be cited as the "Nurse Licensure Compact."

History.
Code 1981, § 43-26-60, enacted by Ga. L. 2017, p. 364, § 3/SB 109.

43-26-61. Compact enacted and entered into by the State of Georgia; text of compact.

The Nurse Licensure Compact is enacted into law and entered into by the State of Georgia with any and all other states legally joining therein in the form substantially as follows:

ARTICLE I
Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

(6) Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(b) The general purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

(6) Decrease redundancies in the consideration and issuance of nurse licenses; and

(7) Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II
Definitions

As used in this Compact:

(a) "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

(b) "Alternative program" means a non-disciplinary monitoring program approved by a licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

(d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction, or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

(f) "Home state" means the party state which is the nurse's primary state of residence.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate license" means a license to practice as a registered professional nurse or a licensed practical nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(i) "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered professional nurse or a licensed practical nurse in a remote state.

(j) "Nurse" means a registered professional nurse or licensed practical nurse, as those terms are defined by each party state's practice laws.

(k) "Party state" means any state that has adopted this Compact.

(l) "Remote state" means a party state, other than the home state.

(m) "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

(n) "State" means a state, territory or possession of the United States and the District of Columbia.

(o) "State practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III
General Provisions and Jurisdiction

(a) A multistate license to practice as a registered professional nurse or a licensed practical nurse issued by a home state to a resident in that

state will be recognized by each party state as authorizing a nurse to practice as a registered professional nurse or a licensed practical nurse, under a multistate licensure privilege, in each party state.

(b) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(c) Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

(1) Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;

(2)(i) Has graduated or is eligible to graduate from a licensing board-approved registered professional nurse or licensed practical nurse prelicensure education program; or

(ii) Has graduated from a foreign registered professional nurse or licensed practical nurse prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

(4) Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;

(5) Is eligible for or holds an active, unencumbered license;

(6) Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

(7) Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) Has not been convicted or found guilty, or has entered into an

agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) Is not currently enrolled in an alternative program;

(10) Is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) Has a valid United States Social Security number.

(d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege to practice such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(e) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

(f) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

(g) Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

(1) A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable Article III(c) requirements to obtain a multistate license from a new home state.

(2) A nurse who fails to satisfy the multistate licensure requirements in Article III(c) due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked

or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission").

ARTICLE IV
Applications for Licensure in a Party State

(a) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

(b) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(c) If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(d) If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V
Additional Authorities Invested in
Party State Licensing Boards

(a) In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

(i) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

(ii) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(2) Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

(3) Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(4) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(5) Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

(6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(7) Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

(b) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure

privilege is deactivated in all party states during the pendency of the order.

(c) Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI
Coordinated Licensure Information System
and Exchange of Information

(a) All party states shall participate in a coordinated licensure information system of all registered professional nurses and licensed practical nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

(c) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(d) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(e) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

(f) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(g) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the

laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(h) The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

(1) Identifying information;

(2) Licensure data;

(3) Information related to alternative program participation; and

(4) Other information that may facilitate the administration of this Compact, as determined by Commission rules.

(i) The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII
Establishment of the Interstate Commission of
Nurse Licensure Compact Administrators

(a) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(1) The Commission is an instrumentality of the party states.

(2) Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(b) **Membership, Voting and Meetings.**

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and

affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

(5) The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

(i) Noncompliance of a party state with its obligations under this Compact;

(ii) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

(iii) Current, threatened or reasonably anticipated litigation;

(iv) Negotiation of contracts for the purchase or sale of goods, services or real estate;

(v) Accusing any person of a crime or formally censuring any person;

(vi) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) Disclosure of investigatory records compiled for law enforcement purposes;

(ix) Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or

(x) Matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully

and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(c) The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including but not limited to:

(1) Establishing the fiscal year of the Commission;

(2) Providing reasonable standards and procedures:

(i) For the establishment and meetings of other committees, and

(ii) Governing any general or specific delegation of any authority or function of the Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

(4) Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission; and

(6) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations;

(d) The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the Commission.

(e) The Commission shall maintain its financial records in accordance with the bylaws.

(f) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(g) The Commission shall have the following powers:

(1) To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

(2) To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

(3) To purchase and maintain insurance and bonds;

(4) To borrow, accept or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;

(5) To cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

(6) To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

(7) To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

(8) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

(9) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

(10) To establish a budget and make expenditures;

(11) To borrow money;

(12) To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or

their representatives, and consumer representatives, and other such interested persons;

(13) To provide and receive information from, and to cooperate with, law enforcement agencies;

(14) To adopt and use an official seal; and

(15) To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

(h) **Financing of the Commission.**

(1) The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

(2) The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

(3) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

(4) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(i) **Qualified Immunity, Defense and Indemnification.**

(1) The administrators, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities, provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

(2) The Commission shall defend any administrator, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional, willful or wanton misconduct.

(3) The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

ARTICLE VIII
Rulemaking

(a) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

(b) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(c) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

(1) On the website of the Commission; and

(2) On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(d) The notice of proposed rulemaking shall include:

(1) The proposed time, date and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment, and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(e) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

(f) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) The Commission shall publish the place, time and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(h) If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety or welfare;

(2) Prevent a loss of Commission or party state funds; or

(3) Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

(l) The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE IX
Oversight, Dispute Resolution and Enforcement

(a) **Oversight.**

(1) Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

(2) The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

(b) **Default, Technical Assistance and Termination.**

(1) If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

(i) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the Commission; and

(ii) Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

(4) A state whose membership in this Compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) **Dispute Resolution.**

(1) Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

(2) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the Commission cannot resolve disputes among party states arising under this Compact:

(i) The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

(ii) The decision of a majority of the arbitrators shall be final and binding.

(d) **Enforcement.**

(1) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

(2) By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal

district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE X
Effective Date, Withdrawal and Amendment

(a) This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact, superseded by this Compact, ('Prior Compact'), shall be deemed to have withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

(b) Each party state to this Compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

(c) Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

(d) A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

(e) Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

(f) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(g) Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

ARTICLE XI
Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

History.
Code 1981, § 43-26-61, enacted by Ga. L. 2017, p. 364, § 3/SB 109.

43-26-62. Rules and regulations.

The Georgia Board of Nursing shall be authorized to promulgate rules and regulations to implement the provisions of this article.

History.
Code 1981, § 43-26-62, enacted by Ga. L. 2017, p. 364, § 3/SB 109.

43-26-63. Nurse Licensure Compact administrator.

The executive director of the Georgia Board of Nursing shall serve as the Nurse Licensure Compact administrator for this state.

History.
Code 1981, § 43-26-63, enacted by Ga. L. 2017, p. 364, § 3/SB 109.

43-26-64. Statutes applicable to nurses practicing under multistate license.

A registered professional nurse or licensed practical nurse practicing in this state under a multistate license issued by another party state shall be subject to all requirements and duties applicable to registered professional nurses or licensed practical nurses who are licensed pursuant to Article 1 or Article 2 of this chapter, respectively.

History.
Code 1981, § 43-26-64, enacted by Ga. L. 2017, p. 364, § 3/SB 109.

43-26-65. [Repealed] Applicability of article to nurses whose states have substantially similar licensure requirements.

History.

Code 1981, § 43-26-65, enacted by Ga. L. 2017, p. 364, § 3/SB 109; repealed by Ga. L. 2019, p. 219, § 5/SB 168, effective April 25, 2019.

CHAPTER 27

LONG-TERM CARE FACILITY ADMINISTRATORS

Sec.		Sec.	
43-27-1.	Definitions.	43-27-6.	License requirement for administrators; qualifications.
43-27-2.	State Board of Long-Term Care Facility Administrators; members.	43-27-7.	Reciprocity; provisional license.
43-27-3.	Election of officers; rules and regulations; reimbursement of members; division director as secretary of board.	43-27-8.	Biennial license fees and renewal; applicability to superintendent of state hospital or facility.
43-27-4.	Board's authority to determine qualifications of administrators.	43-27-9.	Restoration of suspended or revoked license.
43-27-5.	General powers and duties of board; limitations.	43-27-10.	Local fees.
		43-27-11.	Penalty.
		43-27-12.	[Repealed] Termination.

Cross references.

Financing residential care facilities for the elderly, § 31-7-110 et seq.

Long-term care ombudsman program, § 31-8-50 et seq.

Reporting abuse or exploitation of residents in long-term care facilities, § 31-8-80 et seq.

Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq.

Georgia State War Veterans' Home, § 38-4-50 et seq.

Exemptions from law regarding public officials' conflicts of interest relating to Medicaid and medicare payments, § 45-10-25.

JUDICIAL DECISIONS

Intent of Ga. L. 1970, p. 573. — Ga. L. 1970, p. 573 is primarily and almost solely intended to protect the public from improper nursing home administrators. Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299, 1972 Ga. App. LEXIS 957 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Effective date of Ga. L. 1968, p. 1143 was April 8, 1968. 1969 Op. Att'y Gen. No. 69-411.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Proof of Facts.

False Imprisonment in Connection with Confinement in Nursing Home or Hospi-

tal, 40 POF2d 81.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

43-27-1. Definitions.

As used in this chapter, the term:

(1) "Administrator" means a person who operates, manages, supervises, or is in charge of a long-term care facility.

(2) "Assisted living community" means a facility licensed pursuant to Code Section 31-7-12.2.

(3) "Assisted living community administrator" means a person who operates, manages, supervises, or is in charge of an assisted living community.

(4) "Board" means the State Board of Long-Term Care Facility Administrators.

(5) "Long-term care facility" means a personal care home, an assisted living community, or a nursing home.

(6) "Nursing home" has the same meaning as prescribed by the Department of Community Health in the rules and regulations for nursing homes.

(7) "Nursing home administrator" means a person who operates, manages, supervises or is in charge of a nursing home.

(8) "Personal care home" means a facility licensed pursuant to Code Section 31-7-12 which has 25 or more beds.

(9) "Personal care home administrator" means a person who operates, manages, supervises, or is in charge of a personal care home.

History.

Ga. L. 1968, p. 1143, § 1; Ga. L. 1970, p. 573, § 1; Ga. L. 1986, p. 846, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, added paragraphs (1), (2), (3), (5), (8), and (9); redesignated former paragraphs (1), (2), and (3) as present paragraphs (4), (6), and (7), respectively; substituted "Long Term Care Facility Administrators" for "Nursing Home Administrators" in paragraph (4); and deleted "or" following "manages," in paragraph (7).

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1986, "this" was substituted for "the" in the introductory language.

43-27-2. State Board of Long-Term Care Facility Administrators; members.

(a) There is created the State Board of Long-Term Care Facility Administrators, which, on and after June 30, 2022, shall consist of eleven members. The members of the board shall be appointed by the Governor and confirmed by the Senate, as follows:

(1) Four members who are nursing home administrators in this state, at least one of whom shall represent nonproprietary nursing homes;

(2) Four members, each of whom are either a personal care home administrator or an assisted living community administrator; provided, however, that on and after July 1, 2021, all successor members appointed pursuant to this paragraph shall be either a licensed personal care home administrator or a licensed assisted living community administrator;

(3) Two members of the public at large who are not personal care home administrators, assisted living community administrators, or nursing home administrators or pecuniarily interested in any personal care home, assisted living community, or nursing home, or have any connection with the personal care home, assisted living community, or nursing home industry whatsoever; and

(4) One member who is a health care professional with at least a bachelor's degree, experience in elder care, and knowledge in dementia care and who is not a personal care home administrator, an assisted living community administrator, or a nursing home administrator or pecuniarily interested in any personal care home, assisted living community, or nursing home, or has any connection with the personal care home, assisted living community, or nursing home industry whatsoever.

(b) The term for all members shall be three years from the date of appointment. A member may be removed as provided in Code Section 43-1-17, including removal for failing to attend three meetings in one calendar year. All vacancies shall be filled by the Governor for the unexpired terms in accordance with the requirements for appointment to the vacant position.

History.
Ga. L. 1968, p. 1143, § 6; Ga. L. 1969, p. 744, § 1; Ga. L. 1970, p. 573, § 1; Ga. L. 1976, p. 1184, §§ 2, 3; Ga. L. 1979, p. 385, § 1; Ga. L. 1980, p. 536, § 2; Ga. L. 1986, p. 846, § 2; Ga. L. 1992, p. 2770, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, §§ 1-6, 1-47/HB 228; Ga. L. 2020, p. 95, § 9/HB 987; Ga. L. 2022, p. 352, § 43/HB 1428; Ga. L. 2022, p. 552, § 1/HB 1049.

The 2020 amendment, effective June 30, 2020, rewrote subsection (a); and

added ", including removal for failing to attend three meetings in one calendar year" at the end of the second sentence of subsection (b).

The 2022 amendments.

The first 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted a period for "; and" at the end of paragraph (a)(4). The second 2022 amendment, effective July 1, 2022, substituted "June 30, 2022, shall consist of eleven" for "June 30, 2020, shall consist of nine" in the introductory language of subsection (a), substituted "Four" for "Three" at the beginning of paragraphs (a)(1) and (a)(2), and substituted a period for "; and" at the end of paragraph (a)(4).

Code Commission notes.

The amendment of subsection (a) of this Code section by Ga. L. 2009, p. 453, § 1-6/HB 228, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 453, § 1-47/HB 228. See Singer, Statutes and Statutory Construction, sec. 23:18 (6th ed. 2002).

Pursuant to Code Section 28-9-5, in 2020, "on and after June 30, 2020," was substituted for "on and after the effective date of this Act," in the first sentence of subsection (a).

Law reviews.

For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners (now Georgia Composite Medical Board) be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-27-3. Election of officers; rules and regulations; reimbursement of members; division director as secretary of board.

The board shall elect a chairman and vice-chairman from its membership and such other officers as it shall deem necessary and shall adopt rules and regulations to govern its proceedings. Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. The division director shall be the executive secretary of the board.

History.

Ga. L. 1968, p. 1143, § 6; Ga. L. 1969, p. 744, § 3; Ga. L. 1980, p. 536, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2020, p. 95, § 9/HB 987.

Editor's notes.

Ga. L. 2020, p. 95, § 9/HB 987, effective June 30, 2020, reenacted this Code section without change.

43-27-4. Board's authority to determine qualifications of administrators.

The board shall have sole and exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a personal care home, an assisted living community, or a nursing home under this chapter; and the holder of a license under this chapter shall be deemed qualified to serve as the administrator of such personal care home, assisted living community, or nursing home, as applicable.

History.
Ga. L. 1968, p. 1143, § 7; Ga. L. 1986, p. 846, § 3; Ga. L. 2020, p. 95, § 9/HB 987.
The 2020 amendment, effective June 30, 2020, inserted "personal care home, an assisted living community, or a" and substituted "such personal care home, assisted living community, or nursing home, as applicable" for "a nursing home" at the end.

43-27-5. General powers and duties of board; limitations.

(a) The board shall have the following powers and duties:

(1) To issue, renew, and reinstate the licenses of duly qualified applicants for licensure;

(2) To deny, suspend, revoke, or otherwise sanction licenses to practice as an administrator;

(3) To initiate investigations for the purpose of discovering violations of this chapter;

(4) To initiate investigations for the purpose of discovering violations by an administrator of the rules, regulations, or statutes of the Department of Community Health or the Department of Human Services, provided that the board shall investigate those violations only after revocation, limitation, or restriction of participation of the long-term care facility of which such individual is the administrator in the medical assistance program, if applicable, or the license issued by the Department of Community Health and make written findings as to the causes of the alleged violations;

(5) To conduct hearings upon charges into alleged violations of this chapter;

(6) To prepare or approve all examinations for licensure as an administrator;

(7) To develop, impose, and enforce standards which must be met by individuals in order to receive or maintain a license as a personal care home administrator, as an assisted living community administrator, and as a nursing home administrator;

(8) To conduct a continuing study and investigation of long-term care facilities and administrators of such long-term care facilities within the state for the purpose of improving the standards imposed for the licensing of such administrators; and

(9) To adopt such rules and regulations as shall be reasonably necessary for the implementation and enforcement of this chapter. The board shall have the authority to establish, provide, or approve various education programs or courses for personal care home administrators, for assisted living community administrators, and for nursing home administrators and to prescribe rules and regulations

requiring applicants for licenses as administrators to attend such programs or courses as a prerequisite to their being admitted to the examination or issued a license and requiring licensed administrators to attend such programs or courses as a prerequisite to their being issued any license renewal.

(b) Nothing in this chapter or in the rules and regulations adopted under this chapter shall be construed to require an applicant for a license as an administrator who is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions.

History.

Ga. L. 1968, p. 1143, § 8; Ga. L. 1970, p. 573, § 5; Ga. L. 1973, p. 284, § 1; Ga. L. 1986, p. 846, § 4; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 1-48/HB 228; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, substituted "an administrator" for "a nursing home administrator" in paragraphs (a)(2), (a)(4), and (a)(6) and in subsection (b); in paragraph (a)(4), substituted "long-term care facility" for "nursing home" in the middle and inserted ", if applicable," near the end; inserted "personal care home administrator, as an assisted living community administrator, and as a" in the middle of paragraph (a)(7); substituted "long-term care facilities and administrators of such long-term care facilities" for "nursing home and administrators of nursing homes" in the middle of paragraph (a)(8); and, in paragraph (a)(9), inserted "personal care home administrators, for assisted living community administrators, and for" and deleted "nursing home" preceding "administrators" twice.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "under this chapter" was substituted for "hereunder" in subsection (b).

Administrative rules and regulations.

Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Long-Term Care Facility Administrators, Chapter 393-1 et seq.

JUDICIAL DECISIONS

Board has authority to establish number of course hours prerequisite to license renewal and attendance at such courses is mandatory. Baranan v. State Bd. of Nursing Home Adm'rs, 143 Ga. App. 605, 239 S.E.2d 533, 1977 Ga. App. LEXIS 2427 (1977).

O.C.G.A. § 43-27-5(a)(7) does not violate equal protection or due process principles. — Requirement that party must incur certain expenses and must involuntarily attend courses does not discriminate against that party in violation of equal protection rights nor does it violate due process of law; all others similarly situated must bear similar burdens in order to obtain a license renewal. Baranan v. State Bd. of Nursing Home Adm'rs, 143 Ga. App. 605, 239 S.E.2d 533, 1977 Ga. App. LEXIS 2427 (1977).

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-27-6. License requirement for administrators; qualifications.

(a)(1) Prior to July 1, 2021, no person shall serve as a nursing home administrator until first obtaining a license from the board.

(2) On and after July 1, 2021, no person shall serve as an administrator of a long-term care facility until first obtaining a license from the board; provided, however, that an individual hired as an administrator of a long-term care facility shall have 60 days from the date of hire to obtain such licensure.

(b) The board shall issue licenses as administrators only to persons who:

(1) Are at least 21 years of age;

(2) Are of reputable and responsible character;

(3) Meet the standards and the criteria established by the board to evidence the applicant's qualifications by training and experience to operate a personal care home, an assisted living community, or a nursing home, provided that two years of experience working in a personal care home, an assisted living community, or a nursing home shall be equivalent to one year of any academic education and training requirements established by the board; and such experience may be substituted without limitation for such education and training requirements; and

(4) Satisfactorily pass a written or oral examination, or both, approved by the board to determine the applicable qualifications of the applicant to operate a personal care home, an assisted living community, or a nursing home.

History.
Ga. L. 1968, p. 1143, § 3; Ga. L. 1970, p. 573, § 3; Ga. L. 1980, p. 536, § 2; Ga. L. 1986, p. 846, § 5; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, designated the existing provisions of subsection (a) as paragraph (a)(1); substituted "Prior to July 1, 2021, no" for "No" at the beginning of paragraph (a)(1); added paragraph (a)(2); deleted "nursing home" preceding "administrators" in the introductory text of subsection (b); deleted former paragraph (b)(3), which read: "Reserved;"; redesignated former paragraphs (b)(4) and (b)(5) as present paragraphs (b)(3) and (b)(4), respectively; inserted "personal care home, an assisted living community, or a" twice in paragraph (b)(3) and near the end of paragraph (b)(4); and inserted "applicable" in paragraph (b)(4).

JUDICIAL DECISIONS

Plaintiff must prove licensure in order to recover for services. — Although fact of license need not be alleged, it must be shown to entitle plaintiff to recover. Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299, 1972 Ga. App. LEXIS 957 (1972).

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-27-7. Reciprocity; provisional license.

(a) The board, in its discretion and otherwise subject to this chapter and the rules and regulations of the board promulgated under this chapter prescribing the qualifications for a personal care home administrator license, an assisted living community administrator license, and a nursing home administrator license, may issue a license to a personal care home administrator, an assisted living community administrator, or a nursing home administrator who has been issued a license by the proper authorities of any state or issued a certificate of qualification by any national organization, upon payment of a fee to be fixed by the board and upon submission of evidence satisfactory to the board that such other state or national organization maintains a system and standard of qualifications and examinations for a personal care home administrator license, an assisted living community administrator license, or a nursing home administrator license or certificate which is substantially equivalent to those required in this state.

(b) An applicant for licensure who meets the qualifications of subsection (a) of this Code section may be issued a provisional license by the board to practice as a personal care home administrator, assisted living community administrator, or nursing home administrator which shall be valid until the results of any examination required by the board and for which the applicant is scheduled to take are released. An applicant who has been issued a provisional license will be scheduled by the board to take the first available examination. If the applicant passes the examination, the provisional license shall be valid until the permanent license is issued. If the applicant fails to appear for the examination or if the applicant fails the examination, the provisional license shall become invalid immediately. The board may authorize the issuance of a second provisional license only to an applicant who provides just cause to the board as to why the applicant was unable to appear for the examination.

History.
Ga. L. 1973, p. 284, § 4; Ga. L. 1980, p. 536, § 6; Ga. L. 1986, p. 846, § 6; Ga. L. 1996, p. 1255, § 1; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, in subsection (a), inserted "personal care home administrator license, an assisted living community administrator license, and a", inserted "personal care home administrator, an assisted living community administrator license, or a", and inserted "personal care home administrator license, an assisted living community administrator license, or a"; and inserted "personal care home administrator, assisted living community administrator, or" in the first sentence of subsection (b).

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1986, "under this chapter" was substituted for "thereunder" near the beginning of subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 7, 8.

C.J.S.
81A C.J.S., States, § 62.

43-27-8. Biennial license fees and renewal; applicability to superintendent of state hospital or facility.

Each person licensed as an administrator shall be required to pay a biennial license fee in an amount to be fixed by the board. Such license shall expire on the renewal date established by the division director and shall be renewable for two years upon payment of the biennial license fee. No license fee shall be required of any superintendent of a state hospital or facility during such time as the superintendent is acting or serving in the capacity as a nursing home administrator in a state institution and as an employee of the state.

History.
Ga. L. 1968, p. 1143, § 4; Ga. L. 1970, p. 573, § 4; Ga. L. 1980, p. 536, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, substituted "an administrator" for "a nursing home administrator" in the first sentence.

43-27-9. Restoration of suspended or revoked license.

The board may, for good cause shown and under such conditions as it may prescribe, restore a license to any person whose license has been suspended or revoked.

History.
Ga. L. 1973, p. 284, § 3; Ga. L. 2020, p. 95, § 9/HB 987.

Editor's notes.
Ga. L. 2020, p. 95, § 9/HB 987, effective June 30, 2020, reenacted this Code section without change.

43-27-10. Local fees.

No provision of this chapter shall be construed as prohibiting or preventing a municipality or county from fixing, charging, assessing, or collecting any license fee, registration fee, tax, or gross receipt tax on any profession covered by this chapter or upon any related profession or anyone engaged in any related profession governed by this chapter.

History.
Ga. L. 1968, p. 1143, § 11; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, substituted "anyone" for "any one" near the end.

43-27-11. Penalty.

(a) Any person who acts or serves in the capacity of a nursing home administrator without holding a license as a nursing home administrator issued in accordance with this chapter shall be guilty of a misdemeanor.

(b) Any person who knowingly acts or serves in the capacity of a personal care home administrator or assisted living community administrator without holding an appropriate license as such, issued in accordance with this chapter, shall be guilty of a misdemeanor.

(c) Any person not licensed under this chapter as a nursing home administrator who holds himself or herself out to be a licensed nursing home administrator or uses the initials N.H.A. after his or her name shall be guilty of a misdemeanor.

History.
Ga. L. 1968, p. 1143, § 9; Ga. L. 1976, p. 1184, § 1; Ga. L. 2020, p. 95, § 9/HB 987.

The 2020 amendment, effective June 30, 2020, added subsection (b); redesignated former subsection (b) as present subsection (c); and, in subsection (c), inserted "as a nursing home administrator", inserted "or herself", and inserted "or her".

43-27-12. [Repealed] Termination.

History.
Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1986, p. 846, § 7 and Ga. L. 1992, p. 2770, § 2; repealed by Ga. L. 1992, p. 3137, § 22, effective July 1, 1992.

CHAPTER 28

OCCUPATIONAL THERAPISTS

Article 1

Georgia Occupational Therapy Practice

Sec.
43-28-1. Short title.
43-28-2. Declaration of purpose.
43-28-3. Definitions.
43-28-4. State Board of Occupational Therapy; members.
43-28-5. Division director as secretary of board; subpoenas; service; official records or affidavits as prima-facie evidence.
43-28-6. General powers and duties of board; continuing professional education; background checks.
43-28-7. License requirement for occupational therapists.
43-28-8. License requirements for therapy techniques involving physical agent modalities.
43-28-9. Qualifications of license applicants; waiver.
43-28-10. Examinations.
43-28-11. Waiver of examination; reciprocity.
43-28-12. Issuance of license; fees; limited permits; use of titles and abbreviations.
43-28-13. Denial, refusal to renew, suspension, or revocation of licenses; probation; fines; reinstatement.
43-28-14. Renewal or reinstatement of expired licenses; renewal of suspended licenses.
43-28-15. Exceptions to operation of article.
43-28-16. Penalty.
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Article 2

Occupational Therapy Licensure Compact

43-28-20. Short title.
43-28-21. Text of compact.

Law reviews.

For comment, "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," see 34 Emory L.J. 777 (1985).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ARTICLE 1

GEORGIA OCCUPATIONAL THERAPY PRACTICE

Editor's notes.
Ga. L. 2021, p. 710, § 4/HB 268 designated the existing provisions of this chapter as Article 1, effective July 1, 2021.

43-28-1. Short title.

This article shall be known and may be cited as the "Georgia Occupational Therapy Practice Act."

History.
Ga. L. 1976, p. 993, § 1; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "This article" for "This chapter" at the beginning of this Code section.

43-28-2. Declaration of purpose.

This article was enacted to safeguard the public health, safety, and welfare and to assure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this article to provide for the regulation of persons representing themselves as occupational therapists or as occupational therapy assistants, or persons performing services that constitute occupational therapy.

History.
Ga. L. 1976, p. 993, § 2; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "article" for "chapter" near the beginning of the first and second sentences.

43-28-3. Definitions.

As used in this article, the term:

(1) "Board" means the State Board of Occupational Therapy.

(2) "License" means a valid and current certificate of registration issued by the division director or holding a valid Occupational Therapy Compact Privilege pursuant to Article 2 of this chapter.

(3) "National Board for Certification in Occupational Therapy (NBCOT)" means a national organization that administers a national certification examination for occupational therapists and occupational therapy assistants.

(4) "Occupations" means activities of daily living in which people engage.

(5) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this article and whose license is in good standing.

(6) "Occupational therapy" means the therapeutic use of occupations with individuals, groups, populations, or organizations to support participation, performance, and function in life roles. Occupational therapy is provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have or are at risk for developing activity limitation or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations promoting health, well-being, and quality of life. The practice of occupational therapy, including that which may be provided through telehealth, includes, but is not limited to, the following:

(A) Evaluation, treatment, education of, and consultation with individuals, groups, and populations whose abilities to participate safely in occupations, including activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, are impaired or at risk for impairment due to issues related, but not limited to, developmental deficiencies, the aging process, learning disabilities, physical environment and sociocultural context, physical injury or disease, cognitive impairments, and psychological and social disabilities;

(B) Evaluation to determine abilities and limitations related to performance of occupations, including the identification of physical, sensory, cognitive, emotional, or social deficiencies. Treatment based on such evaluation utilizes task oriented, purposeful, and meaningful goal directed activities to prevent, correct, minimize, or compensate for deficiencies to maximize independence in daily life and promote overall health and well-being; and

(C) Specific occupational therapy techniques used for treatment that involve, but are not limited to, training in activities of daily living; environmental modification; the designing, fabrication, and application of orthotic or orthotic devices; selecting, applying, and training in the use of assistive technology and adaptive devices; sensory, motor, and cognitive activities; therapeutic exercises; manual therapy techniques that do not include adjustment or manipulation of the articulations of the human body; and physical agent modalities. Such techniques are applied in the treatment of individuals, groups, or through organizational-level practices to enhance physical functional performance, work capacities, and community participation.

(7) "Occupational therapy aide" means an unlicensed person who provides supportive services to the occupational therapist and the occupational therapy assistant under the direct supervision of the occupational therapist or the occupational therapist assistant.

(8) "Occupational therapy assistant" means a person licensed to assist the occupational therapist in the practice of occupational therapy under the supervision of or with the consultation of the licensed occupational therapist and whose license is in good standing.

(9) "Occupational therapy practitioner" means a licensed occupational therapist or licensed occupational therapy assistant.

(10) "Orthotic" or "orthotic device" means a rigid or semi-rigid device or splint used to support a weak or deformed body part. An orthotic may be used to restrict, eliminate, or enhance motion; to support a healing body part; or to substitute for lost function or motion and can be custom fabricated, custom fitted, or prefabricated.

(11) "Person" means a natural person only, not a legal entity.

(12) "Physical agent modalities" means occupational therapy treatment techniques, both superficial and deep tissue, which may, but are not required to utilize the following agents: thermal, mechanical, electromagnetic, water, and light for a specific therapeutic effect to promote functional outcomes.

(13) "Telehealth" means the application of evaluative, consultative, preventative, and therapeutic services delivered through telecommunication and information technologies by licensed occupational therapy practitioners. This may include, but shall not be limited to, telemedicine, telepractice, telecare, telerehabilitation, and e-health services.

History.

Ga. L. 1976, p. 993, § 3; Ga. L. 1991, p. 379, §§ 1, 2; Ga. L. 1994, p. 97, § 43; Ga. L. 1995, p. 1302, § 15; Ga. L. 2000, p. 1706, § 19; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2020, p. 493, § 43/SB 429; Ga. L. 2021, p. 710, §§ 1, 4/HB 268.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctuation near the beginning of subparagraph (6)(A); and substituted "well-being" for "wellbeing" near the end of the second sentence of subparagraph (6)(B).

The 2021 amendment, effective July 1, 2021, inserted "or holding a valid Occupational Therapy Compact Privilege pursuant to Article 2 of this chapter" at the end of paragraph (2); and substituted "this article" for "this chapter" near the beginning of the introductory paragraph, and near the end of paragraph (5).

RESEARCH REFERENCES

ALR.

Right of corporation to engage in business, trade or activity requiring license from public, 165 A.L.R. 1098.

43-28-4. State Board of Occupational Therapy; members.

(a) There is established the State Board of Occupational Therapy.

(b) The board shall consist of six members who shall each be

appointed by the Governor and confirmed by the Senate for a term of four years and until a successor is appointed and qualified.

(c) The members of the board shall be citizens of the United States and residents of this state for at least one year prior to their appointment.

(d)(1) Five members of the board shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least three years immediately preceding their appointment and may be occupational therapists or occupational therapy assistants and shall at all times be holders of valid licenses for the practice of occupational therapy in this state. All of such members shall fulfill the requirements for licensure of this article.

(2) The sixth member shall be appointed from the public at large and shall have no connection whatsoever with the profession or practice of occupational therapy.

(e) At the expiration of a term, a board member shall be appointed in the same manner as the initial appointment; but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed.

(f) When a vacancy occurs on the board, the Governor shall appoint a member to fill the unexpired term.

(g) The Governor, after notice and opportunity for hearing by the board, may remove any member of the board for neglect of duty, incompetence, revocation or suspension of his or her license, or other dishonorable conduct. After such removal or vacancy due to other reasons, the Governor shall appoint a successor to the unexpired term.

History.

Ga. L. 1976, p. 993, § 4; Ga. L. 1980, p. 61, § 1; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" at the end of paragraph (d)(1).

Law reviews.

For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners (now Georgia Composite Medical Board) be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-28-5. Division director as secretary of board; subpoenas; service; official records or affidavits as prima-facie evidence.

(a) The division director shall be secretary of the board and in addition to his or her powers and duties prescribed by Chapter 1 of this

title shall perform such other administrative duties as may be prescribed by the board.

(b) In a contested case, the division director on behalf of the board shall have the power to subpoena throughout the state witnesses, designated documents, papers, books, accounts, letters, photographs, and objects or other tangible things.

(c) All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office.

(d) All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein.

(e) The division director, guided by the recommendations of the board, shall act in all matters relating to this article.

History.
Ga. L. 1976, p. 993, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" at the end of subsection (e).

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

43-28-6. General powers and duties of board; continuing professional education; background checks.

(a) The board shall administer, coordinate, and enforce this article.

(b) The board shall adopt rules and regulations to carry out the policy of this article, including, but not limited to, rules and regulations relating to professional licensure and the establishment of ethical standards of practice.

(c) The board shall have the responsibility of evaluating and determining the qualifications of occupational therapist and occupational therapy assistant applicants for licensure under this article and shall assist the division director in carrying out this article.

(d) In a timely manner, the board shall:

(1) Authorize the issuance and renewal of licenses to qualified occupational therapists and occupational therapy assistants; and

(2) Discipline and sanction licensees.

(e) The division director shall have the authority to contract with an outside agency for services providing for the supervision and administration of the examination as needed.

(f) The board may initiate investigations, issue subpoenas, examine witnesses, and administer oaths and may investigate allegations of practices violating this article and board rules. For purposes of this subsection, an authorized agent of the board shall have the power and right to enter and make reasonable inspection of any place where occupational therapy is practiced.

(g) The board may provide for the continuing professional education of persons subject to this article by appropriate regulation.

(h) The board shall administer the Occupational Therapy Licensure Compact contained in Article 2 of this chapter.

(i) The board is authorized to conduct national background checks by the submission of fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information Center; provided, however, that reports from such background checks shall not be shared with entities outside the state.

History.
Ga. L. 1976, p. 993, § 5; Code 1981, § 43-28-7; Ga. L. 1982, p. 2224, § 2; Ga. L. 1991, p. 379, § 3; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-28-6, as redesignated by Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, §§ 2, 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" throughout this Code section and added subsections (h) and (i).

Editor's notes.
Ga. L. 2019, p. 745, § 1/HB 253, effective July 1, 2019, repealed former Code Section 43-28-6, pertaining to service of process and documents on division director, and enacted the present Code section. The former Code section was based on Ga. L. 1976, p. 993, § 9; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 415, § 43; Ga. L. 2011, p. 99, § 70/HB 24.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Occupational Therapy, Chapter 671-1 et seq.

43-28-7. License requirement for occupational therapists.

No person shall, unless such person is licensed in accordance with this article:

(1) Practice occupational therapy or assist in the practice of occupational therapy; or

(2) Hold himself or herself out as an occupational therapist or an occupational therapy assistant or as being able to render occupational therapy services in this state.

History.
Ga. L. 1976, p. 993, § 5; Code 1981, § 43-28-8; Ga. L. 1982, p. 2224, § 2; Ga. L. 1991, p. 379, § 3; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-28-7, as redesignated by Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the end of the introductory paragraph.

RESEARCH REFERENCES

ALR.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-28-8. License requirements for therapy techniques involving physical agent modalities.

(a) No person shall utilize occupational therapy techniques involving physical agent modalities unless such person:

(1) Is licensed according to this article; and

(2) Has successfully completed a minimum of 90 hours of instruction or training approved by the board which covers the following subjects:

(A) Principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modality;

(B) Physiological, neurophysiological, and electrophysiological, as indicated, changes which occur as a result of the application of the selected modality;

(C) The response of normal and abnormal tissue to the application of the modality;

(D) Indications and contraindications related to the selection and application of the modality;

(E) Guidelines for treatment or administration of the modality within the philosophical framework of occupational therapy;

(F) Appropriate selection and practical application of physical agent modalities, including determining treatment parameters based on existing pathology, impairments, functional limitations, and expected outcomes;

(G) Guidelines for educating the patient, including instructing the patient as to the process and possible outcomes of treatment, including risks and benefits;

(H) Safety rules and precautions related to the selected modality;

(I) Methods for documenting the effectiveness of immediate and long-term effects of treatment; and

(J) Characteristics of the equipment, including safe operation, adjustment, and care of the equipment.

(b) The board shall promulgate rules and regulations specifically pertaining to the use of physical agent modalities by a person licensed under this article.

History.
Code 1981, § 43-28-8.1, enacted by Ga. L. 1991, p. 379, § 4; Ga. L. 1994, p. 97, § 43; Code 1981, § 43-28-8, as redesignated by Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the end of paragraph (a)(1), and at the end of subsection (b).

43-28-9. Qualifications of license applicants; waiver.

(a) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file an application, on forms provided by the board, showing to the satisfaction of the board that such applicant:

(1) Is of good moral character;

(2) Has successfully completed the academic requirements of an accredited educational program in occupational therapy recognized by the board, with concentration in biological or physical science, psychology, and sociology and with education in selected manual skills. For an occupational therapist or occupational therapy assistant, such a program shall be accredited by a recognized accrediting agency acceptable to the board. Other comparable educational programs such as those approved by the World Federation of Occupational Therapists may be recognized by the board upon evaluation of detailed program and course content. An applicant who is foreign trained shall complete an academic program that is recognized or approved by the World Federation of Occupational Therapists or such other credentialing entity recognized by the board;

(3) Has successfully completed a period of supervised field work experience approved by the board;

(4) Has passed an examination approved by the board as provided for in Code Section 43-28-10; and

(5) Has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for the issuance of a license under this Code section shall constitute express consent and authorization for the board to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. Such applicant

shall be responsible for all fees associated with the performance of such background check.

(b) An applicant not meeting the requirements of subsection (a) of this Code section must indicate to the board that he or she has obtained a waiver of such requirements pursuant to Code Section 43-28-11.

History. Ga. L. 1976, p. 993, § 12; Ga. L. 1991, p. 379, § 5; Ga. L. 1993, p. 1042, § 2; Ga. L. 2010, p. 266, § 31/SB 195; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 3/HB 268.

The 2021 amendment, effective July 1, 2021, deleted "and" at the end of paragraph (a)(3); substituted "; and" for a period at the end of paragraph (a)(4); and added paragraph (a)(5).

43-28-10. Examinations.

(a) A person applying for licensure shall demonstrate his or her eligibility in accordance with the requirements of Code Section 43-28-9 and shall make application for examination upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by the board.

(b) Each applicant for licensure under this article shall pass a nationally recognized examination for occupational therapists or an examination for occupational therapy assistants which has been approved by the board.

(c) Applicants who fail the examination may retake the examination; provided, however, that prior to the issuance of a license, the board may require reexamination applicants to demonstrate competency in a manner deemed appropriate by the board if:

(1) The applicant has failed the examination three times or more; or

(2) The applicant has failed to pass the examination within five years of completion of the academic requirements for licensure as set out in paragraph (2) of subsection (a) of Code Section 43-28-9.

History. Ga. L. 1976, p. 993, § 13; Ga. L. 1991, p. 379, § 6; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the beginning of subsection (b).

43-28-11. Waiver of examination; reciprocity.

The board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia, or territory of the United States, which

requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this article.

History.
Ga. L. 1976, p. 993, § 14; Ga. L. 1991, p. 379, § 7; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" at the end.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

43-28-12. Issuance of license; fees; limited permits; use of titles and abbreviations.

(a) The board shall issue a license to any person who meets the requirements of this article upon payment of the license fee prescribed.

(b) The board shall issue a limited permit to persons who have completed the academic education and fieldwork experience requirements contained in paragraphs (2) and (3) of subsection (a) of Code Section 43-28-9. Such permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the expiration date of the limited permit or the applicant has passed or failed the examination for licensure. An applicant who is working under a limited permit and fails the examination shall immediately surrender his or her limited permit. A limited permit shall not be renewed if the applicant has failed the examination.

(c) The board may issue a limited permit to persons who have successfully completed a certification examination approved by the board. This permit shall allow the person to practice occupational therapy for a period not to exceed 90 days under the supervision of an occupational therapist who holds a current license in this state.

(d)(1) A licensed occupational therapist may use the words "occupational therapist" or "licensed occupational therapist" or any words, title, letters, or other appropriate designation, including "O.T." and "O.T./L.", that identifies such person as a licensed occupational therapist, in connection with the name or place of business, and any activity, practice, or service, so long as the licensee is at all times in compliance with the requirements of this article when providing occupational therapy services.

(2) A licensed occupational therapist who possesses a national certification from the National Board for Certification of Occupational Therapy (NBCOT) may also use the designation "O.T.R." or "O.T.R./L.".

(e)(1) A licensed occupational therapy assistant may use the words "occupational therapy assistant," "licensed occupational therapy as-

sistant," or any word, title, letters, or other appropriate designation, including "O.T.A." or "L.O.T.A.," that identifies such person as a licensed occupational therapy assistant, in connection with the name or place of business, and any activity, practice or service, so long as the licensee is at all times in compliance with the requirements of this article when providing occupational therapy services.

(2) A licensed occupational therapy assistant who possesses a national certification from the National Board for Certification of Occupational Therapy (NBCOT) may also use the designation "C.O.T.A.," or "C.O.T.A./L.".

History.

Ga. L. 1976, p. 993, § 15; Ga. L. 1991, p. 379, § 8; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2020, p. 493, § 43/SB 429; Ga. L. 2021, p. 710, § 4/HB 268.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "requirements contained in" for "requirements of contained in" in the first sentence of subsection (b).

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the middle of subsection (a), near the end of paragraph (d)(1), and near the end of paragraph (e)(1).

RESEARCH REFERENCES

ALR.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

43-28-13. Denial, refusal to renew, suspension, or revocation of licenses; probation; fines; reinstatement.

(a) In addition to the powers granted in Code Section 43-1-19, the board shall, after notice and opportunity for hearing, have the power to deny or refuse to renew, suspend, or revoke the license of, or impose a fine or probationary conditions upon, any licensee who has been engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct, as defined by the rules and regulations of the board, includes, but is not limited to:

(1) Obtaining or attempting to obtain a license by fraud, misrepresentation, or concealment of material facts;

(2) Practicing beyond the scope of the practice of occupational therapy;

(3) Providing substandard care as an occupational therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established;

(4) Providing substandard care as an occupational therapy assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising occupational

therapist regardless of whether actual injury to the patient is established;

(5) Failing to provide appropriate supervision to an occupational therapy assistant or occupational therapy aide in accordance with this article and board rules;

(6) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills, or abilities to perform those responsibilities;

(7) Practicing as an occupational therapist or occupational therapy assistant when physically or mentally impaired;

(8) Having had an occupational therapist or occupational therapy assistant license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country, irrespective of intervening appeals and stays;

(9) Engaging in sexual misconduct. For purposes of this paragraph, sexual misconduct includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, as an occupational therapist or occupational therapy assistant when a client or student relationship exists with that person; or

(B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients, clients, or students;

(10) Aiding or abetting a person who is not licensed as an occupational therapist or occupational therapy assistant in this state and who directly or indirectly performs activities requiring a license;

(11) Abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care; or

(12) Being convicted of a crime that has a direct bearing on whether the licensee should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant.

(b) Such denial, refusal to renew, suspension, revocation, or imposition of a fine or probationary conditions upon a licensee may be ordered by the board in a decision made after a hearing in the manner provided by the rules and regulations adopted by the board and in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." One year from the date of revocation of a license, application may

be made to the board for reinstatement. The board shall have the discretion to accept or reject an application for reinstatement.

History.

Ga. L. 1976, p. 993, § 16; Ga. L. 1991, p. 379, § 9; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2020, p. 493, § 43/SB 429; Ga. L. 2021, p. 710, § 4/HB 268.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, deleted "patient" following "occupational therapy assistant" in subparagraph (a)(9)(A).

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the end of paragraph (a)(5).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, a period was deleted following " 'Georgia Administrative Procedure Act.' " at the end of the first sentence of subsection (b).

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-28-14. Renewal or reinstatement of expired licenses; renewal of suspended licenses.

(a) All licenses shall expire biennially. Each person licensed under this article is responsible for renewing his or her license before the expiration date. Application for renewal shall be completed in the manner prescribed in the rules and regulations of the division director and shall include the payment of a renewal fee. The board may set and require a specific number of continuing education hours for license renewal.

(b) The board may provide for late renewal of a license upon payment of a late renewal fee, proof of continuing education as set by the board, and completion of an appropriate form. Any license which is not renewed during the specified renewal period will be revoked for failure to renew. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for reinstatement.

(c) A suspended license is subject to expiration and may be renewed as provided in this Code section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

History.

Ga. L. 1976, p. 993, § 17; Ga. L. 1991, p. 379, § 10; Ga. L. 2000, p. 1706, § 19; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021,p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the middle of the second sentence of subsection (a).

43-28-15. Exceptions to operation of article.

Nothing in this article shall be construed as preventing or restricting the practice, services, or activities of:

(1) Any person licensed under any other law of the state, including but not limited to, physicians and persons working under the supervision of physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists, chiropractors, and physical therapists, from engaging in the profession or occupation for which he or she is licensed;

(2) Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States if such a person provides occupational therapy solely under the direction or control of the organization by which he or she is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by a recognized accrediting agency acceptable to the board and if such person is designated by a title which clearly indicates such person's status as a student or trainee;

(4) Any person fulfilling the supervised field work experience requirements of Code Section 43-28-9 if such activities and services constitute a part of the experience necessary to meet the requirement of that Code section;

(5) Any person enrolled in a course of study designed to develop advanced occupational therapy skills when the occupational therapy activities are required as part of an educational program sponsored by an educational institution approved by the board and conducted under the supervision of an occupational therapist licensed under this article. If such person provides occupational therapy services outside the scope of the educational program, he or she shall then be required to be licensed in accordance with this article;

(6) Any occupational therapist or occupational therapy assistant licensed or certified by an agency recognized by the board providing consultation, as defined by rule, related to direct patient care if such services are performed for not more than 30 days in a calendar year;

(7) Any person employed as an occupational therapy aide and working under the direct supervision of an occupational therapist licensed in this state;

(8) Any person licensed under any other law of the state from providing orthotics within his or her scope of practice; or

(9) Persons registered as rehabilitation suppliers by the State Board of Workers' Compensation, including those registered before July 1, 1992, but only when practicing rehabilitation counseling as a designated principal rehabilitation supplier pursuant to Chapter 9 of Title 34 and only so long as they do not use any titles other than titles describing the certifications or licenses they are required to hold under Code Section 34-9-200.1.

History.
Ga. L. 1976, p. 993, § 11; Ga. L. 1979, p. 1233, § 1; Ga. L. 1982, p. 2224, § 3; Ga. L. 1991, p. 379, § 11; Ga. L. 1993, p. 1042, §§ 3, 3.1; Ga. L. 2017, p. 774, § 43/HB 323; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the beginning of the introductory paragraph and at the end of the first and last sentences of paragraph (5).

43-28-16. Penalty.

(a) Any person who violates this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $250.00 and not more than $1,000.00, or imprisonment for a period not exceeding six months, or both. A license held by any person convicted under this Code section shall be forfeited and revoked upon the board receiving notice of such conviction.

(b) It is unlawful for any person who is not registered under this article as an occupational therapist or as an occupational therapy assistant or whose registration has been suspended or revoked to use, in connection with his or her name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapy assistant," "licensed occupational therapy assistant," or the letters "O.T.," "O.T.R.," "O.T.R./L., "O.T./L.," "O.T.A.," "L.O.T.A.," "C.O.T.A./L.," or "C.O.T.A."; or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant or to show in any way, orally, in writing, in print, or by sign, directly or by implication, or to represent himself or herself as an occupational therapist or an occupational therapy assistant.

History.
Ga. L. 1976, p. 993, § 19; Ga. L. 2019, p. 745, § 1/HB 253; Ga. L. 2021, p. 710, § 4/HB 268.

The 2021 amendment, effective July 1, 2021, substituted "this article" for "this chapter" near the beginning of subsections (a) and (b).

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

43-28-17. [Repealed] Termination.

History.
Ga. L. 1982, p. 2224, §§ 1, 4; Ga. L. 1983, p. 3, § 32; and Ga. L. 1988, p. 1518, § 2; repealed by Ga. L. 1992, p. 3137, § 23, effective July 1, 1992.

ARTICLE 2

OCCUPATIONAL THERAPY LICENSURE COMPACT

Effective date.
Ga. L. 2021, p. 710, § 4/HB 268 provides that this article becomes effective upon enactment by the tenth member state. This requirement was met February 4, 2022.

43-28-20. Short title.

This article shall be known and may be cited as the "Occupational Therapy Licensure Compact Act."

History.
Code 1981, § 43-28-20, enacted by Ga. L. 2021, p. 710, § 4/HB 268; Ga. L. 2022, p. 352, § 43/HB 1428.
The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "as the 'Occupational" for "as 'The Occupational".

43-28-21. Text of compact.

The Occupational Therapy Licensure Compact is enacted into law and entered into by the State of Georgia with any and all other states legally joining therein in the form substantially as follows:

"OCCUPATIONAL THERAPY LICENSURE COMPACT

SECTION 1.
PURPOSE

The purpose of this Compact is to facilitate interstate practice of Occupational Therapy with the goal of improving public access to Occupational Therapy services. The Practice of Occupational Therapy occurs in the State where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Occupational Therapy services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multi-State Occupational Therapy Practice;

D. Support spouses of relocating military members;

E. Enhance the exchange of licensure, investigative, and disciplinary information between Member States;

F. Allow a Remote State to hold a provider of services with a Compact Privilege in that State accountable to that State's practice standards; and

G. Facilitate the use of Telehealth technology in order to increase access to Occupational Therapy services.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. 'Active Duty Military' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and Section 1211.

B. 'Adverse Action' means any administrative, civil, equitable, or criminal action permitted by a State's laws which is imposed by a Licensing Board or other authority against an Occupational Therapist or Occupational Therapy Assistant, including actions against an individual's license or Compact Privilege such as censure, revocation, suspension, probation, monitoring of the Licensee, or restriction on the Licensee's practice.

C. 'Alternative Program' means a non-disciplinary monitoring process approved by an Occupational Therapy Licensing Board.

D. 'Compact Privilege' means the authorization, which is equivalent to a license, granted by a Remote State to allow a Licensee from another Member State to practice as an Occupational Therapist or practice as an Occupational Therapy Assistant in the Remote State under its laws and rules. The Practice of Occupational Therapy occurs in the Member State where the patient/client is located at the time of the patient/client encounter

E. 'Continuing Competence/Education' means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

F. 'Current Significant Investigative Information' means Investigative Information that a Licensing Board, after an inquiry or investigation that includes notification and an opportunity for the Occupational Therapist or Occupational Therapy Assistant to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

G. 'Data System' means a repository of information about Licensees, including but not limited to license status, Investigative Information, Compact Privileges, and Adverse Actions.

H. 'Encumbered License' means a license in which an Adverse Action restricts the Practice of Occupational Therapy by the Licensee or said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

I. 'Executive Committee' means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

J. 'Home State' means the Member State that is the Licensee's Primary State of Residence.

K. 'Impaired Practitioner' means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

L. 'Investigative Information' means information, records, and/or documents received or generated by an Occupational Therapy Licensing Board pursuant to an investigation.

M. 'Jurisprudence Requirement' means the assessment of an individual's knowledge of the laws and rules governing the Practice of Occupational Therapy in a State.

N. 'Licensee' means an individual who currently holds an authorization from the State to practice as an Occupational Therapist or as an Occupational Therapy Assistant.

O. 'Member State' means a State that has enacted the Compact.

P. 'Occupational Therapist' means an individual who is licensed by a State to practice Occupational Therapy.

Q. 'Occupational Therapy Assistant' means an individual who is licensed by a State to assist in the Practice of Occupational Therapy.

R. 'Occupational Therapy,' 'Occupational Therapy Practice,' and the 'Practice of Occupational Therapy' mean the care and services provided by an Occupational Therapist or an Occupational Therapy Assistant as set forth in the Member State's statutes and regulations.

S. 'Occupational Therapy Compact Commission' or 'Commission' means the national administrative body whose membership consists of all States that have enacted the Compact.

T. 'Occupational Therapy Licensing Board' or 'Licensing Board' means the agency of a State that is authorized to license and regulate Occupational Therapists and Occupational Therapy Assistants.

U. 'Primary State of Residence' means the state (also known as the Home State) in which an Occupational Therapist or Occupational Therapy Assistant who is not Active Duty Military declares a primary residence for legal purposes as verified by: driver's license, federal income tax return, lease, deed, mortgage or voter registration or other verifying documentation as further defined by Commission Rules.

V. 'Remote State' means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Compact Privilege.

W. 'Rule' means a regulation promulgated by the Commission that has the force of law.

X. 'State' means any state, commonwealth, district, or territory of the United States of America that regulates the Practice of Occupational Therapy.

Y. 'Single-State License' means an Occupational Therapist or Occupational Therapy Assistant license issued by a Member State that authorizes practice only within the issuing State and does not include a Compact Privilege in any other Member State.

Z. 'Telehealth' means the application of telecommunication technology to deliver Occupational Therapy services for assessment, intervention and/or consultation.

SECTION 3.
STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a Member State shall:

1. License Occupational Therapists and Occupational Therapy Assistants

2. Participate fully in the Commission's Data System, including but not limited to using the Commission's unique identifier as defined in Rules of the Commission;

3. Have a mechanism in place for receiving and investigating complaints about Licensees;

4. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

5. Implement or utilize procedures for considering the criminal history records of applicants for an initial Compact Privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A Member State shall, within a time frame established by the Commission, require a criminal background check for a Licensee seeking/applying for a Compact Privilege whose Primary State of Residence is that Member State, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

6. Comply with the Rules of the Commission;

7. Utilize only a recognized national examination as a requirement for licensure pursuant to the Rules of the Commission; and

8. Have Continuing Competence/Education requirements as a condition for license renewal.

B. A Member State shall grant the Compact Privilege to a Licensee holding a valid unencumbered license in another Member State in accordance with the terms of the Compact and Rules.

C. Member States may charge a fee for granting a Compact Privilege.

D. A Member State shall provide for the State's delegate to attend all Occupational Therapy Compact Commission meetings.

E. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single-State License as provided under the laws of each Member State. However, the Single-State License granted to these individuals shall not be recognized as granting the Compact Privilege in any other Member State.

F. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

Section 4.
COMPACT PRIVILEGE

A. To exercise the Compact Privilege under the terms and provisions of the Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States Social Security Number or National Practitioner Identification number;

3. Have no encumbrance on any State license;

4. Be eligible for a Compact Privilege in any Member State in accordance with Section 4D, F, G, and H;

5. Have paid all fines and completed all requirements resulting from any Adverse Action against any license or Compact Privilege, and two years have elapsed from the date of such completion;

6. Notify the Commission that the Licensee is seeking the Compact Privilege within a Remote State(s);

7. Pay any applicable fees, including any State fee, for the Compact Privilege;

8. Complete a criminal background check in accordance with Section 3A(5);

a. The Licensee shall be responsible for the payment of any fee associated with the completion of a criminal background check.

9. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Compact Privilege; and

10. Report to the Commission Adverse Action taken by any non-Member State within 30 days from the date the Adverse Action is taken.

B. The Compact Privilege is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of Section 4A to maintain the Compact Privilege in the Remote State.

C. A Licensee providing Occupational Therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

D. Occupational Therapy Assistants practicing in a Remote State shall be supervised by an Occupational Therapist licensed or holding a Compact Privilege in that Remote State.

E. A Licensee providing Occupational Therapy in a Remote State is subject to that State's regulatory authority. A Remote State may, in accordance with due process and that State's laws, remove a Licensee's Compact Privilege in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Compact Privilege in any State until the specific time for removal has passed and all fines are paid.

F. If a Home State license is encumbered, the Licensee shall lose the Compact Privilege in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Two years have elapsed from the date on which the Home State license is no longer encumbered in accordance with Section 4(F)(1).

G. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4A to obtain a Compact Privilege in any Remote State.

H. If a Licensee's Compact Privilege in any Remote State is removed, the individual may lose the Compact Privilege in any other Remote State until the following occur:

1. The specific period of time for which the Compact Privilege was removed has ended;

2. All fines have been paid and all conditions have been met;

3. Two years have elapsed from the date of completing requirements for 4(H)(1) and (2); and

4. The Compact Privileges are reinstated by the Commission, and the compact Data System is updated to reflect reinstatement.

I. If a Licensee's Compact Privilege in any Remote State is removed due to an erroneous charge, privileges shall be restored through the compact Data System.

J. Once the requirements of Section 4H have been met, the license must meet the requirements in Section 4A to obtain a Compact Privilege in a Remote State.

Section 5: Obtaining a New Home State License by Virtue of Compact Privilege

A. An Occupational Therapist or Occupational Therapy Assistant may hold a Home State license, which allows for Compact Privileges in Member States, in only one Member State at a time.

B. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State of Residence by moving between two Member States:

1. The Occupational Therapist or Occupational Therapy Assistant shall file an application for obtaining a new Home State license by virtue of a Compact Privilege, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of compact privilege, the new Home State shall verify that the Occupational Therapist or Occupational Therapy Assistant meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:

a. An FBI fingerprint based criminal background check if not previously performed or updated pursuant to applicable Rules adopted by the Commission in accordance with Public Law 92-544;

b. Other criminal background check as required by the new Home State; and

c. Submission of any requisite Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Compact Privilege once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Occupational Therapist or Occupational Therapy Assistant cannot meet the criteria in Section 4, the new Home State shall apply its requirements for issuing a new Single-State License.

5. The Occupational Therapist or the Occupational Therapy Assistant shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State of Residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State,

the State criteria shall apply for issuance of a Single-State License in the new State.

D. Nothing in this compact shall interfere with a Licensee's ability to hold a Single-State License in multiple States; however, for the purposes of this compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A. Active Duty Military personnel, or their spouses, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new State or through the process described in Section 5.

SECTION 7. ADVERSE ACTIONS

A. A Home State shall have exclusive power to impose Adverse Action against an Occupational Therapist's or Occupational Therapy Assistant's license issued by the Home State.

B. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against an Occupational Therapist's or Occupational Therapy Assistant's Compact Privilege within that Member State.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the State in which the witnesses or evidence are located.

C. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

D. The Home State shall complete any pending investigations of an Occupational Therapist or Occupational Therapy Assistant who changes

Primary State of Residence during the course of the investigations. The Home State, where the investigations were initiated, shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the OT Compact Commission Data System. The Occupational Therapy Compact Commission Data System administrator shall promptly notify the new Home State of any Adverse Actions.

E. A Member State, if otherwise permitted by State law, may recover from the affected Occupational Therapist or Occupational Therapy Assistant the costs of investigations and disposition of cases resulting from any Adverse Action taken against that Occupational Therapist or Occupational Therapy Assistant.

F. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

G. Joint Investigations

1. In addition to the authority granted to a Member State by its respective State Occupational Therapy laws and regulations or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

H. If an Adverse Action is taken by the Home State against an Occupational Therapist's or Occupational Therapy Assistant's license, the Occupational Therapist's or Occupational Therapy Assistant's Compact Privilege in all other Member States shall be deactivated until all encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against an Occupational Therapist's or Occupational Therapy Assistant's license shall include a Statement that the Occupational Therapist's or Occupational Therapy Assistant's Compact Privilege is deactivated in all Member States during the pendency of the order.

I. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

J. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

Section 8. Establishment of the Occupational Therapy Compact Commission

A. The Compact Member States hereby create and establish a joint public agency known as the Occupational Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one (1) delegate selected by that Member State's Licensing Board.

2. The delegate shall be either:

a. A current member of the Licensing Board, who is an Occupational Therapist, Occupational Therapy Assistant, or public member; or

b. An administrator of the Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the law of the State from which the delegate is appointed.

4. The Member State board shall fill any vacancy occurring in the Commission within 90 days.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

6. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. The Commission shall establish by Rule a term of office for delegates.

C. The Commission shall have the following powers and duties:

1. Establish a Code of Ethics for the Commission;

2. Establish the fiscal year of the Commission;

3. Establish bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform Rules to facilitate and coordinate implementation and administration of this Compact. The Rules shall have the force and effect of law and shall be binding in all Member States;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Occupational

Therapy Licensing Board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an Executive Committee; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Occupational Therapy licensure and practice.

D. The Executive Committee

The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Committee shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex-officio, nonvoting member from a recognized national Occupational Therapy professional association; and

c. One ex-officio, nonvoting member from a recognized national Occupational Therapy certification organization.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually.

5. The Executive Committee shall have the following Duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Compact Privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Perform other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 10.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission

shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Section 9. Data System

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member States.

B. A Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable (utilizing a unique identifier) as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Compact Privilege;

4. Non-confidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission; and

7. Current Significant Investigative Information.

C. Current Significant Investigative Information and other Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 10. RULEMAKING

A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

B. The Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty (30) days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State Occupational Therapy Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty five (25) persons;

2. A State or federal governmental subdivision or agency; or

3. An association or organization having at least twenty five (25) members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

4. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact,

unless agreed upon in writing between the Commission and the defaulting State.

6. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

Section 12. Date of Implementation of the Interstate Commission for Occupational Therapy Practice and Associated Rules, Withdrawal, and Amendment

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Occupational Therapy Licensing Board to comply with the investigative and Adverse Action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Occupational Therapy licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

Section 13. Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

Section 14. Binding Effect of Compact and Other Laws

A. A Licensee providing Occupational Therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws promulgated by the Commission, are binding upon the Member States.

E. All agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State."

History.
Code 1981, § 43-28-21, enacted by Ga. L. 2021, p. 710, § 4/HB 268.

CHAPTER 29

DISPENSING OPTICIANS

Sec.		Sec.	
43-29-1.	Purpose of chapter.	43-29-12.	Refusal or revocation of certificates of registration.
43-29-2.	Definitions.	43-29-13.	Appeal from decisions of board.
43-29-3.	State Board of Dispensing Opticians; members; election of officers; meetings; powers and duties.	43-29-14.	Duties when dispensing contact lenses; restrictions; qualified dispensing optician as engaging in lawful trade or occupation.
43-29-4.	Board records and seal.	43-29-15.	Advertising.
43-29-5.	Jurisdiction of board.	43-29-16.	Splitting fees or costs.
43-29-6.	Rules and regulations; violation as grounds for revocation of license.	43-29-17.	Sale of nonprescription glasses; manufacture and sale of artificial eyes.
43-29-7.	License requirement; qualifications of applicants; subjects to be tested on examination; issuance and display of license.	43-29-18.	Construction of chapter.
43-29-8.	Examination; effect of failure of two examinations.	43-29-19.	Payment of fees in advance; restriction on paying out funds and creating expenses.
43-29-9.	Reciprocity.	43-29-20.	Unlicensed practice as public nuisance; injunctions.
43-29-10.	Registration; fee; reinstatement.	43-29-21.	Penalty.
43-29-11.	Continuing education requirement; waiver; effect of failure to complete required course hours.	43-29-22.	[Repealed] Termination.

Administrative rules and regulations. Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-1.

JUDICIAL DECISIONS

Drugstore was not engaged in the unlicensed practice of dispensing opticianry, when the drugstore took a customer's order for a contact lens together with a prescription from an optometrist or physician licensed in Georgia, forwarded the prescription and order to the drugstore's contact lens supplier in Ohio, received the lens from the supplier in a sealed container, and delivered the sealed container to the customer. Georgia State Bd. of Dispensing Opticians v. Dunaway Drug Stores, Inc., 259 Ga. 194, 378 S.E.2d 116, 1989 Ga. LEXIS 154 (1989).

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d,

States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

43-29-1. Purpose of chapter.

This chapter is enacted in the exercise of the police powers of the state. Its purposes generally are to protect the public health, welfare, and safety by providing for the regulation of the sale, dispensing, and supplying of all ophthalmic appliances, eyeglasses, and all aids to human vision.

History.

Ga. L. 1956, p. 148, § 1.

Cross references.

Regulation of use of flammable materials in eyeglass frames, § 31-1-2.

RESEARCH REFERENCES

Am. Jur. 2d.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 8, 37 et seq.

C.J.S.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 22, 23.

43-29-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Dispensing Opticians.

(2) "Dispensing optician" means, subject to Code Section 43-29-18, an individual who is duly licensed to prepare and dispense lenses, spectacles, eyeglasses, contact lenses, and optical devices to the intended user thereof as specifically directed or authorized on the written prescription of a physician skilled in diseases of the eye or an optometrist duly licensed to practice his profession.

History.

Ga. L. 1956, p. 148, § 2; Ga. L. 1981, p. 1378, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

RESEARCH REFERENCES

Am. Jur. 2d.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 8.

C.J.S.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 9.

43-29-3. State Board of Dispensing Opticians; members; election of officers; meetings; powers and duties.

(a) There is created the State Board of Dispensing Opticians, which board shall supervise the practice of dispensing opticians and enforce this chapter, which board shall be composed of five licensed dispensing opticians, each of whom shall be a resident of the state who has been engaged in the occupation of dispensing optician in the state for not less than five years preceding the time of his appointment, and one additional member who shall have no connection whatsoever with the trade or occupation of dispensing optician.

(b) The members of the board shall be appointed by the Governor, and each such appointee shall hold office for a period of four years or until his successor is appointed and qualified.

(c) The Governor is also authorized to fill vacancies that may occur from time to time on said board with persons duly qualified.

(d) The board shall select from among its own number a chairman and a vice-chairman, shall adopt rules and regulations governing the examination of applicants and the enforcement of this chapter, and shall establish a code of ethics and standards of practice for dispensing opticians and such other rules and regulations governing procedure as shall be necessary and proper for the carrying out of the objectives of this chapter.

(e) The board shall provide for meetings at least twice each year for the purpose of receiving applications and giving examinations as above provided and may meet at other times and at such places as the board shall designate from time to time or fix by regulations.

(f) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties.

(g) The board shall issue a license to practice the trade or occupation of dispensing optician to all persons who shall furnish satisfactory evidence of attainments and qualifications under this chapter and the rules and regulations of the board. Such license shall be signed by the chairman and attested by the division director, and it shall give the person to whom it is issued the absolute authority to practice the trade or occupation of dispensing optician in this state.

(h) Each member of the board shall be reimbursed as provided in subsection (f) of Code Section 43-1-2.

History.
Ga. L. 1956, p. 148, § 5; Ga. L. 1978, p. 1960, § 1; Ga. L. 1980, p. 1101, § 2; Ga. L. 2000, p. 1706, § 19.

OPINIONS OF THE ATTORNEY GENERAL

Conflict of interest. — There is no conflict of interest when a member of the State Board of Dispensing Opticians is also a Medicaid provider. 1982 Op. Att'y Gen. No. 82-97.

43-29-4. Board records and seal.

(a) The board shall have an official seal and shall keep a record of its proceedings and a register of persons whose licenses have been revoked.

(b) The records of the board shall be open to public inspection, and it shall keep on file all examination papers for a period of 90 days after each examination.

History.
Ga. L. 1956, p. 148, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 71/HB 24.
Cross references.
Inspection of public records generally, § 50-18-70 et seq.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.
C.J.S.
76 C.J.S., Records, § 1 et seq.

43-29-5. Jurisdiction of board.

The board shall have exclusive jurisdiction in the enforcement of this chapter over all persons engaged in business as dispensing opticians, whether licensed or unlicensed, provided that nothing contained in this

chapter shall be construed as limiting or abrogating the power or authority of any board or commission created under any of the laws of this state defining and regulating any profession to enforce such respective laws or exercising any of the powers contained in such laws against violators thereof, even though engaged in the business of dispensing optician.

History.
Ga. L. 1956, p. 148, § 2.

43-29-6. Rules and regulations; violation as grounds for revocation of license.

The board is authorized to adopt rules and regulations pursuant to this chapter for the carrying out of the purposes of this chapter. The violation of such rules and regulations shall be grounds for the revocation of any license issued under this chapter.

History.
Ga. L. 1980, p. 1101, § 8.

Administrative rules and regulations.
Rules and regulations governing dispensing opticians, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Dispensing Opticians, Chapter 420-1 et seq.

43-29-7. License requirement; qualifications of applicants; subjects to be tested on examination; issuance and display of license.

(a) Any person wishing to obtain the right to practice the trade or occupation of dispensing optician, as defined in this chapter, shall, before it shall be lawful for him or her to do so in this state, make application to the board, upon such form and in such manner as shall be adopted and prescribed by the board, and obtain a license from the board. Unless such person shall have obtained a license as provided in this subsection, it shall be unlawful for him or her to practice the trade or occupation of dispensing optician in this state; and he or she shall be subject to the penalties prescribed in Code Section 43-29-21.

(b) The board shall admit to examination any candidate who pays the fee provided for in this chapter and submits evidence satisfactory to the board, verified on oath, that:

(1) The applicant is over 18 years of age;

(2) The applicant has completed a high school education or its equivalent, as defined by the State Board of Education;

(3) The applicant is of good moral character; and

(4) The applicant has satisfactorily completed one school year of not less than an 850 hour course of study in a recognized school of

optical dispensing or has had practical training and experience of a grade and character satisfactory to the board for not less than two years under the supervision of a licensed dispensing optician, a licensed physician, or a licensed optometrist, provided that any time spent in a recognized school shall be considered as part of the apprenticeship period. The practical training and experience required under this paragraph for an apprenticeship shall include, at a minimum, 3,000 hours of experience engaged in apprenticeship functions and shall include instruction in ophthalmic optics, optical laboratory materials and techniques, eye anatomy and physiology, related laws and regulations, ophthalmic dispensing theory and application, and basic contact lens theory. Prior to beginning an apprenticeship, the applicant shall register with the board. The registration shall identify the supervising licensed physician, licensed optometrist, or licensed dispensing optician and the mailing address and telephone number of the primary location where the apprenticeship training shall occur; provided, however, that in addition to the primary location, such training may be furnished at other locations under proper supervision. The board shall develop a list of textbooks and instructional materials to guide the apprentice and supervisors in providing the appropriate apprenticeship instruction. Upon completion by the applicant, such training and experience shall be certified by the supervising licensed dispensing optician, licensed physician, or licensed optometrist to the board.

(c) Applicants who have received practical training and experience in the trade or occupation of dispensing optician prior to July 1, 2008, shall receive credit toward the practical training and experience requirements of paragraph (4) of subsection (b) of this Code section if they register with the board in accordance with the provisions of said paragraph no later than August 31, 2008.

(d) Applicants may also meet the educational requirements of this Code section by receiving a certificate from recognized schools of opticianry with the Technical College System of Georgia or formal home study programs through the Career Progression Program with the National Academy of Opticianry or other programs approved by the board.

(e) Applicants for examination may be examined upon matters pertaining to mathematics and physics, ophthalmic materials and laboratory technique, ophthalmic optics, ophthalmic dispensing, and practical subjects. When any applicant passes the necessary examination and meets the qualifications set out, the board shall issue a license to such person to practice the trade or occupation of dispensing optician.

(f) Such license shall be conspicuously displayed in the office or place of business of the dispensing optician; and it shall not be necessary to

remove the same so long as such dispensing optician continues to practice his or her trade or occupation in this state and so long as the license is not revoked or suspended by the board.

History.
Ga. L. 1956, p. 148, § 3; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 513, § 1; Ga. L. 2008, p. 123, § 1/HB 241; Ga. L. 2010, p. 266, § 32/SB 195.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, in paragraph (b)(4), a comma was inserted following "licensed physician" in the last sentence, and, in subsection (d), "Technical College System of Georgia" was substituted for "Georgia Department of Technical and Adult Education".

Administrative rules and regulations.
Licenses, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-5.

RESEARCH REFERENCES

ALR.
Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

43-29-8. Examination; effect of failure of two examinations.

(a) An applicant applying for a license to practice the trade or occupation of dispensing optician shall be required to pass a board approved examination.

(b) Failure to pass a satisfactory examination shall not prevent any applicant from participating in subsequent examinations upon complying with this chapter, but any applicant who has failed two examinations shall not be permitted to take any further examination for licensure under this chapter until such applicant has furnished sufficient proof of having taken such additional education and training as shall be required by the board.

History.
Ga. L. 1956, p. 148, § 4; Ga. L. 1980, p. 1101, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 33/SB 195.

43-29-9. Reciprocity.

Any person who has been duly licensed to practice as a dispensing optician in any state of the United States which has a standard of qualifications and examination for such practice at least as high as that provided for in this state by this chapter and who has been principally engaged in such practice pursuant to such license for a period of not less than two years preceding may, upon proper application to the board and upon payment of a fee in an amount established by the board in lieu of examination and registration fees, be issued a certificate of registration without examination and shall thereupon be authorized to practice as a registered dispensing optician in this state subject to this chapter and the rules and regulations of the board, provided that the state of

residence of a dispensing optician seeking registration under this Code section accords a similar privilege to dispensing opticians licensed by Georgia and seeking to practice as dispensing opticians in such other state; provided, further, that an applicant for registration under this Code section shall not, within the five years preceding his application, have failed any examination which is required in this state.

History.
Ga. L. 1956, p. 148, § 9; Ga. L. 1980, p. 1101, § 3.

Administrative rules and regulations.
Registration requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-2.

Cross references.
Cooperation between Georgia and other states generally, T. 28, C. 6.

43-29-10. Registration; fee; reinstatement.

All persons practicing as dispensing opticians shall register with the division director and shall pay a biennial registration fee in an amount determined by the board, on or before the renewal date established by the division director. Failure to register and pay this fee shall forfeit the certificate of such delinquent, but he may be reinstated by paying all registration dues and an additional penalty fee in an amount established by the board.

History.
Ga. L. 1956, p. 148, § 11; Ga. L. 1980, p. 1101, § 4; Ga. L. 2000, p. 1706, § 19.

43-29-11. Continuing education requirement; waiver; effect of failure to complete required course hours.

(a) Each person who holds a license as a dispensing optician shall be required to complete ten hours of continuing education prior to each renewal of such license.

(b) With his or her application for license renewal, each licensed dispensing optician shall submit an affidavit of course hours completed as proof that his or her education requirements have been satisfied. The board shall give credit for any course given by any recognized national, regional, or state dispensing society or association if such course increases the education of a dispensing optician and is made available to all licensed opticians on a reasonably nondiscriminatory fee basis. The board may also approve, in accordance with the objectives of this chapter, other courses held within or outside of this state which are available to all persons on a reasonably nondiscriminatory fee basis. Any group of ten or more licensed opticians may arrange for an educational course and request board approval thereof. Any such request shall be made at least 90 days prior to the proposed date of the course and shall include full details as to the contents of the course, the

instructors, and the charge to be made for attendance, as well as any other information which the board may require. The board shall endeavor to act upon any request for approval at least 45 days prior to the proposed date therefor and shall thereupon notify all licensed opticians of the time, place, contents, and charges for any such approved course. The certificate of attendance required under this Code section shall be issued to the optician upon completion of the approved course. Credit shall be allowed on the basis of an hour for an hour. To receive one hour of credit, one must attend one full hour. No fractional hour credits shall be allowed.

(c) The board may waive the requirements of this Code section for any license period for any dispensing optician upon proof of such optician's hardship or disability, provided that such optician's license may be revoked upon failure of the licensee to complete the required number of hours, not to exceed 20 hours, of continuing education within 12 months immediately following renewal.

(d) A dispensing optician failing to complete the course hours required under this Code section shall have his or her license restored upon proof of subsequent completion of required course hours and, except in the case of a waiver granted under subsection (c) of this Code section, upon payment of a penalty fee in an amount established by the board.

History.
Ga. L. 1976, p. 279, § 1; Ga. L. 1980, p. 1101, § 6; Ga. L. 1981, p. 1378, § 2; Ga. L. 1984, p. 513, §§ 2, 3; Ga. L. 2010, p. 266, § 34/SB 195.

Administrative rules and regulations.
Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-9.

43-29-12. Refusal or revocation of certificates of registration.

The board shall refuse to issue its certificate of registration and may revoke its certificate of registration issued to any person who is not of good moral character, who commits an act involving moral turpitude, who is guilty of highly unprofessional conduct, or whose certificate was issued through error, fraud, or perjury, provided that in all such cases the board shall serve written notice of the charges on such accused person at least ten days prior to the date set for hearing, and such person shall be notified to appear before the board to answer the charges at such time and place as the board may direct. Such notice shall plainly set forth the charges made and shall notify the accused person to appear to answer the same. On such hearing, if the charges are found true, the accused having the right to produce witnesses in his behalf and cross-examine those testifying against him, the board shall render judgment against him.

History.
Ga. L. 1956, p. 148, § 15.

RESEARCH REFERENCES

ALR.
Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

43-29-13. Appeal from decisions of board.

Any person whose license has been revoked or suspended by the board may appeal to the superior court of the county of domicile of the board for a trial de novo by filing with the clerk a certified copy of the charge heard by the board and his petition requesting a trial. Upon demand by the applicant, the board shall make certified copies of any charges. When the copy of the charge is lodged with the clerk of the superior court of the county of domicile of the board and the required deposit of court cost is paid within ten days after the board's findings, the appeal shall be considered perfected and shall be docketed and stand for trial. No such appeal shall operate as a supersedeas to such revocation or suspension.

History.
Ga. L. 1956, p. 148, § 16; Ga. L. 2000, p. 1706, § 18.

43-29-14. Duties when dispensing contact lenses; restrictions; qualified dispensing optician as engaging in lawful trade or occupation.

(a) Dispensing opticians who dispense contact lenses shall instruct the wearer at the time the lenses are delivered to return to the prescribing and responsible optometrist or physician skilled in diseases of the eye for evaluation, approval, and follow-up care.

(b) A dispensing optician may duplicate lenses without prescription, provided that a dispensing optician shall not substitute contact lenses for spectacles, eyeglasses, or other optical devices except as otherwise authorized in this chapter or engage in the diagnosis of diseases of the human eye or attempt to determine the refractive powers of the human eye or in any manner attempt to prescribe remedies for or treat diseases or ailments of human beings.

(c) A dispensing optician who qualifies under this chapter shall be determined and recognized as engaging in a lawful trade or occupation in this state.

History.
Ga. L. 1956, p. 148, § 2; Ga. L. 1981, p. 1378, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Dispensing optician may not examine a patient's eyes for the purpose of determining whether or not the patient may wear contact lenses. However, the duplication of a contact lens from an original contact lens, without examination, is not prohibited. 1980 Op. Att'y Gen. No. 80-19.

Optician may not duplicate contact lens from spectacle lens. — Authority vested in a dispensing optician to duplicate a lens is an exception to the general statutory scheme providing for preparation and dispensing of optical devices upon a prescription. Exceptions must be strictly construed; thus, a dispensing optician may duplicate a spectacle lens from another such lens, but may not duplicate a contact lens from a spectacle lens. 1980 Op. Att'y Gen. No. 80-19.

43-29-15. Advertising.

It shall be lawful for a dispensing optician to advertise, provided that such dispensing optician does not advertise in any manner that would tend to mislead or deceive the public or that would in any manner discredit others in the eye care field.

History.
Ga. L. 1956, p. 148, § 7.
Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

43-29-16. Splitting fees or costs.

It shall be unlawful for any dispensing optician, either directly or indirectly, to participate in any manner in the division, assignment, rebate, splitting, or refunding of service fees or costs of completed eyeglasses or parts thereof with a physician, optometrist, or other person or persons.

History.
Ga. L. 1956, p. 148, § 7.

RESEARCH REFERENCES

ALR.
Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

43-29-17. Sale of nonprescription glasses; manufacture and sale of artificial eyes.

Nothing in this chapter shall be construed to prevent the sale of spectacles for reading purposes, toy glasses, goggles, or sunglasses consisting of plano white, plano colored, or plano tinted glasses or ready-made nonprescription glasses; nor shall anything in this chapter be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any persons engaged in the manufacturing or sale of plastic or glass artificial eyes.

History.
Ga. L. 1956, p. 148, § 10.

43-29-18. Construction of chapter.

(a) Nothing in this chapter shall be construed to authorize or permit any person to hold himself out as being able, or to offer, undertake, or attempt, by any means or method, to examine eyes or to diagnose, treat, correct, relieve, operate, or prescribe for any human ailment, deficiency, deformity, disease, injury, pain, or physical condition.

(b) Nothing in this chapter shall be construed to limit or restrict, in any respect, the practice of medicine by duly licensed physicians authorized to practice under Article 2 of Chapter 34 of this title or the practice of optometry by duly licensed optometrists authorized to practice under Chapter 30 of this title. Nothing in this chapter shall be construed to limit or restrict a duly licensed physician or optometrist from the practices enumerated and defined in this chapter; and such licensed physician or optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under this chapter.

(c) Nothing in this chapter shall be construed to impede, limit, prevent, or restrict the furnishing, selling, or supplying of any commodities or services by any manufacturer, wholesaler, jobber, vendor, or distributor of any commodities or services to any manufacturer, wholesaler, jobber, vendor, or distributor thereof or to or as agent for any physician, optometrist, or dispensing optician or to any clinic, infirmary, or hospital or to any school, college, or university.

(d) Nothing in this chapter shall be construed to prohibit an unlicensed person from performing merely mechanical work upon inert materials in an optical office or laboratory.

(e) The services and appliances relating to optical dispensing shall be dispensed, furnished, or supplied to the intended wearer or user thereof only upon prescription issued by a physician or an optometrist; but duplications, replacements, reproductions, or repetitions may be done

without prescription, in which event any such act shall be construed to be optical dispensing the same as if performed on the basis of an original written prescription.

(f) Nothing contained in this chapter shall be construed to require an employee of a licensed physician or a licensed optometrist to secure a license under this chapter or be otherwise subject to this chapter, so long as such employee is working exclusively for and under the direct supervision of such licensed physician or optometrist or licensed optician and does not hold himself out to the public generally as a dispensing optician.

History.
Ga. L. 1956, p. 148, §§ 8, 14; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 1999, p. 81, § 43.

OPINIONS OF THE ATTORNEY GENERAL

Board cannot establish rules and regulations regarding one's outside activities. — State Board of Dispensing Opticians does not have authority to establish rules and regulations, with reference to a person's outside activities, and thus refuse to issue a license to one otherwise qualified under the law. 1954-56 Ga. Op. Att'y Gen. 549.

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Dispensing optician may not examine a patient's eyes for the purpose of determining whether or not the patient may wear contact lenses. However, the duplication of a contact lens from an original contact lens, without examination, is not prohibited. 1980 Op. Att'y Gen. No. 80-19.

Optician may not duplicate contact lens from spectacle lens. — Authority vested in a dispensing optician to duplicate a lens is an exception to the general statutory scheme providing for preparation and dispensing of optical devices upon a prescription. Exceptions must be strictly construed; thus, a dispensing optician may duplicate a spectacle lens from another such lens, but may not duplicate a contact lens from a spectacle lens. 1980 Op. Att'y Gen. No. 80-19.

Requirements for license without examination. — If a person were engaged in trade of a dispensing optician at time of passage of this statute, and made application on prescribed forms, within time limit, and paid the fee, the person would be entitled to receive a license without examination under provisions of the law. 1954-56 Ga. Op. Att'y Gen. 549.

Board must return fee when rejecting grandfathered license application. — When the State Board of Dispensing Opticians receives an application for a license under "grandfather clause" of Ga. L. 1956, p. 148 creating the board, the fee received therewith must be refunded if the application is rejected. 1954-56 Ga. Op. Att'y Gen. 547.

RESEARCH REFERENCES

ALR.
Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

43-29-19. Payment of fees in advance; restriction on paying out funds and creating expenses.

All fees provided for in this chapter shall be paid in advance to the division director. No funds shall be paid out unless authorized by the chairman of the board and the division director, and no expense shall be created in excess of the fees provided in this chapter.

History.
Ga. L. 1956, p. 148, § 12; Ga. L. 1980, p. 1101, § 7; Ga. L. 2000, p. 1706, § 19.

43-29-20. Unlicensed practice as public nuisance; injunctions.

The practice of the profession of dispensing optician is declared to involve activities affecting the public interest and involving the health and safety and welfare of the public. Such activities, when engaged in by a person who is not licensed, are declared to be a public nuisance and harmful to the public health, safety, and welfare. The board or the appropriate prosecuting attorney where such nuisance exists may bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides. It shall not be necessary in order to obtain the equitable relief provided in this Code section to allege or prove that there is no adequate remedy at law.

History.
Ga. L. 1980, p. 1101, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
42 Am. Jur. 2d, Injunctions, § 145.
C.J.S.
43A C.J.S., Injunctions, § 266. 66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104.

43-29-21. Penalty.

Any person who shall practice the trade or occupation of dispensing optician, as defined in this chapter, without first complying with this chapter or who shall violate any of the Code sections of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof,

shall be punished by a fine of not more than $500.00 or by imprisonment of not more than six months in the county jail, or both.

History.
Ga. L. 1956, p. 148, § 13; Ga. L. 1982, p. 3, § 43.

43-29-22. [Repealed] Termination.

History.
This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8); Ga. L. 1984, p. 513, § 4; Ga. L. 1990, p. 284, § 1; repealed by Ga. L. 1992, p. 3137, § 24, effective July 1, 1992.

CHAPTER 30

OPTOMETRISTS

Sec.	
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43-30-13.	Construction of chapter.
43-30-14.	Practicing optometry without a license.
43-30-15.	[Repealed] Termination.

Cross references.

Professional corporations generally, T. 14, C. 7.

Discrimination against licensed optometrists by state agencies or public officials in suggestions or recommendations for visual care, § 45-11-9.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Examiners in Optometry, Chapter 430-1.

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Board may not require licensed optometrist to join State Association of Optometrists. 1945-47 Ga. Op. Att'y Gen. 508.

Board may not prescribe equipment nor personnel to be employed by practicing optometrists. 1945-47 Ga. Op. Att'y Gen. 502.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 21 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 90 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d,

States, Territories and Dependencies, §§ 42, 64 et seq. 73 Am. Jur. 2d, Statutes, §§ 17 et seq., 58 et seq.

Am. Jur. Trials.

Laser Eye Surgery Litigation, 88 Am. Jur. Trials 265.

C.J.S.

15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 280 et seq. 16A C.J.S., Constitutional Law, § 580 et seq. 16B C.J.S., Constitutional Law, §§ 1055-1058, 1444-1448. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 50 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 146 et seq. 81A C.J.S., States, § 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905; 22 A.L.R.2d 939.

Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343; 128 A.L.R. 585.

What constitutes practice of "optometry", 88 A.L.R.2d 1290; 77 A.L.R.3d 817.

Liability of optometrist or optician for malpractice, 51 A.L.R.3d 1273.

Medical malpractice: when limitations period begins to run on claim for optometrist's malpractice, 70 A.L.R.4th 600.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

43-30-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Optometry.

(2)(A) "Optometry" means the art and science of visual care and is declared to be a learned profession. The practice of optometry consists of the diagnosis and interpretation of the visual behavior of the human organism by the employment of any means other than surgery. The practice of optometry further consists of the correction of visual anomalies through the prescribing, employment, and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, and visual training, light frequencies, and any other means or methods for the relief, correction, or remedy of any insufficiencies or abnormal conditions of the human visual organism, other than surgery. Optometrists are prohibited from using nondiagnostic lasers. Nothing in this chapter shall prohibit the use, administration, or prescription of pharmaceutical agents for diagnostic purposes and treatment of ocular disease in the practice of optometry by optometrists who have received pharmacological training and certification from a properly accredited institution of higher learning and who are certified by the board to use pharmaceutical agents for diagnostic and treatment purposes. Only a doctor of optometry who:

(i) Is already certified for using pharmaceutical agents for diagnostic purposes;

(ii) Has passed or passes an examination approved by the

board which tests knowledge of pharmacology for treatment and management of ocular diseases;

(iii) Is certified in coronary pulmonary resuscitation (CPR); and

(iv) Maintains at least $1 million in malpractice insurance coverage

shall be certified to use pharmaceutical agents for treatment purposes.

(B) The board shall establish by rule a list, which may be modified from time to time, of pharmaceutical agents which optometrists shall be allowed to use for treatment purposes.

(C) A doctor of optometry may administer pharmaceutical agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi by injection, except for sub-tenon, retrobulbar, peribulbar, facial nerve block, subconjunctival anesthetic, dermal filler, intravenous injections, intramuscular injections, intraorbital nerve block, intraocular, or botulinum toxin injections, if he or she:

(i) Holds a current license or certificate of registration issued by the board and has obtained a certificate showing successful completion of an injectables training program, sponsored by a school or college of optometry credentialed by the United States Department of Education and the Council on Postsecondary Accreditation, consisting of a minimum of 30 hours approved by the board; or

(ii)(I) Is enrolled in an injectables training program, sponsored by a school or college of optometry credentialed by the United States Department of Education and the Council on Postsecondary Accreditation, in order to fulfill the requirements of such training program consisting of a minimum of 30 hours approved by the board; and

(II) Is under the direct supervision of a physician licensed under Chapter 34 of this title and board certified in ophthalmology.

Any injectables training program approved by the board pursuant to this subparagraph shall, prior to its approval by the board, be subject to the guidance of the Department of Public Health as to the appropriate curriculum necessary to safeguard the public health of the people of this state.

(D) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes may only be:

(i)(I) Nonnarcotic oral analgesics, hydrocodone administered orally, and Schedule III or Schedule IV controlled substances which are oral analgesics;

(II) Used for ocular pain; and

(III) Used for no more than 72 hours without consultation with the patient's physician; provided, however, that with respect to hydrocodone, used for no more than 48 hours without consultation with the patient's physician; or

(ii) Other pharmaceutical agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi except Schedule I or Schedule II controlled substances.

Doctors of optometry using such pharmaceutical agents shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts; provided, however, that a doctor of optometry shall not be authorized to treat systemic diseases.

(E) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered topically shall be subject to the following conditions only when used for the treatment of glaucoma:

(i) If the pharmaceutical agent is a beta blocker, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year. If the patient has not had such a physical examination or if the patient has any history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, that patient must be referred to a person licensed under Chapter 34 of this title for examination prior to initiating beta blocker therapy;

(ii) If the glaucoma patient does not respond to the topically administered pharmaceutical agents after 60 days of treatment, that patient must be referred to an ophthalmologist;

(iii) If the patient is diagnosed as having closed angle glaucoma, the patient shall be immediately referred to an ophthalmologist; and

(iv) If the pharmaceutical agent is oral corticosteroids, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year and must not prescribe oral corticosteroids for a patient

with any condition for which oral corticosteroids are contraindicated, and in no event shall such oral corticosteriods be prescribed for more than 14 days.

(F) Doctors of optometry using pharmaceutical agents for treatment purposes shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts.

(G) Any doctor of optometry who uses a pharmaceutical agent, except under the conditions specified therefor by this chapter and any other law, shall be guilty of a misdemeanor unless a greater penalty is otherwise provided by law.

(H) Nothing in this chapter shall be construed to allow a doctor of optometry to dispense pharmaceutical agents to patients.

History.

Ga. L. 1916, p. 83, § 1; Code 1933, § 84-1101; Ga. L. 1956, p. 94, § 1; Ga. L. 1980, p. 47, § 1; Ga. L. 1988, p. 34, § 1; Ga. L. 1994, p. 853, § 1; Ga. L. 1994, p. 996, § 1; Ga. L. 1995, p. 351, § 1; Ga. L. 2007, p. 551, § 1/SB 17; Ga. L. 2013, p. 639, § 1/HB 235; Ga. L. 2017, p. 680, § 1/SB 153; Ga. L. 2018, p. 251, § 1/SB 382.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2013, "and" was deleted from the end of division (2)(E)(ii).

Law reviews.

For comment on Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs., 219 Ga. 364, 133 S.E.2d 374 (1963); 219 Ga. 856, 136 S.E.2d 371 (1964), see 16 Mercer L. Rev. 349 (1964).

JUDICIAL DECISIONS

Optometry is a learned profession because a valid statute of state declares it to be. The declaration is not a mere effort on the part of the General Assembly to establish a fact by legislative fiat; it is the province of the lawmaking body to adjudge the sufficiency of the factual foundation necessary to support the statutes the legislature enacts into law. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Learned professions involve close relation between practitioner and patient. — From description of practice contained in the law relating thereto it is also evident that there is the close and confidential relationship between practitioner and patient that separates learned professions of the law from other pursuits or professions that may require great learning or scholarship, but are not classified as learned professions. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Relation between optometrist and patient is personal and confidential and subject to reasonable legislative regulation in common interest. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Practice of optometry is subject to regulation to protect public against ignorance, incapacity, deception, and fraud, equally with practice of ophthalmology and other learned professions, a category originally confined to theology, law, and medicine, but long since broadened in keeping with diffusion of scientific learning and need of specialized knowledge in functioning of the ever-expanding and complex society. Pearle Optical of

Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Working for optical concern interested in selling goods may create conflict of interest for optometrist. — It would seem that the public has as much need to be protected from quacks and charlatans in optometry as in dentistry or any other subdivision of medicine. One who consults an optometrist for ocular examination is entitled to the same undivided loyalty that a patient should receive from a physician. The fact that the optometrist is employee of an optical concern whose main interest is the sale of optical goods tends to be a distracting influence which may adversely affect the optometrist's loyalty to the interests of the patient. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Unlicensed corporation or individual cannot practice through licensed employee. — Absent express statutory authority, a corporation or individual not licensed to practice optometry cannot practice optometry through a licensed employee. Lee Optical of Ga., Inc. v. Georgia State Bd. of Exmrs. in Optometry, 220 Ga. 204, 138 S.E.2d 165, 1964 Ga. LEXIS 490 (1964).

Optometrist keeping supplies solely for use by patients not subject to local optical supplier tax. — Duly licensed optometrist, who keeps and furnishes optical supplies solely for use by own patients in connection with work as an optometrist and does not engage in separate business of selling them to public, is exempt from municipal tax imposed on dealers in optical supplies. Tinley v. City Council, 55 Ga. App. 153, 189 S.E. 413, 1937 Ga. App. LEXIS 12 (1937).

Applicability of limitation and repose statute to professional negligence action. — Statute setting limitation and repose for medical malpractice actions applied to alleged professional negligence by an optometrist. Zechmann v. Thigpen, 210 Ga. App. 726, 437 S.E.2d 475, 1993 Ga. App. LEXIS 1335 (1993), cert. denied, No. S94C0215, 1994 Ga. LEXIS 159 (Ga. Jan. 21, 1994).

OPINIONS OF THE ATTORNEY GENERAL

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Definition of "optometry" embraces the practice of opticianary. 1952-53 Ga. Op. Att'y Gen. 160.

Fitting contact lenses is the practice of optometry. 1945-47 Ga. Op. Att'y Gen. 495.

Preliminary determination of a pathological condition of the eye is within the scope of a license to practice optometry. 1983 Op. Att'y Gen. No. 83-52.

RESEARCH REFERENCES

Am. Jur. 2d.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 37 et seq., 58.

C.J.S.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 22, 23.

ALR.

What constitutes practice of "optometry", 88 A.L.R.2d 1290; 82 A.L.R.4th 816.

Fitting of contact lenses as practice of optometry, 77 A.L.R.3d 817.

43-30-2. State Board of Optometry; composition; qualifications of members.

(a) It shall be the duty of the Governor to appoint a State Board of Optometry to consist of six members. This board shall be appointed by the Governor and styled the "State Board of Optometry." All appointments to the board shall be subject to the confirmation of the Senate. One of the members shall be appointed from the public at large and shall have no connection whatsoever with the profession or practice of optometry. The remaining five members shall be persons who have been actively engaged in the practice of optometry in the state for five years immediately preceding such appointment, shall be registered as optometrists under this chapter, and shall be qualified to use pharmaceutical agents for diagnostic and treatment purposes as authorized under this chapter.

(b) No person shall be eligible for appointment to the board who is connected in any way with a school teaching optometry or who sells optical goods at wholesale.

History.
Ga. L. 1916, p. 83, § 2; Code 1933, § 84-1102; Ga. L. 1980, p. 47, § 2; Ga. L. 1994, p. 853, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of Ga. L. 1916, p. 83 in creating the board and regulating and setting up standards for practitioners was to protect interest, health, and welfare of public by precluding incompetent persons from engaging in the occupation. 1945-47 Ga. Op. Att'y Gen. 496.

RESEARCH REFERENCES

ALR.
Disqualification, for bias or interest, of member of occupation of profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

43-30-3. Terms of office for board members; vacancies.

Two members of the board shall be appointed for one year, two for two years, and one for three years; and after the expiration of the terms of office of the members so first appointed, subsequent appointments shall be for a term of three years. Any vacancy that may occur from any cause shall be filled by the Governor for the unexpired term.

History.
Ga. L. 1916, p. 83, § 3; Code 1933, § 84-1103.

43-30-4. Election of board officers; rules, regulations, and by-laws as to board's proceedings; meetings.

The board shall annually elect a president and a vice-president who shall hold their offices until their successors are elected and qualified. The board shall prescribe such rules, regulations, and bylaws for its proceedings and governance as will put this chapter into effect. There shall be at least two regular meetings of the board held every year. Special meetings may be held on the call of the president and two other members.

History.
Ga. L. 1916, p. 83, § 4; Code 1933, § 84-1104; Ga. L. 1982, p. 1278, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Board may hold such special meetings as the board may find necessary in addition to regular semiannual meetings. 1945-47 Ga. Op. Att'y Gen. 506.

43-30-5. Adoption of rules and regulations by board generally; restrictions on practice locations for doctors of optometry.

The board shall have the authority and power to adopt, establish, enforce, and maintain rules and regulations applicable to the practice of optometry adequate to put this chapter into effect and to regulate the practice of optometry as a profession in conformity with and in compliance with accepted professional standards; provided, however, the board shall not provide by rule to restrict the location of the practice of a licensed doctor of optometry, and any such rule now in effect shall be null and void.

History.
Code 1933, § 84-1110A, enacted by Ga. L. 1963, p. 214, § 1; Ga. L. 1982, p. 1278, § 3; Ga. L. 1983, p. 3, § 32.

Administrative rules and regulations.
Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Examiners in Optometry, Chapter 430-1 et seq.

JUDICIAL DECISIONS

Delegation by legislature of rule-making authority is constitutional. — Legislative department of state, wherein Constitution has lodged all legislative authority, will not be permitted to relieve itself by delegation thereof. It cannot confer on any person or body the power to determine what the law shall be. But this constitutional inhibition does not prevent grant of legislative authority to some administrative board or other tribunal to adopt rules, by-laws, or ordinances for its government, or to carry out a particular purpose. Pearle Optical of Monroeville,

Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Scope of rule-making authority. — Rules promulgated by administrative boards must be within framework of act creating the boards and designed to accomplish purpose of the act. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Rules promulgated hereunder have force of law. — When prescribed by proper action of the board, rules and regulations have all force and effect of statutes of the state. To disobey the rules and regulations is to violate the law. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

To safeguard public, state may regulate learned professions. — In order to safeguard the public, the state may make proper regulations concerning practice of medicine and surgery, dentistry, optometry, chiropody, chiropractic, and nursing; the state may also regulate practice of law. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Practice of optometry is subject to regulation for protection of public against ignorance, incapacity, deception, and fraud, equally with practice of ophthalmology and other learned professions, a category originally confined to theology, law, and medicine, but long since broadened in keeping with the diffusion of scientific learning and the need of specialized knowledge in functioning of the ever-expanding and complex society. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

Inhibiting employment of licensed optometrist by unlicensed person or corporation is in keeping with public policy. Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374, 1963 Ga. LEXIS 458 (1963).

OPINIONS OF THE ATTORNEY GENERAL

Neither board nor any member thereof should encourage voluntary contributions to assist in meeting expenses incurred in administration of board's affairs. 1945-47 Ga. Op. Att'y Gen. 504.

Board may require incorporated optometrists to use personal name only. — State Board of Examiners in Optometry has the authority to require optometrists who incorporate under Ga. L. 1970, p. 243, § 1 (see now O.C.G.A. Ch. 7, T. 14) to use only their personal names in naming the professional corporation. 1971 Op. Att'y Gen. No. 71-180.

43-30-5.1. Advertising requirements.

Any truthful written or broadcast advertising for eye exam services whether regional or national by any optical firm with more than seven locations in the State of Georgia shall not be required to list the name of the optometrist in the advertisement provided those optometrists practicing under a trade name at a specific location shall be identified to any person inquiring by telephone.

History.

Code 1981, § 43-30-5.1, enacted by Ga. L. 1988, p. 716, § 1.

Administrative rules and regulations.

Deceptive advertising, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Examiners in Optometry, Chapter 430-6.

43-30-6. Certificate of registration required.

It shall be unlawful for any person to practice optometry in this state unless he shall have first obtained a certificate of registration from the board and filed same with the clerk of the superior court of the county in which such practice is conducted.

History.
Ga. L. 1916, p. 83, § 8; Code 1933, § 84-1107.

OPINIONS OF THE ATTORNEY GENERAL

Regularly licensed optometrist may practice in any county in which the optometrist registers a license with the clerk of superior court. 1945-47 Ga. Op. Att'y Gen. 507.

RESEARCH REFERENCES

ALR.
Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343; 128 A.L.R. 585.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice of medicine or optometry without license, 121 A.L.R. 1455.

What constitutes practice of "optometry," 88 A.L.R.2d 1290; 82 A.L.R.4th 816.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

Fitting of contact lenses as practice of optometry, 77 A.L.R.3d 817.

43-30-6.1. Display of license or certificate of registration.

Persons holding a license or certificate of registration issued by the board shall display that license or certificate in a conspicuous place in that person's principal place of practice.

History.
Code 1981, § 43-30-6.1, enacted by Ga. L. 1982, p. 1278, § 4.

43-30-7. Certification and registration requirement; comity; qualifications examination.

(a) All persons engaged in the practice of optometry or who wish to begin the practice of optometry shall apply through the division director to the board for a certificate of registration. Such certificate of registration shall be granted to such applicants upon compliance with the conditions contained in subsections (b), (c), and (d) of this Code section.

(b) The applicant shall be registered and given a certificate of

registration if he or she holds a valid license from such other state boards of optometry as may be, under the rules of comity, recognized by the board. The fee for registering such applicant shall be in an amount determined by the board. A person practicing optometry who has been registered and given a certificate of registration under the rules of comity and who fails to pay the biennial registration fee, as established by the board, on or before the renewal date established by the division director shall forfeit his or her certificate of registration. Such person may be reinstated by paying all past due registration fees and an additional fee in an amount established by the board.

(c) Any other applicant for registration under this chapter shall be required to pass an examination approved by the board. In addition, each such applicant shall:

(1) Be 21 years of age and of good moral character;

(2) Possess a high school education of not less than 16 Carnegie units or the equivalent thereof to be determined by the board;

(3) Have completed not less than two years of preoptometry college work in a college of arts and sciences approved by the board or the equivalent thereof to be determined by the board; and

(4) Hold a certificate of graduation from an accredited college or university teaching optometry, acceptable to the board, requiring a course of study therein of at least four school years.

(d) Any applicant seeking a certificate of registration after July 1, 1994, must be qualified to use pharmaceutical agents for diagnostic and treatment purposes in accordance with subparagraph (A) of paragraph (2) of Code Section 43-30-1. Qualification to use pharmaceutical agents for diagnostic and treatment purposes shall be met by evidence of:

(1) Successful completion of pharmacological training and certification from a properly accredited institution of higher learning, or the equivalent thereof to be determined by the board; and

(2) Successful passage of an examination approved by the board which tests knowledge of pharmacology for treatment and management of ocular diseases.

History.

Ga. L. 1916, p. 83, § 6; Code 1933, § 84-1105; Ga. L. 1953, Jan.-Feb. Sess., p. 114, § 1; Ga. L. 1960, p. 961, § 1; Ga. L. 1971, p. 425, § 1; Ga. L. 1976, p. 185, § 1; Ga. L. 1994, p. 853, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 35/SB 195.

Cross references.

Cooperation between Georgia and other states, T. 28, C. 6.

Administrative rules and regulations.

Examination requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State

Board of Examiners in Optometry, Chapter 430-11.

JUDICIAL DECISIONS

Unlicensed corporation or individual cannot practice through licensed employee. — Absent express statutory authority, a corporation or individual not licensed to practice optometry cannot practice optometry through a licensed employee. Lee Optical of Ga., Inc. v. Georgia State Bd. of Exmrs. in Optometry, 220 Ga. 204, 138 S.E.2d 165, 1964 Ga. LEXIS 490 (1964).

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Former Code 1933, §§ 84-1105 and 84-1110 (see now O.C.G.A. §§ 43-30-7 and 43-30-9) clearly place discretionary authority in board. 1945-47 Ga. Op. Att'y Gen. 496.

Board has no authority to prescribe any period of residence as prerequisite to consideration of application to practice optometry in Georgia. 1945-47 Ga. Op. Att'y Gen. 500.

Board may require examinations for optometrists from states with residency requirements. — Board is not required, under rules of comity, to issue licenses upon applications presented by persons licensed to practice in other states when such residence periods are required, when recognition of Georgia licenses are held subject to that condition, but the board has right to require such persons to undergo examination as is set forth in the statute. 1945-47 Ga. Op. Att'y Gen. 500.

Regularly licensed optometrist may practice in any county in which that optometrist registers with the clerk of superior court. 1945-57 Ga. Op. Att'y Gen. 507.

RESEARCH REFERENCES

ALR.

Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 A.L.R. 742.

43-30-8. Biennial registration; educational programs for optometrists; forfeiture of certificate upon failure to comply; reinstatement of certificate.

(a) Each person practicing optometry shall register biennially with the division director by completing and filing a form to be furnished by the board.

(b) The board may approve educational programs to be held within or outside this state. The board shall approve only such educational programs as are available to all persons practicing optometry in the state on a reasonable nondiscriminatory fee basis. Any request for board approval of an educational program shall be submitted in a timely manner with due regard for the necessity of investigation and consideration by the board. The board may contract with institutions of higher learning, professional organizations, or qualified individuals for the providing of programs that meet this requirement; and such programs shall be self-sustaining by the individual fees set and

collected by the provider of the program. The minimum number of hours of continuing education required shall be fixed by the board by February 1 of each calendar year. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state; and the board is authorized to waive this requirement in cases of certified illness or undue hardship.

(c) Failure to register, to pay the registration fee, or to submit satisfactory proof of training shall forfeit the certificate of the delinquent optometrist; but a practitioner's certificate may be restored upon payment of all delinquent registration fees, a penalty as established by the board, and the submission of satisfactory proof of training.

History.

Ga. L. 1933, p. 202, § 1; Code 1933, § 84-1109; Ga. L. 1956, p. 691, § 7; Ga. L. 1960, p. 961, § 2; Ga. L. 1971, p. 234, § 1; Ga. L. 1976, p. 185, § 2; Ga. L. 1988, p. 34, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 639, § 2/HB 235.

JUDICIAL DECISIONS

Prior approval of educational programs not required. — Statute did not state specifically, nor necessarily implied, that educational program must be approved by board prior to time program was held. State Bd. of Exmrs. in Optometry v. Society of Professional Optometrists, Inc., 231 Ga. 44, 200 S.E.2d 123, 1973 Ga. LEXIS 587 (1973).

Request for approval submitted two weeks before seminar not untimely absent rule to contrary. — When no rules setting a longer period of time for submitting requests of approval were in effect, board was not authorized to refuse to consider a request submitted by letter two weeks prior to the seminar as being untimely. State Bd. of Exmrs. in Optometry v. Society of Professional Optometrists, Inc., 231 Ga. 44, 200 S.E.2d 123, 1973 Ga. LEXIS 587 (1973).

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Statute applied only to persons actively engaged in practice of optometry. 1945-47 Ga. Op. Att'y Gen. 496.

"Practice of optometry" defined. — Practice of optometry refers to frequent or habitual exercising of calling by one who habitually holds self out to public as being a practicing optometrist. 1945-47 Ga. Op. Att'y Gen. 496.

Phrase "practice of optometry" is distinguishable from that of "licensed to practice optometry." 1945-47 Ga. Op. Att'y Gen. 496.

What actually constitutes "practice of optometry" is a matter of fact in each situation. 1945-47 Ga. Op. Att'y Gen. 496.

One allowing license to lapse not entitled to automatic reinstatement. — Persons who for some years have not practiced or who are not presently practicing optometry and who have not maintained payment of required registration fees, thus forfeiting their certificates to practice, are not entitled to reinstatement as a matter of right by tendering all past due registration fees plus prescribed penalty. It is within the discretion of the board to promulgate reasonable rules and regulations concerning reissuing licenses to such persons. 1945-47 Ga. Op. Att'y Gen. 496.

Loss of privilege by nonuse. — One who is or has been licensed to practice

optometry, but who nevertheless is not now engaged in the practice, or who for a period of years has been licensed but has not practiced, is excluded from privilege of annually (now biennially) registering and paying proper fee, or in case of delinquency, from securing a license to practice by paying back fees plus penalty prescribed. 1945-47 Ga. Op. Att'y Gen. 496.

Board may require proof of practice at time of application. — It is within the discretion of the board to require proof by the applicant that the applicant is actually in practice at time of tendering an application or that the applicant has been in active practice within a reasonable time prior thereto. 1945-47 Ga. Op. Att'y Gen. 496.

43-30-9. Refusal or revocation of certificates; appeals.

(a) The board shall refuse to issue its certificate of registration and may revoke its certificate of registration issued to any person who is not of good moral character, or who commits an act involving moral turpitude, or who is guilty of unprofessional conduct, or whose certificate was issued through error, fraud, or perjury, or who knowingly makes any fraudulent, misleading, or deceptive statement in any form of advertising, or who makes any statement in any advertising concerning the quality of optometric services rendered by the registrant or licensee or any optometrist associated with him.

(b) The board shall serve written notice of the charges on such accused person at least ten days prior to the date set for hearing, and said person shall be notified to appear before the board to answer the charges at such time and place as the board may direct. Such notice shall plainly set forth the charges made and notify the accused person to appear to answer the same. On such hearing, if the charges are found true, the accused having the right to produce witnesses in his behalf and cross-examine those testifying against him, the board shall render judgment after such hearing; and the person accused may enter an appeal to the next superior court of the county in which the hearing is held. If he is dissatisfied with the finding, such appeal is to be governed by the law relating to appeals in other cases.

History.

Ga. L. 1916, p. 83, § 7; Ga. L. 1933, p. 202, § 2; Code 1933, § 84-1110; Ga. L. 1972, p. 916, § 1; Ga. L. 1982, p. 1278, § 5.

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Legislature intended to limit board's discretion in revoking or refusing registration. — General Assembly by passage of this statute definitely presented bounds within which administrative discretion of board might be exercised in refusing to issue certificates of registration and to revoke such certificates of those persons guilty of highly unprofessional conduct. 1948-49 Ga. Op. Att'y Gen. 327.

Scope of board's authority over practitioners. — Former Code 1933, §§ 84-1110 and 84-1111 (see now O.C.G.A. §§ 43-30-9 and 43-30-12) enumerate fully the authority vested in the board which may be exercised by that body over any or all regularly licensed practicing optom-

etrists or nonlicensed practicing optometrists; after admission to practice, there is no authority over licensed practicing optometrists given to the board outside of these sections. 1945-47 Ga. Op. Att'y Gen. 503.

Former Code 1933, §§ 84-1105 and 84-1110 (see now O.C.G.A. §§ 43-30-7 and 43-30-9) clearly place discretionary authority in board over areas enumerated. 1945-47 Ga. Op. Att'y Gen. 496.

Violation of optometrists' code of ethics. — Whether violation of code of ethics adopted by State Association of Optometrists constitutes highly unprofessional conduct warranting revocation of license to practice optometry was an administrative question for determination by the board. 1945-47 Att'y Gen. p. 504.

Certain advertising as unprofessional conduct. — Whether certain types of advertising constitute highly unprofessional conduct warranting revocation of license to practice optometry is an administrative question for determination by the board. 1945-47 Ga. Op. Att'y Gen. 500.

RESEARCH REFERENCES

ALR.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 A.L.R.3d 487.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

43-30-10. Appeal from board decisions.

Actions of the board in granting, refusing to grant, or refusing to renew a license issued under this chapter or in revoking or suspending or refusing to revoke or suspend any such license shall be subject to appeal to the superior court in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Code 1933, § 84-1110B, enacted by Ga. L. 1963, p. 214, § 1; Ga. L. 1966, p. 299, § 1.

43-30-11. Agency representative to determine contested cases; judicial review.

(a) Upon the written request of the board, the division director shall have the power under paragraph (5) of subsection (a) of Code Section 50-13-13 to select and appoint an agency representative to determine a contested case pending before the board to the extent and in the manner provided by law.

(b) In any contested case brought under authority of this chapter to enforce this chapter, a party aggrieved by an initial decision of the agency representative may immediately seek judicial review thereof within the time and in the manner provided by Code Section 50-13-19 if board review of the initial decision of the agency representative in accordance with Code Section 50-13-17 would not provide an adequate remedy or if such board review is unlawful. Upon such appeal, the court

shall first determine the claim supporting the intermediate appeal. If the court determines the claim adversely to the petitioner, it shall remand the case to the board which shall then proceed in accordance with Code Section 50-13-17, except that the board shall consider the initial decision of the hearing representative as having been filed with it on the date of remand from the court. If the court determines the claim adversely to the board, it shall treat the initial decision of the agency representative as a final decision of the board and determine all other issues in the case in accordance with Code Section 50-13-19.

History.
Code 1933, § 84-1110.3, enacted by Ga. L. 1976, p. 1575, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2000, p. 1706, § 19.

43-30-12. Unlicensed practice as constituting a nuisance; injunction.

The practice of optometry by any unregistered or unlicensed optometrist is declared to be a menace and a nuisance and dangerous to the public health and safety; and the board shall promptly abate such practice by filing an action for an injunction in the county in which such practice is conducted. The practice shall be enjoined unless it shall be made to appear that such practitioner is licensed and registered. The board is authorized to file and prosecute such action, and it shall be its duty to do so.

History.
Ga. L. 1933, p. 202, § 3; Code 1933, § 84-1111.

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Scope of board's authority over practitioners. — Former Code 1933, §§ 84-1110 and 84-1111 (see now O.C.G.A. §§ 43-30-9 and 43-30-12) enumerate fully the authority vested in the board which may be exercised by that body over any or all regularly licensed practicing optometrists or nonlicensed practicing optometrists; after admission to practice, there is no authority over licensed practicing optometrists given to the board outside of these sections. 1945-47 Ga. Op. Att'y Gen. 503.

43-30-13. Construction of chapter.

(a) Nothing in this chapter shall be construed to apply to physicians and surgeons duly licensed to practice medicine, nor to prevent persons from selling spectacles or eyeglasses on prescription from any duly qualified optometrist or physician, nor to prevent any person from selling glasses as articles of merchandise or from using test cards in connection with the sale of such glasses at a permanently located place when not trafficking or attempting to traffic upon assumed skill in optometry; nor shall anything in this chapter be construed to authorize

any registered optometrist to prescribe or administer drugs except as permitted by law or practice medicine or surgery in any manner as defined by the laws of this state; nor shall this chapter be construed to authorize any such person to use the title of "M.D." or any other title mentioned in Code Section 43-34-21 or 43-34-22.

(b) Nothing in this chapter shall be construed to imply liability, either civil or criminal, on the part of a pharmacist who is duly licensed under Title 26 and who in good faith fills a prescription presented by a patient pursuant to this chapter. The pharmacist shall presume that the prescription was issued by a duly licensed optometrist under this chapter who has qualified under this Code section to prescribe pharmaceutical agents. The pharmacist shall also presume that the pharmaceutical agent prescribed by the optometrist is an approved pharmaceutical agent, unless the pharmacist has actual or constructive knowledge to the contrary.

History.
Ga. L. 1916, p. 83, § 9; Code 1933, § 84-1108; Ga. L. 1988, p. 34, § 3; Ga. L. 2009, p. 859, § 13/HB 509.

RESEARCH REFERENCES

ALR.
Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343; 128 A.L.R. 585.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice medicine or optometry without license, 121 A.L.R. 1455.

Fitting of contact lenses as practice of optometry, 77 A.L.R.3d 817.

43-30-14. Practicing optometry without a license.

Any person who practices optometry or who offers or pretends to practice or holds himself or herself out as eligible to practice optometry and who is not legally registered and licensed shall be guilty of a felony.

History.
Ga. L. 1916, p. 83, § 8; Ga. L. 1933, p. 202, § 4; Code 1933, § 84-9917; Ga. L. 2003, p. 315, § 1.

Cross references.
False or fraudulent advertising, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR.
What constitutes practice of "optometry," 88 A.L.R.2d 1290; 82 A.L.R.4th 816.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Fitting of contact lenses as practice of optometry, 77 A.L.R.3d 817.

43-30-15. [Repealed] Termination.

History.
Ga. L. 1982, p. 1278, §§ 1, 6 and Ga. L. 1988, p. 530, § 6; repealed by Ga. L. 1992, p. 3137, § 25, effective July 1, 1992.

CHAPTER 31

PECAN DEALERS AND PROCESSORS

Sec.
43-31-1 through 43-31-8. [Reserved].

43-31-1 through 43-31-8. [Reserved]

History.
Ga. L. 1943, p. 549, §§ 1, 1A, 2-4, 6-8; repealed by Ga. L. 2013, p. 797, § 7/HB 268, effective July 1, 2013.

Editor's notes.
Ga. L. 2013, p. 797, § 7/HB 268 repealed and reserved this article, effective July 1, 2013.

CHAPTER 32

PEDDLERS AND ITINERANT TRADERS

Sec.
43-32-1 through 43-32-7. [Reserved].

43-32-1 through 43-32-7. [Reserved]

History.

Laws 1819, Laws 1850, Cobb's 1851 Digest, pp. 773, 774, 777, 822; Code 1863, §§ 1564, 1565, 1567-1570, 4466; Code 1868, §§ 1625, 1626, 1628-1631, 4510; Code 1873, §§ 1631, 1632, 1634-1637, 4598; Ga. L. 1880-81, p. 75, § 1; Code 1882, §§ 1631, 1632, 1635-1637, 4598; Ga. L. 1887, p. 33, § 1; Civil Code 1895, §§ 1640, 1641, 1647-1650; Penal Code 1895, § 600; Civil Code 1910, §§ 1886, 1887, 1893-1896; Penal Code 1910, § 631; Code 1933, §§ 84-2001—84-2005, 84- 2010, 84-9933; Ga. L. 1982, p. 3, § 43; repealed by Ga. L. 2015, p. 385, § 2-7/HB 252, not codified by the General Assembly, effective July 1, 2015.

Editor's notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"