House Bill 266 (AS PASSED HOUSE AND SENATE)

By: Representatives Wilkinson of the 52nd, Henson of the 87th, Drenner of the 86th, Burmeister of the 119th, Williams of the 4th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 9 of Title 43 of the Official Code of Georgia Annotated, relating to chiropractors, so as to provide for additional authority for the board to expunge or delete certain violations from the disciplinary record of any licensee; to provide for additional authority for the board to refuse to grant a license, revoke a license, or discipline a licensee; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 43 of the Official Code of Georgia Annotated, relating to chiropractors, is amended by striking Code Section 43-9-6.1, relating to the scope of the authority of the Georgia Board of Chiropractic Examiners, and inserting in its place the following:

"43-9-6.1.

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; ~~and~~

(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.″

SECTION 2.

Said chapter is further amended by striking subsection (a) of Code Section 43-9-12, relating to grounds for refusal or revocation of license, and inserting in its place the following:

″(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; ~~or~~

(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) 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:

(A) 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 24-9-21. 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;

(B) 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 24-9-21. 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; and

(C) 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 (A) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (B) 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.″

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.