

House Bill 458

By: Representatives Cooper of the 43rd, Holcomb of the 81st, Gaines of the 117th, Newton of the 123rd, and Hawkins of the 27th

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
2 physicians, physician assistants, and others, so as to require certain training relating to sexual
3 misconduct for members of the Georgia Composite Medical Board; to provide for the refusal,
4 suspension, or revocation of the license of a physician who has committed a sexual assault
5 on a patient; to require the completion of continuing education by physicians relating to
6 sexual misconduct; to require the development and identification of educational resources
7 and materials relating to sexual misconduct and the impacts of trauma for physicians, board
8 members, and board staff; to require medical schools and osteopathic medical schools to
9 provide training to medical students on sexual misconduct; to provide for mandatory
10 reporting by health care providers who have reasonable cause to believe that a physician has
11 committed a sexual assault on a patient; to provide for definitions; to provide for limited
12 liability; to provide for fines and disciplinary action; to provide for release of investigative
13 records by law enforcement; to amend Chapter 34A of Title 43 of the Official Code of
14 Georgia Annotated, relating to patient right to know, so as to provide for annual reporting
15 to the General Assembly of the number of physicians investigated or disciplined for the
16 sexual assault of patients; to provide for definitions; to provide for related matters; to repeal
17 conflicting laws; and for other purposes.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician assistants, and others, is amended in Code Section 43-34-2, relating to the creation of the Georgia Composite Medical Board, its members, physician assistants advisory committee, and review of qualifications, by revising subsection (g), which is reserved, as follows:

"(g) On and after January 1, 2022, all newly appointed board members shall be required to participate in training and education to support greater understanding of sexual misconduct, sexual boundaries, and impacts of trauma and implicit bias within three months of such appointment. All board members in office as of January 1, 2022, shall be required to participate in such training and education by March 30, 2022. Reserved."

SECTION 2.

Said chapter is further amended in Code Section 43-34-8, relating to the authority of the Georgia Composite Medical Board to refuse license, certificate, or permit or issue discipline, by adding a new paragraph to subsection (a) and a new subsection to read as follows:

"(15.1)(A) Pleaded guilty to committing a sexual assault on a patient; or

(B) Been found guilty by a court of law of committing a sexual assault on a patient."

"(a.2) Upon a finding by the board that the public health, safety, or welfare imperatively requires emergency action pursuant to an alleged sexual assault on a patient by a licensee, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceeding shall be promptly instituted and determined."

SECTION 3.

Said chapter is further amended in Code Section 43-34-11, relating to continuing education requirements, by revising paragraph (1) of subsection (a) as follows:

"(a)(1) The board shall be authorized to require persons seeking renewal of a license, certificate, or permit 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, including, but not limited to, the American Medical Association, the National Medical Association, and the American Osteopathic Association, the number of hours required, and the category in which these hours should be earned. On and after January 1, 2022, continuing education requirements for physicians shall include ongoing education and training regarding professional boundaries and physician sexual misconduct. Such education and training shall include subject matter relating to how to proceed with basic as well as sensitive or intimate examinations and the communication with patients that is required as a component of such examinations. Such education and training shall be established by the board and shall be informed by members of the public, as best possible. This paragraph shall not apply to respiratory care professionals, persons seeking renewal of certification as respiratory care professionals, clinical perfusionists, persons seeking renewal of licensure as a clinical perfusionist, licensed orthotists or prosthetists, persons seeking renewal of licensure as an orthotist or prosthetist, genetic counselors, or persons seeking renewal of licensure as a genetic counselor."

SECTION 4.

Said chapter is further amended by adding a new Code section to Article 1, relating to the Georgia Composite Medical Board, to read as follows:

65 "43-34-14.
66 No later than January 1, 2022, the board shall develop and identify educational resources
67 and materials for physicians, board members, and board staff to support greater
68 understanding of sexual misconduct, sexual boundaries, and impacts of trauma and implicit
69 bias. Such information shall include resources and materials to help physicians develop
70 better insight into their own behavior and its impacts on others. Resources and materials
71 shall be developed and identified in collaboration with national medical boards
72 associations, national medical associations, state physician health programs, state medical
73 associations, hospital medical staffs, other organized physician groups, and medical schools
74 and training programs."

75 **SECTION 5.**

76 Said chapter is further amended in Code Section 43-34-26, relating to license requirement
77 for persons engaged in practice of medicine, qualifications, evaluation program, and
78 examinations, by revising subsection (a) as follows:

79 "(a)(1)(A) Any person who wishes to obtain the right to practice medicine in this state
80 and who was not, prior to March 16, 1970, registered or licensed to practice medicine,
81 either by the State Board of Medical Examiners or the State Board of Examiners in
82 Osteopathy, shall, before it shall be lawful for him or her to practice medicine in this
83 state, make application to the board through the executive director, upon such forms
84 and in such manner as shall be adopted and prescribed by the board, and shall obtain
85 from the board a license to practice medicine. Any person who practices medicine
86 without first having obtained a license shall be deemed to have violated this article. All
87 applicants for a license to practice medicine or for a renewal of any such license which
88 has been revoked shall furnish the board with evidence of good moral character.
89 Applications from candidates to practice medicine or surgery in any of its branches

shall be accompanied by proof that the applicant is a graduate of some legally incorporated medical school or osteopathic medical school.

(B) The board by rule or regulation may establish standards for evaluating, inspecting, and approving any medical school or osteopathic medical school. The evaluation procedure may include consideration of reports from any outside agency having expertise in medical school or osteopathic medical school evaluation; provided, however, that the board shall make the final decision on approval of medical schools and osteopathic medical schools. Nothing contained in this Code section shall prevent the approval of medical schools outside of the United States or the licensing of graduates of medical schools outside of the United States if such schools and their graduates comply with the standards established in this Code section and by rule of the board.

(2) Each medical school or osteopathic medical school in good standing with the board shall have a minimum preliminary educational requirement of the completion of a two-year premedical college course. On and after June 30, 2022, each medical school or osteopathic medical school in good standing with the board shall include education and training regarding professional boundaries and physician sexual misconduct for its medical students. Such education and training shall include subject matter relating to how to proceed with basic as well as sensitive or intimate examinations and the communication with patients that is required as a component of such examinations.

(3) Graduates of board approved medical schools or osteopathic medical schools and persons who graduated on or before July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must complete one year of a postgraduate residency training program. Persons who graduated after July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must complete three years of residency, fellowship, or other postgraduate medical training that is approved by the Accreditation Council for Graduate Medical Education

(ACGME), the American Osteopathic Association (AOA), or the board to be eligible for a license to practice medicine in this state. Current certification of any applicant by a member board of the American Board of Medical Specialties may be considered by the board as evidence that such applicant's postgraduate medical training has satisfied the requirements of this paragraph. However, before any such person shall be eligible to receive a license to practice medicine in this state, he or she shall furnish the board with satisfactory evidence of attainments and qualifications under this Code section and the rules and regulations of the board. Nothing contained in this Code section shall be construed so as to require a person who has previously passed an examination given by the board for a license to practice medicine in this state to stand another examination.

(4) If the applicant submits proof that he or she has had postgraduate training as required in paragraph (3) of this subsection and if he or she furnishes satisfactory evidence of qualifications under this article and the rules and regulations of the board, he or she shall be eligible to receive a license from the board giving him or her absolute authority to practice medicine in this state.

(5) If the date of graduation from an institution mentioned in subparagraph (B) of paragraph (1) of this subsection is on or before January 1, 1967, no proof of postgraduate training in an approved hospital need be submitted to obtain a license from the board."

SECTION 6.

Said chapter is further amended by adding a new Code section to Article 2, relating to medical practice, to read as follows:

"43-34-47.

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

(1) 'Health care provider' means:

(A) A physician;

(B) A registered professional nurse or licensed practical nurse licensed as such under Chapter 26 of this title; or

(C) A physician assistant licensed under Article 4 of this chapter.

(2) 'Sexual assault' shall have the same meaning as provided in Code Section 15-24-1.

(b) A health care provider in this state shall report the name of a physician to the board if such health care provider has reasonable cause to believe that such physician has committed sexual assault on a patient. A health care provider shall not be required to duplicate a report if such health care provider has reasonable cause to believe that such report has been made to the board. A health care provider shall not be required to report a physician to the board under this Code section as a result of professional knowledge obtained in the course of the health care provider-patient relationship when the physician is the patient.

(c) No health care provider required to report a physician to the board under this Code section 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.

(d) Any health care provider required to report a physician to the board under this Code section who knowingly and willfully fails to do so shall be subject to a fine of no less than \$1,000.00 or greater than \$5,000.00 as determined by such health care provider's respective licensing board and may be subject to other disciplinary action in such respective licensing board's discretion.

(e) Law enforcement officers, when investigating cases of alleged sexual assaults on a patient by a physician, are authorized to send pertinent records on such cases to the board. Such records shall be confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board."

SECTION 7.

Chapter 34A of Title 43 of the Official Code of Georgia Annotated, relating to patient right to know, is amended by revising Code Section 43-34A-9, relating to annual report, as follows:

"43-34A-9.

(a) On January 1 of each year, the board shall compile a report for the Governor and General Assembly containing a statistical and comparative data analysis using information obtained from the physician profiles in addition to other information collected by the board. The board shall not be required to distribute copies of the report to the Governor or members of the General Assembly but shall provide notification of the availability of the report in the manner which it deems to be the most effective and efficient.

(b) The report shall include, but shall not be limited to, the following information:

(1) The number of physicians for which it has created physician profiles;

(2) The specialty board certification of such physicians;

(3) The geographic regions of the primary practices;

(4) The number of physicians participating in the Medicaid program; ~~and~~

(5) The number of physicians carrying any medical malpractice insurance and the specialty and current hospital privileges of the physicians not carrying such insurance and whether such physicians are actively seeing patients; and

(6) The number of physicians on whom the board has conducted investigations for committing an act of sexual assault pursuant to paragraph (15.1) of subsection (a) of Code Section 43-34-8 or an act of sexual abuse, misconduct, or exploitation of a patient pursuant to paragraph (15) of subsection (a) of Code Section 43-34-8, and the outcome of the investigation which shall include whether the board refused, revoked, or suspended a license, or issued a private or public disciplinary order. In no event shall any identifying information be included in such report for any physician on whom the board conducted an investigation in which the outcome of the investigation exonerated the

193 physician or that did not result in the refusal, revocation, or suspension of license or a
194 private or public disciplinary order."

195 **SECTION 8.**

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