

House Bill 807

By: Representative Cooper of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to
2 medical and other confidential information, so as to allow for voluntary open
3 communications related to healthcare under rules of evidence; to provide for definitions; to
4 provide that certain open communications shall not be subject to future disclosure; to provide
5 for related matters; to provide for a short title; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Georgia CANDOR Act."

10 **SECTION 2.**

11 Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to medical and
12 other confidential information, is amended by adding a new article to read as follows:

13 "ARTICLE 5

14 24-12-40.

15 As used in this article, the term:

16 (1) 'Additional people' includes legal counsel, insurance representatives, family
17 members, or friends.

18 (2) 'Adverse healthcare incident' means an objective and definable outcome arising from
19 or related to patient care that results in the death or physical injury of a patient.

20 (3) 'Health facility' means a facility, hospital, institution, or other healthcare related
21 business entity with a permit or license issued by the Department of Community Health
22 pursuant to Title 31.

23 (4) 'Healthcare provider' means any person who is licensed, certified, registered, or
24 otherwise permitted by the laws of this state to administer healthcare in the ordinary
25 course of business or in the practice of a profession. Such term shall include a
26 professional corporation, limited liability company, or limited liability partnership
27 organized pursuant to the laws of this state for the practice of a healthcare profession.

28 (5) 'Open discussion' means all communications that are made under Code Section
29 24-12-41 and includes memoranda, work product, documents, and other materials that
30 are prepared for, or submitted in the course of or in connection with, communications
31 under Code Section 24-12-41. Such term shall not include communications, memoranda,
32 records, documents, or other materials that are otherwise subject to discovery and that
33 were not prepared specifically for use in an open discussion under Code Section 24-12-41
34 as specified in Section 24-12-43.

35 (6) 'Patient' means a person who receives healthcare from a healthcare provider; or the
36 person's legal representative if the person is an unemancipated minor under the age of 18,
37 incapacitated, or deceased; or the parties recognized as entitled to bring action for
38 wrongful death under Chapter 4 of Title 51 if the patient is deceased.

39 24-12-41.

40 (a) If an adverse healthcare incident occurs, a healthcare provider involved in the adverse
41 healthcare incident, or the healthcare provider jointly with the health facility involved in
42 the adverse healthcare incident, may provide the patient with written notice of the desire
43 of the healthcare provider, or of the healthcare provider jointly with the health facility, to
44 enter into an open discussion.

45 (b) A healthcare provider or health facility that chooses to provide the notice specified in
46 subsection (a) of this Code section shall send the notice within 180 days after the date on
47 which the healthcare provider knew, or through the use of diligence should have known,
48 of the adverse healthcare incident. Such notice shall include:

49 (1) A copy of Code Section 31-33-2 with an explanation of the patient's right to receive
50 a copy of his or her medical records within 30 days of request and of his or her right to
51 authorize the release of his or her medical records to any other person designated by the
52 patient;

53 (2) A statement regarding the patient's right to seek legal counsel and to have legal
54 counsel present throughout the process specified in this article;

55 (3) A copy of Code Sections 9-3-71, 9-3-72, and 9-3-73, as appropriate, with notice that
56 the time for a patient to bring a lawsuit is limited and will not be extended by engaging
57 in an open discussion under this article unless all parties agree to an extension in writing;

58 (4) If a healthcare provider or health facility is a state, county or municipal government
59 entity, or officer or employee of such state, county, or municipal government entity, a
60 copy of Code Section 36-11-1, 36-33-5, or 50-21-26, as applicable, together with the
61 statement that the deadline for filing the notice required under any of such Code sections
62 is limited and will not be extended by engaging in an open discussion under this article;

63 (5) Notice that if the patient chooses to engage in an open discussion with the healthcare
64 provider or health facility, all communications made in the course of the discussion under
65 this article, including communications regarding the initiation of an open discussion, are:

- 66 (A) Privileged and confidential;
67 (B) Not subject to discovery, subpoena, or other means of legal compulsion for release;
68 and
69 (C) Not admissible as evidence in a proceeding arising out of the adverse healthcare
70 incident, including a judicial, administrative, or arbitration proceeding; and
71 (6) An advisement that communications, memoranda, records, documents, and other
72 materials that are otherwise subject to discovery and not prepared specifically for use in
73 an open discussion under this article are not confidential.
74 (c)(1) If the patient agrees in writing to engage in an open discussion under this article,
75 the patient, healthcare provider, or health facility engaged in the open discussion may
76 include additional people in the open discussion.
77 (2) The healthcare provider, or the healthcare provider jointly with the health facility,
78 involved in the adverse healthcare incident shall advise all additional people in writing
79 of the nature of communications made in accordance with this article as specified in Code
80 Section 24-12-43.
81 (3) Additional people shall acknowledge the advisement provided for in subsection (b)
82 of this Code section in writing.
83 (4) The advisement provided in accordance with this subsection (b) of this Code section
84 shall indicate that communications, memoranda, records, documents, and other materials
85 that are otherwise subject to discovery and not prepared specifically for use in an open
86 discussion under this article are not confidential.
87 (d) The healthcare provider or health facility that agrees to engage in an open discussion
88 may:
89 (1) Investigate how the adverse healthcare incident occurred and gather information
90 regarding the medical care or treatment provided;
91 (2) Disclose the results of the investigation to the patient; and

92 (3) Openly communicate to the patient the steps the healthcare provider or health facility
93 will take to prevent future occurrences of the adverse healthcare incident.

94 (e) If a healthcare provider or health facility determines that an offer of compensation is
95 warranted, the healthcare provider or health facility shall provide the patient with a written
96 offer of compensation.

97 (f) If a healthcare provider or health facility makes an offer of compensation under
98 subsection (e) of this Code section and the patient is not represented by legal counsel, the
99 healthcare provider or health facility shall:

100 (1) Advise the patient of the patient's right to seek legal counsel regarding the offer of
101 compensation; and

102 (2) Provide notice that the patient may be legally required to repay medical and other
103 expenses that were paid by a third party, including private health insurance, Medicare,
104 or Medicaid.

105 (g) Except for an offer of compensation under subsection (e) of this Code section, open
106 discussions between the healthcare provider or health facility and the patient about the
107 compensation offered under subsection (e) of this Code section shall not be in writing.

108 24-12-42.

109 (a) Any compensation made by a healthcare provider or health facility to a patient under
110 this article shall not be construed as compensation resulting from:

111 (1) A written claim or demand for payment; or

112 (2) A medical malpractice claim, judgment, arbitration award, or settlement.

113 (b) As a condition of an offer of compensation under Code Section 24-12-41, a healthcare
114 provider or health facility may require a patient to execute all documents and obtain any
115 necessary court approval to resolve an adverse healthcare incident. The agreement of
116 resolution shall release the participating healthcare providers and health facilities from any
117 future liability arising from the adverse healthcare incident. The patient and participating

118 healthcare providers and health facilities shall negotiate the form of the documents and
119 obtain court approval as necessary.

120 24-12-43.

121 (a) Open discussion communications, offers of compensation, and compensation made
122 under this article and in substantial compliance with this article:

123 (1) Shall not constitute an admission of liability;

124 (2) Are privileged and confidential and shall not be disclosed;

125 (3) Are not admissible as evidence in any subsequent judicial, administrative, or
126 arbitration proceeding arising out of the adverse healthcare incident;

127 (4) Are not subject to discovery, subpoena, or other means of legal compulsion for
128 release; and

129 (5) Shall not be disclosed by any party or person in any subsequent judicial,
130 administrative, or arbitration proceeding arising out of the adverse healthcare incident.

131 (b) Communications, memoranda, records, documents, and other materials that are
132 otherwise subject to discovery and that were not prepared specifically for use in an open
133 discussion under Code Section 24-12-41 shall not be confidential.

134 (c) The limitation on disclosure imposed by this Code section includes disclosure during
135 any discovery conducted as part of a subsequent adjudicatory proceeding arising out of the
136 adverse healthcare incident, and a court or other adjudicatory body shall not compel any
137 party or person who engages in an open discussion under this article to disclose
138 confidential communications, agreements, or compensation made pursuant to this article.

139 (d) This Code section shall not be construed to affect any other law, rule, or requirement
140 with respect to confidentiality.

141 24-12-44.

142 (a) A healthcare provider or health facility that participates in open discussions under this
143 article may provide de-identified information about an adverse healthcare incident to any
144 patient safety centered nonprofit organization for use in patient safety research and
145 education.

146 (b) Disclosure of de-identified information under subsection (a) of this Code section:

147 (1) Does not constitute a waiver of the privilege specified in Code Section 24-12-43; and

148 (2) Is not a violation of the confidentiality requirements of Code Section 24-12-43."

149 **SECTION 3.**

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