

House Bill 178 (AS PASSED HOUSE AND SENATE)

By: Representatives Weldon of the 3rd, Cooper of the 43rd, Taylor of the 79th, Channell of the 120th, Parrish of the 158th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
2 physicians, acupuncture, physician assistants, cancer and glaucoma treatment, respiratory
3 care, clinical perfusionists, and orthotics and prosthetics practice, so as to provide for
4 additional powers of the Georgia Composite Medical Board relating to pain management;
5 to enact the "Georgia Pain Management Clinic Act"; to provide for legislative intent; to
6 require the licensure of pain management clinics; to provide for definitions; to provide for
7 requirements for licensure; to provide for denial, suspension, and revocation of licenses; to
8 provide for notice to the board upon the occurrence of certain events; to provide for renewal
9 of licenses; to provide for a penalty for violation of the Act; to provide for reporting by
10 hospitals; to provide for reports to the Georgia Composite Medical Board; to provide for
11 related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

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

- 20 (1) To adopt, amend, and repeal such rules and regulations in accordance with this
21 chapter necessary for the proper administration and enforcement of this chapter;
22 (2) To adopt a seal by which the board shall authenticate the acts of the board;
23 (3) To establish a pool of qualified physicians to act as peer reviewers and expert
24 witnesses and to appoint or contract with physicians professionally qualified by education
25 and training, medical associations, or other professionally qualified organizations to serve
26 as peer reviewers; provided, however, that no licensing, investigative, or disciplinary

duties or functions of the board may be delegated to any medical association or related entity by contract or otherwise;

(4) To employ a medical director and other staff to implement this chapter and provide necessary and appropriate support who shall be subject to the same confidentiality requirements of the board;

(5) To keep a docket of public proceedings, actions, and filings;

(6) To set its office hours;

(7) 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;

(8) To establish rules regarding licensure and certification status, including, but not limited, to inactive status, as the board deems appropriate;

(9) To issue, deny, or reinstate the licenses, certificates, or permits of duly qualified applicants for licensure, certification, or permits under this chapter;

(10) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional medical training, require medical community service, or otherwise sanction licensees, certificate holders, or permit holders;

(11) To renew licenses, certificates, and permits and set renewal and expiration dates and application and other deadlines;

(12) To approve such examinations as are necessary to determine competency to practice under this chapter;

(13) To set examination standards, approve examinations, and set passing score requirements;

(14) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(15) To initiate investigations for the purposes of discovering violations of this chapter;

(16) To administer oaths, subpoena witnesses and documentary evidence including medical records, and take testimony in all matters relating to its duties;

(17) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(18) To conduct investigative interviews;

(19) To issue cease and desist orders to stop the unlicensed practice of medicine or other profession licensed, certified, or permitted under this chapter and impose penalties for such violations;

(20) To request injunctive relief or refer cases for criminal prosecution to appropriate enforcement authorities;

(21) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(22) To sue and be sued in a court of competent jurisdiction; and

(23) To enter into contracts;

(24) To license and regulate pain management clinics;

(25) To establish minimum standards for prescribing controlled substances for pain management; and

(26) To accept any gifts, grants, donations, and other funds, including funds from the disposition of forfeited property to the extent permitted by applicable law, to assist in enforcing this chapter."

SECTION 2.

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

"ARTICLE 10

43-34-280.

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

43-34-281.

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

(b) Nothing in this article shall be construed to limit the authority and regulations of the board relating to pain management as such authority and regulations existed on June 30, 2013.

43-34-282.

As used in this article, the term:

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

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

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

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

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

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

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

(8) 'Person' means a natural person.

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

43-34-283.

(a) On and after July 1, 2013, all pain management clinics shall be licensed by the board and shall biennially renew their license with the board. In the event that physicians in a pain management clinic practice at more than one location, each such location shall be licensed by the board, and such license shall be nontransferable.

(b)(1) All pain management clinics shall be owned by physicians licensed in this state.

(2) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is jointly owned by one or more physician assistants or advanced practice registered nurses and one or more physicians; provided, however, that any physician assistant or advanced practice registered nurse with an ownership interest in such pain management clinic shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(3) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is not majority owned by physicians licensed in this state; provided, however, that the person or entity that owns such pain management clinic shall not operate more than one licensed pain management clinic within this state; and provided, further, that any such owner shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, no person who has been convicted of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-34-8 shall own or have any ownership interest in a pain management clinic.

(c) The board may establish minimum standards of continuing medical education for all physicians owning a pain management clinic. All other licensed health care professionals practicing in a pain management clinic may be subject to minimum standards of continuing education established by the respective licensing board for the health care professional.

(d) Upon the filing of an application for a license, the board may cause a thorough investigation of the applicant to be made and such investigation may include a criminal background check; provided, however, that the board shall cause a thorough investigation of a new applicant to be made, and such investigation shall include a background check. If satisfied that the applicant possesses the necessary qualifications, the board shall issue a license. However, the board may issue licenses with varying restrictions to such persons where the board deems it necessary for the purpose of safeguarding the public health, safety, and welfare.

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

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

(g) No pain management clinic shall provide medical treatment or services, as defined by the board, unless a physician, a physician assistant authorized to prescribe controlled substances under an approved job description, or an advanced practice registered nurse

authorized to prescribe controlled substances pursuant to a physician protocol is on-site at the pain management clinic.

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

43-34-284.

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

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

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

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

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

43-34-285.

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

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

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

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

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

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

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

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

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

43-34-286.

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

43-34-287.

(a) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may be late renewed after application and payment of the prescribed late renewal fee within the time period established by the board and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been renewed by the end of the late renewal period shall be considered revoked and subject to reinstatement at the discretion of the board after meeting such requirements as the board may establish.

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

43-34-288.

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

43-34-289.

Any hospital which operates an outpatient clinic at its main facility or at any satellite facility with greater than 50 percent of such clinic's annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances shall annually notify the board of such clinic.

43-34-290.

Law enforcement officers, medical examiners, the Georgia Drugs and Narcotics Agency, and the Georgia Bureau of Investigation Medical Examiner's Office, when investigating deaths which may be the result of medication administered or prescribed or a procedure conducted at a pain management clinic as defined by paragraph (7) of Code Section 43-34-282 either by an individual licensed under Chapter 34 of Title 43 or by an individual under the supervision or delegated authority of such person, are authorized to send pertinent records on such deaths 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 3.

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