

GEORGIAGOV



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Official Opinion 2000-10

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To:

Executive Director
Composite State Board of Medical Examiners

Re:

Under O.C.G.A. § 43-34-103(e.1), physicians assistants are allowed to prescribe Schedule III, IV, and V controlled substances when acting under the requisite supervision of a physician and pursuant to the requisite job description.

You have asked for my opinion whether physician's assistants are authorized to prescribe controlled substances in Georgia, thereby permitting them to have a Drug Enforcement Administration ("DEA") number. For the reasons outlined below, I believe that the Legislature intended to allow physician's assistants to prescribe Schedule III, IV, and V controlled substances when acting under the proper delegation of a physician, thereby permitting them to have a DEA number.

The Physician's Assistant Act ("Act"), contained in Article 4, Chapter 34 of Title 43 of the Official Code of Georgia, provides for the establishment of physician's assistants as a recognized health caregiver in the State of Georgia. First enacted in 1972, the Act was "intended to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to such assistants where such delegation is consistent with the patient's health and welfare." O.C.G.A. § 43-34-101(b). The General Assembly provided that physician's assistants would be authorized to assist the supervisory physician pursuant to a job description, approved by the Composite State Board of Medical Examiners. O.C.G.A. § 43-34-103(a)(3), -104. Recently the Georgia Supreme Court held that the Act "establishes that it is a matter strictly for the Composite State Board of Medical Examiners to determine the nature and scope of the medical tasks for which any [physician's assistant] may be qualified to perform." *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 405 (2000).

Although the original Act gave authority to the Composite State Board of Medical Examiners to determine what tasks were suitable for delegation, there was no language that authorized physician's assistants to engage in the prescribing of drugs in the State of Georgia. In 1989, the General Assembly enacted O.C.G.A. § 43-34-26.1. Subsection (b) of Code section 43-34-26.1

authorizes physicians to delegate to a physician's assistant in accordance with a job description "the authority to order controlled substances selected from a formulary of such drugs established by the Composite State Board of Medical Examiners and the authority to order dangerous drugs, medical treatments, and diagnostic studies." O.C.G.A. § 43-34-26.1(b)(1). Relevant to this section is the definition for "order," which means "to select a drug, medical treatment, or diagnostic study through physician delegation in accordance with a nurse protocol or a physician's assistant's job description." O.C.G.A. § 43-34-26.1(a)(8). However, the General Assembly also directed that "[o]rdering under such delegation shall not be construed to be prescribing, which act can only be performed by the physician, nor shall ordering of a drug be construed to authorize the issuance of a written prescription." O.C.G.A. § 43-34-26.1(a)(8). Therefore, as of 1989, physician's assistants did not have the authority to prescribe drugs even while acting under the supervision of a physician.

In 1995, the General Assembly added a new subsection to the Physician's Assistant Act. Paragraph (1) of this new subsection 43-34-103(e.1) reads:

In addition to the authority granted by Code Section 43-34-26.1, a physician's assistant shall be allowed to carry out a prescription drug order or orders for any device as defined in Code Section 26-4-5, any dangerous drug as defined in Code Section 16-13-71, or any Schedule III, IV, or V controlled substance as defined in Code Section 16-13-21 on a prescription drug order or prescription device order form as specified in paragraph (3) of this subsection, pursuant to the authority delegated by the supervising physician of that physician's assistant. Delegation of such authority shall be contained in the job description required by this Code section. The delegating physician shall remain responsible for the medical acts of the physician's assistant performing such delegated acts and shall adequately supervise the physician's assistant. If an existing job description for a physician's assistant does not contain such authority to carry out a prescription drug or device order as provided by this subsection, that physician's assistant may not issue any such prescription drug or device order until a new job description delegating such authority is submitted to and approved by the board. Nothing in this Code section shall be construed to authorize the written prescription drug order of a Schedule I or II controlled substance.

The definitional section in the amended Physician's Assistants Act, O.C.G.A. § 43-34-102(2), specifies that to carry out a prescription drug or device order "means to complete, on a form established and approved by the board, a written prescription drug order or a prescription device order pursuant to the authority delegated by a supervising physician." Therefore, the relevant question is whether the act of carrying out a prescription drug or device order is equivalent to the act of prescribing a drug or device. There is no affirmative provision in the Code that clearly answers this question. To find an answer, one must scrutinize the statutes further to determine the General Assembly's intent.

Two of the paragraphs under subsection 43-34-103(e.1) strongly suggest that the General Assembly meant to allow a physician's assistant to prescribe in a very limited context. Paragraph (2) of Code section 43-34-103(e.1) provides in part:

Nothing in this subsection shall be construed to create a presumption of 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 drug or device order presented by a patient pursuant to this subsection. The pharmacist shall presume that the prescription drug or device order was issued by a physician's assistant duly licensed 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 physician's assistant is an approved pharmaceutical agent, unless the pharmacist has actual or constructive knowledge to the contrary.

(Emphasis added.) The second sentence of this paragraph implicitly reads that a physician's assistant may qualify to prescribe pharmaceutical agents in the context of Code section 43-34-103. Furthermore, a fair reading of the next sentence clearly suggests that the physician's assistant is engaged in the act of prescribing when issuing a prescription drug or device order. Next, paragraph (8) of subsection 43-34-103(e.1) provides that a "physician's assistant is not permitted to prescribe drugs or devices except as authorized in the physician's assistant's job description and in accordance with this chapter." Although this paragraph does not affirmatively allow a physician's assistant to prescribe drugs or devices, the inference is that a physician's assistant may now prescribe drugs or devices, as authorized in his or her job description.

In 1999, the General Assembly also added a new subparagraph (C) to paragraph (23) of Code section 16-13-21. This amendment included physician's assistants in the definition of "practitioner" in the Georgia Controlled Substances Act and authorized physician's assistants to register with the federal Drug Enforcement Administration and appropriate state authorities and to allow them to dispense controlled substances, as provided in Code section 43-34-103(e.1). O.C.G.A. § 16-13-21(23)(C). The inclusion of physician's assistants as practitioners for purposes of the Georgia Controlled Substances Act is further indirect support that the General Assembly intended to authorize physician's assistants the power to prescribe in a limited context.

The apparent intent of the General Assembly in amending the Physician's Assistants Act in 1995 to add Code section 43-34-103(e.1) was to authorize physician's assistants to prescribe under certain conditions. However, Code section 43-34-26.1(a)(8), enacted in 1989, affirmatively provides that only a physician is allowed to engage in prescribing. It appears that there is an irreconcilable conflict between Code section 43-34-26.1(a)(8) and Code section 43-34-103(e.1) that can only be resolved by turning to the established rules of statutory construction.

The cardinal rule in construing statutes is that one tries to ascertain the intent of the General Assembly. O.C.G.A. § 1-3-1(a). In this case, there are two Code sections that are in conflict. The subsequent amendment of Section 43-34-103(e.1) does not specifically repeal the language contained in Code section 43-34-26.1(a)(8). While repeals by implication are generally disfavored, *Freeman v. Ryder Truck Lines*, 244 Ga. 80 (1979), the 1995 amendment does provide that "[a]ll laws and parts of laws in conflict with this Act are repealed." 1995 Ga. Laws 827, § 3. This language supports the conclusion that Code section 43-34-103(e.1), providing for the ability of physician's assistants to prescribe drugs or devices, controls over Code section 43-34-26.1(a)(8).

Moreover, in the event of conflicting provisions, the statute later in time governs as the last expression of the General Assembly's intent. *Foster v. Brown*, 199 Ga. 444, 451 (1945); *Carroll & Co. v. Langford Constr. Co.*, 182 Ga. App. 258, 260 (1987). "Where there is an irreconcilable conflict between an earlier statute and a subsequent enactment, the subsequent enactment governs. However, repeal by implication takes place only insofar as a statute is clearly repugnant to a former statute." *Evans v. Evans*, 242 Ga. 57, 58 (1978). In this case, the later statutory enactment of Code section 43-34-103(e.1) supersedes the statutory language in Code section 43-34-26.1(a)(8), as far as it is suggested that only physicians have the authority to engage in the act of prescribing.

Although it is my opinion that the General Assembly intended to grant physician's assistants the ability to lawfully prescribe certain pharmaceutical agents, it is very clear that the authority allowing physician's assistants to issue prescriptions is of a restricted nature. The General Assembly has apparently decided to place multiple checks on the prescribing authority of physician's assistants. For example, paragraph (3) of subsection 43-34-103(e.1) provides:

The physician's assistant shall only be authorized to exercise the rights granted under this subsection using a prescription drug or device order form which includes the name, address, and telephone number of the prescribing supervising physician, the patient's name and address, the drug or device prescribed, the number of refills, and directions to the patient with regard to the taking and dosage of the drug. Such form shall be signed by the physician's assistant using the following language:

This prescription authorized through: (the prescribing supervising physician) (M.D. or D.O.) by (the physician's assistant) PHYSICIAN'S ASSISTANT.

The name of the prescribing supervising physician shall be handwritten in the appropriate space by the physician's assistant on the prescription drug or device order form. Any form containing less information than that described in this paragraph shall not be offered to or accepted by any pharmacist who is duly licensed under Title 26.

Further controls are contained in paragraphs (4), (5), (6), and (7). A patient always has the right to see a physician prior to the issuance of a prescription by the physician's assistant. O.C.G.A. § 43-34-103(e.1)(4). A physician's assistant may only carry out the prescription order for a limited period. O.C.G.A. § 43-34-103(e.1)(5). The supervising physician is required to personally monitor all patients receiving controlled substances and to countersign all prescriptions issued by a physician's assistant within a period of time not to exceed seven days. O.C.G.A. § 43-34-103(e.1)(6) and (7). The General Assembly also has directed the Composite State Board of Medical Examiners to adopt rules carrying out the provisions of Code section 43-34-103(e.1) and to determine which drugs or devices may be included in a physician's assistant's job description. O.C.G.A. § 43-34-103(e.1)(9).

In summary, it is my official opinion that a physician's assistant may prescribe Schedule III, IV, and V controlled substances when acting under the requisite supervision of a physician, thereby permitting them to have a DEA number. However, it is clear that the physician's assistant may only prescribe these controlled substances pursuant to the authority delegated by the supervising physician and that authority must be contained in the physician's assistant's job description.

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