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CRIMES AND OFFENSES Hazing: Provide Definitions and Criminal Penalties

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CRIMES AND OFFENSES

Health Records: Prohibit Destruction, Alteration, or Falsification

CODE SECTION: O.C.G.A. § 16-10-94.1 (new)
BILL NUMBER: HB 1598
ACT NUMBER: 1168
SUMMARY: The Act prohibits the knowing and willful falsification, alteration, or destruction of health records if done with an "intent to conceal any material fact relating to a potential claim or cause of action."
EFFECTIVE DATE: July 1, 1988

History

O.C.G.A. § 16-10-94, enacted in 1974, defines the offense of tampering with evidence as the knowing destruction, alteration, concealment, disguise of physical evidence, or the manufacture of or planting of evidence.¹ The prohibition of tampering with evidence ensures the just prosecution or defense of any person² and its application is limited by the courts to criminal trials.³ Civil trials, in which alteration of patient records would be relevant, do not fall within the purview of the statute.⁴ HB 1598 was drafted to extend the crime of tampering with evidence to include destruction, alteration, or falsification of patient care records.⁵

HB 1598

Since patient health care records are under the control of health care providers, a great potential exists for the falsification of these records in

1. O.C.G.A. § 16-10-94(a) (1988). There must be an intent on the part of the tamperer "to prevent the apprehension or cause the wrongful apprehension of any person," or an intent "to obstruct the prosecution or defense of any person." *Id.* See also *Chastain v. State*, 255 Ga. 723, 725, 342 S.E.2d 678, 680 (1986) (defendant in murder case planted false evidence by placing a knife in the victim's hand). Individuals who tamper with evidence are guilty of a misdemeanor. O.C.G.A. § 16-10-94(c) (1988).

2. Telephone interview with Representative Kenneth Waldrep, House District No. 80 (Apr. 11, 1988) [hereinafter Waldrep Interview].

3. *Chastain v. State*, 255 Ga. 723, 342 S.E.2d 678 (1986); *Barfield v. State*, 160 Ga. App. 228, 286 S.E.2d 516 (1981) (no evidence of tampering in drug possession case).

4. Waldrep Interview, *supra* note 2.

5. *Id.*

the event of malpractice suits.⁶ The Act protects the interests of the patient in civil actions in which the health care records may play a vital role in establishing the plaintiff's cause of action.⁷

HB 1598 defines the operative terms of the Act.⁸ A "patient" is "any person who has received health care services from a provider."⁹ A "provider" is defined to include individual as well as institutional health care providers or facilities.¹⁰ A patient's health "record" includes specific components of the medical chart as well as "technical information used in assessing the patient's condition."¹¹

The Act requires that the offense be carried out knowingly and willfully with the intent to conceal information relating to potential claims.¹² The sponsors of the bill did not wish to make unintentional or inadvertent activity criminal and wanted to protect persons who merely altered or corrected clerical errors.¹³ The Act was drawn narrowly so that the entities affected by the Act will not be unreasonably burdened in their efforts to avoid prosecution.¹⁴ The final version of HB 1598 remained unchanged from the version initially introduced in the Georgia General Assembly during the 1988 legislative session.¹⁵ There was no opposition to the bill.¹⁶

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6. *Id.*

7. *Id.*

8. O.C.G.A. § 16-10-94.1(a)(1)—(3) (1988).

9. O.C.G.A. § 16-10-94.1(a)(1) (1988).

10. O.C.G.A. § 16-10-94.1(a)(2) (1988).

11. O.C.G.A. § 16-10-94.1(a)(3) (1988). The definition includes, but is not limited to, the following items: "evaluations, diagnoses, prognoses, laboratory reports, x-rays, prescriptions . . . or the pertinent portion of the record relating to a specific condition or a summary of the record." *Id.*

12. O.C.G.A. § 16-10-94.1(b) (1988).

13. Waldrep Interview, *supra* note 2.

14. *Id.*

15. *Id.*

16. *Id.*