

1-1-1988

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Recommended Citation

S. Bawtinheimer, *PROFESSIONS AND BUSINESSES Medical or Dental License Revocation: Provide Discretionary Stay*, 5 GA. ST. U. L. REV. (1988).

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PROFESSIONS AND BUSINESSES

Medical or Dental License Revocation: Provide Discretionary Stay

CODE SECTION: O.C.G.A. § 50-13-20 (amended)
BILL NUMBER: HB 1456
ACT NUMBER: 1157
SUMMARY: The Act allows the Georgia Supreme Court or the Court of Appeals to issue a discretionary stay of an agency decision revoking a medical or dental license.
EFFECTIVE DATE: July 1, 1988

History

HB 1456 amends O.C.G.A. § 50-13-20 to close an administrative loophole in the appellate review of medical or dental licensing revocations.¹ The State Board of Dentistry or the State Board of Medical Examiners are the licensing boards which make the initial determination to revoke or suspend a dental or medical license.² The first appeal of the decision of the licensing board is to the superior court.³ At a preliminary hearing, the petitioner may request a stay and the superior court has discretion to determine whether the public will be harmed by a stay of license revocation or suspension pending final adjudication.⁴ The petitioner can appeal the final judgment of the superior court to an appellate court.⁵

Under prior law, the filing of an application for or notice of appeal with an appellate court would automatically stay the enforcement of the agency decision.⁶ As a result of this loophole, a physician or dentist whose license was revoked could continue to practice until the appellate court ruled on the appeal.⁷

The bill was introduced by the Secretary of State's Administrative Office to abolish the automatic stay of license revocation upon the filing of this secondary appeal.⁸ The intent of this legislation is to protect the pub-

1. Telephone interview with Valerie A. Hepburn, Director of Administration, Secretary of State (Apr. 7, 1988) [hereinafter Hepburn Interview].

2. Hepburn Interview, *supra* note 1; see O.C.G.A. §§ 50-13-13, 50-13-18 (1986).

3. O.C.G.A. § 50-13-19(b) (1986).

4. O.C.G.A. § 50-13-19(d) (1986).

5. O.C.G.A. § 50-13-20 (Supp. 1988).

6. 1964 Ga. Laws 338.

7. Hepburn Interview, *supra* note 1.

8. *Id.*

lic from the potential misuse of existing appellate procedure.⁹ The statute is limited to medical or dental licensing review.¹⁰

HB 1456

HB 1456 amends O.C.G.A. § 50-13-20 by precluding an automatic stay of enforcement upon the invocation of the appellate procedure. Instead, it allows the Georgia Supreme Court and Georgia Court of Appeals to order a discretionary stay of the enforcement of medical or dental license revocation. The stay will be granted only if the appellate court determines that the public will not be harmed by the doctor's or dentist's practice until the appeal is concluded.¹¹ The Act allows the appellate courts the same discretion as the superior court to stay enforcement of the revocation or suspension during the pendency of the appeal.¹²

According to the bill's supporters, the bill was intended as a prophylactic measure; although the licensing boards have "rarely had a case where a doctor has appealed to the appellate court, serious offenders could have used this as a loophole."¹³ Both the dental and medical associations in Georgia supported this protection of the public,¹⁴ and there was no opposition in either the House or the Senate.¹⁵

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9. *Id.*

10. O.C.G.A. § 50-13-20 (Supp. 1988).

11. *Id.*

12. Telephone interview with Representative Pete Robinson, House District No. 96 (Apr. 5, 1988); see O.C.G.A. § 50-13-19(d) (1986).

13. Hepburn Interview, *supra* note 1.

14. *Id.*

15. The Senate passed HB 1456 by a vote of 44—0, with 12 senators not voting. GEORGIA SENATE ROLL CALL (Mar. 2, 1988). The House passed the bill by a hand vote of 121—0. HOUSE OF REPRESENTATIVES, WEEKLY LEGISLATIVE REPORT, at 8 (Feb. 12, 1988).