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## TORTS General Provisions: Provide Immunity to Physicians Providing Uncompensated Services to Nonprofessional Athletes

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## TORTS

### *General Provisions: Provide Immunity to Physicians Rendering Uncompensated Services to Nonprofessional Athletes*

CODE SECTION: O.C.G.A. § 51-1-45 (new)  
BILL NUMBER: HB 252  
ACT NUMBER: 528  
SUMMARY: The Act immunizes licensed physicians from civil liability for acts or omissions committed while providing physical examinations or serving as team doctors on a voluntary basis to amateur or nonprofessional athletes. Physicians guilty of willful or wanton acts or omissions do not receive immunity.  
EFFECTIVE DATE: July 1, 1993

#### *History*

Traditionally, physicians have provided their services to high school athletic teams free of charge.<sup>1</sup> Such services typically have included serving as the team doctor or performing preseason physical examinations.<sup>2</sup> Some doctors have performed free services for over three hundred athletes.<sup>3</sup>

However, as physicians have become increasingly subject to malpractice litigation, malpractice insurance premiums have increased.<sup>4</sup> When services are provided free of charge, there is no commensurate increase in revenue to compensate for the increased premiums.<sup>5</sup> Consequently, fewer physicians have been donating their time to perform free physical examinations on the athletes or to serve as team doctors.<sup>6</sup> Members of the medical profession who wanted to make contributions to public service felt that there were other worthwhile opportunities, unlike volunteering their services to athletes, that did not entail incurring increased cost and liability.<sup>7</sup>

Schools could not afford the additional cost of paying for team doctors and physical examinations; therefore, the burden of paying the

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1. Telephone Interview with Rep. Garland Pinholster, House District No. 15 (Apr. 15, 1993) [hereinafter Pinholster Interview]. Rep. Pinholster drafted HB 252. *Id.*

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

additional cost shifted to athletes individually.<sup>8</sup> As a result, this expense threatened to make participation in high school sports impossible for some athletes, especially in rural counties.<sup>9</sup>

### *HB 252*

The Act amends chapter 1 of title 51 by adding Code section 51-1-45, which provides immunity from civil damages to licensed physicians who render voluntary service without compensation to amateur or nonprofessional athletes.<sup>10</sup> The immunity applies to services rendered as the team doctor either during practices and contests or during preseason physical examinations.<sup>11</sup> The immunity extends to acts or omissions in arranging for subsequent treatment.<sup>12</sup> However, liability may still be imposed for willful or wanton acts or omissions.<sup>13</sup>

The Act only provides immunity to physicians performing services without compensation.<sup>14</sup> As introduced, the bill applied to any physician "who in good faith renders voluntary service as an athletic team physician."<sup>15</sup> When the bill was sent to the House Committee on Special Judiciary, the Committee returned its substitute version which changed the language to apply to any physician "who in good faith renders voluntary service without compensation as an athletic team physician."<sup>16</sup> The new language, which was added to emphasize that the service must be voluntary,<sup>17</sup> was adopted on the House floor.<sup>18</sup>

The Act provides immunity for services provided as a team doctor either at actual sports contests or at practice.<sup>19</sup> The original version of the bill only provided immunity for services as team doctor "during athletic contests or when conducting preseason physicals for the athletes."<sup>20</sup> The House Committee on Special Judiciary changed the quoted language to "during or in conjunction with athletic preparatory activities or athletic contests."<sup>21</sup> This Committee substitute version was adopted on the House floor.<sup>22</sup> The purpose of the change was to

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8. *Id.*

9. *Id.*

10. O.C.G.A. § 51-1-45 (Supp. 1993).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. HB 252, as introduced, 1993 Ga. Gen. Assem.

16. HB 252 (HCS), 1993 Ga. Gen. Assem.

17. Pinholster Interview, *supra* note 1.

18. HB 252 (HCSFA), 1993 Ga. Gen. Assem.

19. O.C.G.A. § 51-1-45 (Supp. 1993).

20. HB 252, as introduced, 1993 Ga. Gen. Assem.

21. HB 252 (HCS), 1993 Ga. Gen. Assem.

22. *See* HB 252 (HCSFA), 1993 Ga. Gen. Assem.

broaden the coverage of the bill to include more people.<sup>23</sup> When the bill was considered by the Senate, the Health and Human Services Committee changed the word "preparatory" to "practice."<sup>24</sup> This language remains in the final version passed by the House and Senate.<sup>25</sup>

The Act was intended to provide immunity only for services rendered to amateur or nonprofessional athletes.<sup>26</sup> As originally introduced, the bill was applicable to services provided to the "student athlete."<sup>27</sup> However, the House Committee on Special Judiciary changed the language to "amateur or nonprofessional athlete."<sup>28</sup> The Committee substitute version was adopted on the House floor.<sup>29</sup> The change resulted from the concern of some Committee members that the Act may be construed to include professional athletes.<sup>30</sup> The change was intended to eliminate professional teams from the coverage of the Act.<sup>31</sup> Although the Act might be read to immunize services provided to professional athletes, such a reading was not the intent of the General Assembly.<sup>32</sup>

Finally, the Act provides that liability may still be imposed where the physician is guilty of willful or wanton acts or omissions.<sup>33</sup> Because of legislative oversight, the provision regarding willful or wanton acts or omissions was omitted from the original version.<sup>34</sup> This was corrected in the substitute version by the House Committee on Special Judiciary.<sup>35</sup>

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- 23. Pinholster Interview, *supra* note 1.
  - 24. HB 252 (SCA), 1993 Ga. Gen. Assem.
  - 25. O.C.G.A. § 51-1-45 (Supp. 1993).
  - 26. Pinholster Interview, *supra* note 1.
  - 27. See HB 252, as introduced, 1993 Ga. Gen. Assem.
  - 28. HB 252 (HCS), 1993 Ga. Gen. Assem.
  - 29. HB 252 (HFACS), 1993 Ga. Gen. Assem.
  - 30. Pinholster Interview, *supra* note 1.
  - 31. *Id.*
  - 32. *Id.*
  - 33. O.C.G.A. § 51-1-45 (Supp. 1993).
  - 34. Pinholster Interview, *supra* note 1; see HB 252, as introduced, 1993 Ga. Gen. Assem.
  - 35. HB 252 (HCS), 1993 Ga. Gen. Assem.