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## PROFESSIONS AND BUSINESSES

### *Health: Registered Nurses and Physicians' Assistants May Order Drugs Under Protocol*

CODE SECTIONS: O.C.G.A. §§ 26-4-4 (amended), 43-26-4 (amended), 43-34-26 (amended), 43-34-103 (amended)

BILL NUMBER: HB 209

ACT NUMBER: 359

SUMMARY: The Act expands the scope of practice for registered professional nurses and physicians' assistants to include the ordering of certain drugs, medical treatments, and diagnostic studies by reference to a nurse protocol or a physician's assistant's job description. Registered nurses and physicians' assistants may dispense drugs in certain settings.

EFFECTIVE DATE: March 30, 1989

#### *History*

In May 1988, in response to a request from the Director of the Georgia Drugs and Narcotic Agency, the Attorney General of Georgia issued a formal opinion stating that nurses may not write or telephone in prescriptions by reference to a written protocol.<sup>1</sup> Interpreting the practice of nursing in Georgia to include only the administration of medications ordered by a physician, the Attorney General advised that there was no statutory authority for nurses to prescribe medications by reference to a written protocol.<sup>2</sup> This opinion shocked health care providers in Georgia because prescribing by protocol was a common nursing practice in Georgia.<sup>3</sup> The practice was especially prevalent in public health where nurses practiced by protocol to meet the needs of clients who could not afford private medical care or who lived in rural

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1. 1988 Op. Att'y Gen. 9. Protocols are a specific set of instructions constructed and approved by a licensed physician which guide the nurse in assessment and treatment. Greenfield, *Protocols As Analogs to Standing Orders* in *THE LAW AND THE EXPANDING NURSING ROLE* 186 (B. Bullough ed. 1980).

2. 1988 Op. Att'y Gen. 9.

3. McCarthy, *Nurses can't prescribe medicine, Bowers says*, Atlanta J., June 15, 1988, at C1, col. 1.

areas where physician accessibility was a problem.<sup>4</sup> Because of the Attorney General's opinion, public health clinics and other clinics serving the indigent stopped ordering medications by protocol, which created a crisis situation in health care in Georgia.<sup>5</sup> In the fall before the 1989 session, several groups drafted legislation to address the problems revealed by the Attorney General's opinion. The State Department of Human Resources drafted legislation that addressed protocols in the public health setting.<sup>6</sup> The Georgia Board of Nursing and the Georgia Nurses Association drafted a revised Nurse Practice Act which addressed the protocol issue.<sup>7</sup> Because the current Nurse Practice Act had not undergone major legislative revision since 1975, there were many reasons for revision; however, the Attorney General's opinion was the primary factor in introducing the revised Act.<sup>8</sup> The Chairman of the House Committee on Health and Ecology asked the Health Professions Subcommittee to review the matter. Prior to the legislative session, the subcommittee met several times to study the issue.<sup>9</sup> HB 209, as introduced, was a product of the work and investigation of this subcommittee.<sup>10</sup> The Health Professions Subcommittee was given the revised Nurse Practice Act, but the subcommittee chose to deal only with the protocol issue.<sup>11</sup>

Legislators agreed that legislation addressing public health needs had to be enacted.<sup>12</sup> Once legislators realized that protocols were utilized in settings other than public health, the decision was made to address the "whole problem."<sup>13</sup> After numerous revisions in the Health Professions House Subcommittee on Health and Ecology, HB 209 passed unanimously in the House. During these revisions a "turf struggle" developed<sup>14</sup> which

4. Hill, *House Bill May Again Let Nurses Give Drugs*, Atlanta J., Feb. 4, 1989, at C2, col. 5.

5. *Id.*

6. Telephone interview with Representative Jim Pannell, House District No. 122 (Apr. 20, 1989) [hereinafter Pannell Interview].

7. Georgia Registered Nurse Practice Act, Draft III, Oct. 3, 1988 (provided that a registered professional nurse would be authorized to administer, prescribe, and dispense medications and medical treatments by protocol).

8. Gould, *Nurse Practice Act - 1989*, GEORGIA'S LEAGUE FOR NURSING NEWSLETTER, Winter Quarter 1989 (available in Georgia State University College of Law Library).

9. Pannell Interview, *supra* note 6.

10. *Id.*

11. Interview with Susan Williamson, Executive Director, Georgia Nurses Association, in Atlanta (Mar. 30, 1989) [hereinafter Williamson Interview].

12. Pannell Interview, *supra* note 6.

13. *Id.*

14. Hill, *supra* note 4. Participants in this "turf struggle" included: Physicians who viewed the bill as potentially expanding the powers of nonphysicians, the Medical Association of Georgia (MAG) which opposed any increase in nonphysicians' powers because it would encroach upon a physician's practice, and pharmacists who viewed dispensing as a pharmacy issue and objected to other health care providers dispensing without pharmacy control. *Id.*

continued until the last day of the session. The bill was amended in the Senate Committee on Human Resources and then further amended by a floor amendment before being passed by the Senate. As the 1989 session drew to an end, a conference committee was appointed which adopted a compromise version of HB 209. The conference committee version passed both houses of the General Assembly on the last day of the session.<sup>15</sup> The Act reflects the interests of numerous lobbying groups, including: the State Department of Human Resources (DHR), the Georgia Association of Physicians' Assistants (GAPA), the Georgia Hospital Association (GHA), the Georgia Nurses Association (GNA), the Georgia Pharmaceutical Association (GPhA), and the Medical Association of Georgia (MAG).

### *HB 209*

Prior to the passage of HB 209, registered nurses in Georgia had statutory authority to administer medications<sup>16</sup> but no statutory authority to order medications.<sup>17</sup> Registered nurses who worked under protocol frequently ordered medications. This practice has existed in the public health arena since the mid-1970s.<sup>18</sup> The Attorney General, however, found no statutory authority for protocols, and ruled their use illegal.<sup>19</sup>

Although the Attorney General's opinion did not address the practices of physicians' assistants, the physicians' assistants involved themselves in HB 209. They were concerned that their practice of ordering medications might not be upheld if subjected to legal scrutiny.<sup>20</sup> Physicians' assistants are allowed to perform functions delegated to them by a physician.<sup>21</sup> Prior to HB 209, physicians' assistants' functions included ordering medications if the function had been delegated by job description to the physician's assistant.<sup>22</sup>

HB 209, as introduced, gave all registered professional nurses utilizing written protocols the authority to order diagnostic studies, treat clients, and order and dispense medications defined as dangerous drugs.<sup>23</sup> Physicians' assistants were given the same functions under a different requirement. Rather than utilizing a protocol, the physician's assistant's duties must be delegated in the physician's assistant's job description.<sup>24</sup>

15. Final Composite Status Sheet, Mar. 15, 1989.

16. O.C.G.A. § 43-26-1(3) (1988).

17. 1988 Op. Att'y Gen. 9.

18. McCarthy, *supra* note 3.

19. 1988 Op. Att'y Gen. 9.

20. Telephone interview with Mickey Ward, Chairman Legislative Committee, Georgia Association of Physicians' Assistants (Apr. 20, 1989) [hereinafter Ward Interview].

21. O.C.G.A. § 43-34-103 (1988).

22. Ward Interview, *supra* note 20.

23. HB 209, as introduced, 1989 Ga. Gen. Assem.

24. *Id.*

The MAG felt the bill was too expansive and allowed for poor quality health care due to lack of physician involvement.<sup>25</sup> An amendment was offered to limit the settings where registered nurses and physicians' assistants could order and dispense medication. The Health Professions House Subcommittee on Health and Ecology amended HB 209 by limiting the settings to situations where health care is provided to individuals who cannot afford private medical care.<sup>26</sup> This section was further amended in the Senate.

The Act provides that a registered nurse or physician's assistant can order and dispense medications only if the nurse or physician's assistant is an agent or employee of: the public health division of DHR; the County Board of Health; certain tax-exempt agencies;<sup>27</sup> or an outpatient clinic owned or operated by a hospital where the clinical services are provided primarily to the medically disadvantaged.<sup>28</sup> The intent of this provision was to limit nurses who are not advanced practitioners<sup>29</sup> to dispensing and ordering only in indigent settings. Even though "medically disadvantaged" is not defined in the bill, the intent was clearly to limit the settings to indigent care.<sup>30</sup>

Some legislators and lobbyists expressed concern that this amendment set up a two-tier system, one system for the poor and another system for those who could afford to pay for medical care.<sup>31</sup> If all registered nurses could order under protocol in settings designed to provide health care for the poor, why couldn't all nurses order under protocol in the private sector? MAG, strongly opposed to broadening the scope of registered nurses and physicians' assistants, was willing to compromise in indigent care but did not want to expand the practice of registered nurses or physicians' assistants in the private sector.<sup>32</sup> Since the motivating factor for the legislation was to provide care for the poor,

25. Telephone interview with Richard Greene, General Counsel, Medical Association of Georgia (Apr. 19 1989) [hereinafter Greene Interview].

26. HB 209 (HCS), 1989 Ga. Gen. Assem. To order or dispense drugs the nurse or physician's assistant must work in one of the following agencies or organizations: Division of Public Health of DHR, County Board of Health, a tax-exempt agency, organization established under the authority of or receiving funds pursuant to 42 U.S.C. § 254(b) or § 254(c) of the United States Public Health Service, or any project of a hospital which provides care at no cost or on ability to pay. *Id.*

27. Applied to tax-exempt agencies under I.R.C. § 501(c)(3) (West 1988) except if that tax-exempt agency is a hospital, a preferred provider organization, or a health maintenance organization. O.C.G.A. § 43-34-26.1(b)(2)-(3) (Supp. 1989).

28. O.C.G.A. § 43-34-26.1(b)(2)-(3) (Supp. 1989).

29. "Advanced practice nurses" are nurses recognized by the Georgia Board of Nursing as advanced practitioners and are limited to "certified nurse midwife, certified registered nurse anesthetist, certified nurse practitioner, or clinical nurse specialist, psychiatric/mental health." O.C.G.A. § 43-34-26.1(b)(1)(B) (Supp. 1989).

30. Greene Interview, *supra* note 25.

31. Pannell Interview, *supra* note 6; Williamson Interview, *supra* note 11.

32. Greene Interview, *supra* note 25.

the two-tier system was justified as an economic reality.<sup>33</sup> Without utilizing nurses and physicians' assistants to order diagnostic studies, treat clients, and order and dispense medications by protocol, the State of Georgia could not provide adequate health care in public health clinics and other clinics which provide care for those unable to pay.<sup>34</sup>

The GNA and the GAPA successfully lobbied and obtained authority for advanced practice nurses<sup>35</sup> and physician's assistants to order both dangerous drugs<sup>36</sup> and specified controlled substances<sup>37</sup> regardless of the setting; these medications cannot be dispensed by the advanced practice nurse or physician's assistant, however, unless he or she works in an indigent setting.<sup>38</sup> HB 209, as passed by the Senate, allowed advanced practice nurses and physicians' assistants to dispense to inpatients in a licensed hospital, but this provision was deleted by the conference committee.<sup>39</sup>

Because only advanced practice nurses in hospitals and nursing homes were authorized to use protocols for treating patients and ordering medications, questions arose regarding life-threatening situations where all registered nurses commonly follow standard procedures established by physicians to initiate life-saving measures which include the ordering of medications and treating of patients. The Senate Human Resources Committee amended the bill to authorize the use of standing procedures in life-threatening situations; therefore, when any registered nurse or physician's assistant responds to an emergency in a hospital or nursing home, the nurse or physician's assistant has statutory authority to "perform any act deemed necessary to provide treatment" in a life-threatening situation as long as the acts are authorized by standing procedures established by the medical staff.<sup>40</sup>

33. Interview with Senator Pierre Howard, Senate District No. 42, in Atlanta (Mar. 15, 1989).

34. Hill, *supra* note 4.

35. O.C.G.A. § 43-34-26.1(b)(1)(B) (Supp. 1989). *See supra* note 29 and accompanying text.

36. O.C.G.A. § 43-34-26.1(a)(4) (Supp. 1989) (defines "dangerous drug" as "any dangerous drug, as defined in Code Section 16-13-71, but does not include any controlled substance or Schedule I controlled substance").

37. O.C.G.A. § 43-34-26.1(a)(2) (Supp. 1989) (defines "controlled substance" as "any controlled substance, as defined in Code Section 16-13-21, except any Schedule I controlled substance listed in Code Section 16-13-25").

38. O.C.G.A. § 43-34-26.1(b)(2)-(3) (Supp. 1989).

39. Telephone interview with Paul Bolster, Lobbyist, Georgia Hospital Association (Apr. 3, 1989) [hereinafter Bolster Interview]. The Georgia Pharmaceutical Association objected to advanced practice nurses and physicians' assistants dispensing medications in the hospital, and the Georgia Hospital Association was willing to delete this provision in the spirit of compromise. *Id.*

40. HB 209 (SCS), 1989 Ga. Gen. Assem.

Dispensing<sup>41</sup> of medications is routinely done by pharmacists; therefore, the GPhA opposed allowing other health care providers to dispense medications without adequate safeguards.<sup>42</sup> In the Senate Human Resources Committee, an amendment offered by the GPhA would have mandated pharmacy participation in the dispensing procedures; however, the amendment was defeated.<sup>43</sup> The amendment was again introduced as a floor amendment in the Senate, and after lengthy debate, was approved. The amendment provided for a dispensing procedure<sup>44</sup> and gave pharmacists authority to delegate to physicians' assistants and nurses the authority to dispense medications.<sup>45</sup> The GNA and GPhA strongly opposed this amendment.<sup>46</sup> From the perspective of the GNA and the GPhA, the physician has delegated authority to dispense and order medicants to the registered nurse or physician's assistant working under protocol. Nurses and physicians' assistants opposed having to obtain additional authority to dispense from pharmacists. The GPhA was of the opinion that there were no precedents for pharmacists to supervise physicians' assistants.<sup>47</sup> Concerns were expressed that this amendment would increase costs by necessitating pharmacist involvement when medications were dispensed. The conference committee deleted the delegation authority of the pharmacist but kept the dispensing procedure.<sup>48</sup> Any clinic which dispenses medications must have a dispensing procedure which has been signed by a physician and a pharmacist.<sup>49</sup>

HB 209, as introduced, did not authorize the "prescribing" of medications but only the "ordering" of medications. The definition of "ordering" underwent several revisions because MAG and GPhA were opposed to giving nurses and physicians' assistants the authority to write a prescription. The bill's final version clearly prohibits the writing

41. "Dispensing" is defined as the "issuance of one or more doses of medication in a suitable container with appropriate labeling for subsequent administration to, or use by, a patient." O.C.G.A. § 26-4-2(6) (Supp. 1989).

42. Telephone interview with Wayne Oliver, Director of Governmental Affairs, Georgia Pharmaceutical Association (Apr. 19, 1989).

43. HB 209 (SCS), 1989 Ga. Gen. Assem.

44. HB 209 (SCSFA), 1989 Ga. Gen. Assem. (defined "dispensing procedure" as a "written document signed by a licensed pharmacist, by which document the pharmacist establishes the appropriate manner under which drugs may be dispensed pursuant to this Code section").

45. HB 209 (SCSFA), 1989 Ga. Gen. Assem. (provided that a "pharmacist may delegate to a physician's assistant or nurse the authority to dispense dangerous drugs pursuant to a dispensing procedure").

46. Williamson Interview, *supra* note 11; Ward Interview, *supra* note 20.

47. Ward Interview, *supra* note 20.

48. HB 209 (CCS), 1989 Ga. Gen. Assem. The definition of dispensing procedure was amended to include a physician's signature along with the pharmacist's signature. *Id.*

49. O.C.G.A. § 43-34-26.1(a)(3.1), (b)(2) (Supp. 1989).

of prescriptions by a registered nurse or physician's assistant.<sup>50</sup> A nurse or physician's assistant may call a pharmacist and order a medication by reference to protocol or job description, but the nurse or physician's assistant may not write out a prescription and give it to the client. The conference committee discussed language that could have prevented advanced practice nurses and physicians' assistants from writing orders on a hospital chart.<sup>51</sup> GAPA and GNA strongly opposed this language; accordingly, the definition of "order" was amended to prohibit only the writing of prescriptions by physician's assistants and advanced practice nurses. The Act now provides two methods for a patient to receive a medication: by a prescription and by an order.<sup>52</sup>

HB 209, as introduced, authorized certain certified emergency medical personnel to administer drugs pursuant to an emergency medical personnel protocol.<sup>53</sup> This provision was deleted in the House Health Professions Subcommittee on Health and Ecology because emergency medical personnel work under direct orders from physicians; therefore, there was no justification for expanding the powers of the emergency medical personnel, who did not lobby in opposition to the deletion.<sup>54</sup>

The Act authorizes three boards to promulgate rules and regulations. The Georgia Board of Pharmacy has the authority to promulgate rules and regulations regarding the dispensing of drugs.<sup>55</sup> The Georgia Board of Nursing is charged with promulgating rules and regulations governing "nurses performing under a nurse protocol."<sup>56</sup> The Composite State Board of Medical Examiners is empowered to promulgate rules and regulations "to carry out the intents and purposes of this Code section."<sup>57</sup> This will include "establishing criteria and standards governing physician's [sic], physician's assistants, job descriptions, and nurse protocols."<sup>58</sup> The Composite State Board of Medical Examiners can reject protocols not within established criteria and standards. The Secretary of State has asked each group to appoint two representatives to a committee to work together to assure that the rules and regulations promulgated by each board do not conflict.<sup>59</sup>

HB 209, as passed by the House, did not "limit or repeal the authority of any organization" to "supervise or provide for professional standards

50. O.C.G.A. § 43-34-26.1(a)(8) (Supp. 1989) (provides that ordering "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").

51. Ward Interview, *supra* note 20.

52. Bolster Interview, *supra* note 39.

53. HB 209, as introduced, 1989 Ga. Gen. Assem.

54. Bolster Interview, *supra* note 39.

55. O.C.G.A. § 26-4-4(f) (Supp. 1989).

56. O.C.G.A. § 43-26-4(a)(12) (Supp. 1989).

57. O.C.G.A. § 43-34-26.1(c) (Supp. 1989).

58. *Id.*

59. Ward Interview, *supra* note 20.



and criteria for any agent or employee of such organization.”<sup>60</sup> This language created concern that the bill could be interpreted to give the employing agency the authority to set up professional standards and criteria related to protocols and job descriptions;<sup>61</sup> however, the Act grants this authority to the Composite State Board of Medical Examiners.<sup>62</sup> The Senate Committee on Human Resources amended the language to clearly state its intent not to interfere with the agency’s supervision of its employees, while withholding from the agency the power to promulgate standards and criteria regarding physicians, physicians’ assistants, job descriptions, and nurse protocols.<sup>63</sup>

HB 209 was crucial to meeting the health care needs of Georgians. Although legislators realized the need for some type of legislation, intense lobbying and debate occurred regarding the scope of the bill. The Act represents the compromises and victories of numerous health care groups. Registered nurses and physicians’ assistants now have statutory authority for a practice that had been in existence for years. The Act has created two levels of health care. Although some would argue that all Georgians have a right to care by a physician, this unfortunately is not an economic reality. By utilizing the expertise of registered nurses and physicians’ assistants, HB 209 provides that all Georgians, including the indigent, will have access to health care.

*B. Rowe*

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60. HB 209 (HCS), 1989 Ga. Gen. Assem.

61. Greene Interview, *supra* note 25.

62. *Id.*; See O.C.G.A. § 43-34-26.1(c) (Supp. 1989).

63. HB 209 (SCS), 1989 Ga. Gen. Assem.