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HEALTH Performance of Sterilization Procedures: Deletion of Spousal Consent and Consulting Opinion Requirements

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HEALTH

Performance of Sterilization Procedures: Deletion of Spousal Consent and Consulting Opinion Requirements

CODE SECTIONS:	O.C.G.A. § 31-20-2 (amended)
BILL NUMBER:	SB 552
ACT NUMBER:	1074
SUMMARY:	The Act deletes the requirements for spousal consent and a second medical opinion that were previously required before a vasectomy, tubal ligation, or other sterilization procedures could be obtained.
EFFECTIVE DATE:	July 1, 1990

History

The Georgia Voluntary Sterilization Act was enacted in 1966.[1] It outlined requirements for obtaining sterilization and protected the medical profession from civil liability or criminal prosecution when sterilization was performed in accordance with the statute.[2] The objectives of the 1966 regulations were twofold: to legalize sterilization and to insulate physicians from liability for performing sterilization procedures.[3]

These regulations required the consent of the spouse, as well as the consent of the patient.[4] The physician was also required to consult with another physician before performing the operation.[5] Both of these requirements were largely ignored in practice due to the inconvenience and cost to the patient.[6] The medical community recognized the

1. 1970 Ga. Laws 683.

2. 1970 Ga. Laws 683 (formerly found at O.C.G.A. § 31-20-5 (1985)). "When an operation shall have been performed in compliance with this chapter, no physician duly licensed . . . shall be liable civilly or criminally as a result of such operation or participation therein, except in the case of negligence in the performance of such operation." *Id.*

3. Dohn v. Lovell, 187 Ga. App. 523, 523, 370 S.E.2d 789, 790–91 (1988).

4. 1970 Ga. Laws 683 (formerly found at O.C.G.A. § 31-20-2 (1985)) (a request for sterilization must be made by the person seeking the procedure "and by his or her spouse if married and such spouse can be found after reasonable effort . . .").

5. *Id.* This section required the physician to act "in collaboration or consultation with at least one other physician . . . ." *Id.*

6. Telephone interview with Senator Donn Peevy, Special Judiciary Committee Chairman, Senate District No. 48 (Mar. 15, 1990) [hereinafter Peevy Interview].

ineffectiveness of the requirements and, therefore, sought their repeal.[7] The Georgia Supreme Court never addressed the spousal consent issue; however, the United States District Court for the Northern District of Georgia held the consent requirement unconstitutional in a 1976 suit against the Attorney General of Georgia.[8]

SB 552

SB 552 deletes the requirements for a second medical opinion and spousal consent.[9] The original version of the bill did not meet any opposition, and passed both houses without change.[10] The lack of opposition surprised some legislators because the issue could be tied to the general abortion issue, and was, therefore, potentially volatile.[11] The bill allows patients to undergo sterilization without consent from their spouses, and permits physicians to perform the procedure without consulting other physicians.[12] The bill leaves undisturbed the initial purposes of the Voluntary Sterilization Act: to legalize a sterilization performed by a physician and to exempt the physician from liability for performing such a procedure.[13] The requirement that the physician give a full explanation about the procedure was also untouched.[14]

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7. Peevy Interview, *supra* note 6.

8. Francis Coe v. Arthur Bolton, No. C76-785A (N.D.Ga. Sept. 1976). Cases concerning spousal consent and sterilization have not reached the United States Supreme Court, because of the lack of state action. These challenges have lacked state action because they have been directed to the policy of private hospitals or clinics, and not to state law. *See* Spencer v. Southeast Missouri Hospital, 452 F. Supp. 597 (E.D. Mo. 1978); Holton v. Crozer-Chester Medical Center, 560 F.2d 575 (3d Cir. 1977). *See also* Doe v. Temple, 409 F. Supp. 899 (E.D. Va. 1976), in which the court stated that the parties had standing, established a three-judge panel to consider the issues, but published no final court decision on the issues.

9. O.C.G.A. § 31-20-2 (Supp. 1990).

10. Final Composite Status Sheet, Mar. 9, 1990.

11. Telephone interview with Representative Mary Margaret Oliver, House District No. 53 (Mar. 20, 1990).

12. O.C.G.A. § 31-20-2 (Supp. 1990).

13. *See supra* text accompanying note 3.

14. 1970 Ga. Laws 683 (formerly found at O.C.G.A. § 31-20-2 (1985)). This requirement has been the focus of much litigation. It requires that "a full and reasonable medical explanation is given by such physician to such person as to the meaning and consequence of such operation." *Id.* Litigation has centered on whether this language required the physician to describe the actual procedure and the attendant risks, or only required the physician to tell the patient that the operation would render the patient incapable of having children. *See* Robinson v. Parrish, 251 Ga. 496, 306 S.E.2d 922 (1983); Dohn v. Lovell, 187 Ga. App. 523, 370 S.E.2d 789 (1988). The most recent interpretation requires the physician to give the patient "a full and reasonable medical explanation ... as to the *method* to be employed in such sterilization operation so that the patient will understand *how* his or her inability to have children will result." *Dohn*, 187 Ga. App. at 525—26, 370 S.E.2d at 792 (emphasis in original).

Although Georgia courts have not addressed the issue, constitutional objections to spousal consent provisions have been decided in other jurisdictions at the appellate level, in cases involving abortion but not sterilization.[15] Such spousal consent provisions in abortion cases have been held to be an undue burden on a woman's right to privacy and, therefore, unconstitutional.[16] Heavy reliance on the abortion cases allowed the United States District Court for the Northern District of Georgia to declare the language of § 31-20-2 unconstitutional in 1976.[17] This case was not appealed and, consequently, received little notice outside the medical community, which took the practical approach of ignoring the written requirements of the law.[18] Deleting this requirement in sterilization procedures avoids any future constitutional attacks based on the same rationale.[19]

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15. *See* Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976). Standing requirements have defeated the spousal consent issue from being decided in sterilization cases. *Id.* Georgia courts have not addressed the issue of spousal consent requirements involving abortions.

16. *Id.*

17. Francis Coe v. Arthur Bolton, No. C76-785A (N.D.Ga. Sep. 1976).

18. Peevy Interview, *supra* note 6.

19. *Id. See also supra* note 8.