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EVIDENCE

Witnesses Generally: Limit Circumstances in Which Pharmacists May be Required to Release Medical Information About Patients

CODE SECTION: O.C.G.A. § 24-9-40 (amended)
BILL NUMBER: SB 154
ACT NUMBER: 505
SUMMARY: The Act prohibits a pharmacist from being required to release medical information about a patient, unless there is a written waiver by the patient or the patient's legal representative, a court order, or subpoena requiring release. Pharmacists releasing information pursuant to a waiver, court order, or subpoena are not liable for doing so. Patients waive the limited privilege of confidentiality provided by the Act to the extent that they put their care of treatment at injuries in issue in an administrative, civil, or criminal proceeding.
EFFECTIVE DATE: July 1, 1993

History

Under the Omnibus Budget Reconciliation Act of 1990,¹ Congress imposed new guidelines requiring that pharmacy counseling be provided to patients whose drugs were paid for by Medicaid.² To avoid having a two-tiered system, the State Board of Pharmacy promulgated regulations effective January 1, 1993 that required pharmacy counseling to be provided to all patients.³ To comply with the new requirement, pharmacists needed more in-depth patient histories, requiring the patient to provide confidential information.⁴ However, there was no law protecting pharmacists from being required to disclose such information.⁵

1. Pub. L. No. 101-508, 104 Stat. 1388 (1990).

2. Telephone Interview with Sen. Eddie Madden, Senate District No. 47 (June 1, 1993) [hereinafter Madden Interview]. Sen. Madden was one of the sponsors of the bill. *Id.* The restriction on Medicaid payment is codified at 42 U.S.C.S. § 1396b(i)(10) (Law. Co-op. Supp. 1993). *Id.* Specific requirements for state drug use review programs are contained at 42 U.S.C.S. § 1396r-8(g) (Law. Co-op. Supp. 1993).

3. Madden Interview, *supra* note 2; see also GA. COMP. R. & REGS. r. 480-31-.01 (1993).

4. Madden Interview, *supra* note 2.

5. *Id.*

SB 154

The Act amends Code section 24-9-40, relating to circumstances where medical information may be released by a physician, hospital, or health care facility⁶ by extending a similar privilege to pharmacists.⁷ Language from prior Code section 24-9-40 is designated subsection (a), and a new subsection (b) is created pertaining to pharmacists.⁸

The Act provides that pharmacists generally cannot be required to release medical information concerning patients.⁹ The Act provides an exception where there is a written authorization or other waiver by the patient, or in the case of a minor, by a parent or guardian ad litem.¹⁰ Information may also be released under a court order or subpoena.¹¹ The Act explicitly protects pharmacists from liability for releasing information pursuant to a written authorization, other waiver, court order, or subpoena.¹² Further, a pharmacist may be required to release information when a patient places the patient's treatment or physical injury at issue in an administrative, civil, or criminal proceeding.¹³ However, the patient waives the privilege only to that extent.¹⁴

The provision created by the Act essentially parallels law regarding privileged information provided by physicians, hospitals, and health care facilities as it existed prior to 1982.¹⁵ However, the privilege established currently for physicians, hospitals, and health care facilities provides that physicians may be required to release information where the information is requested by the Department of Human Resources to administer public health programs and "where authorized or required by law, statute, or lawful regulation."¹⁶ These exceptions do not apply to pharmacists.¹⁷ The reason for the different language in subsection (a) and subsection (b) is that pharmacists are not regulated by the Department of Human Resources.¹⁸

The provisions protecting pharmacists from liability also parallel the law applicable to physicians prior to 1982.¹⁹ Physicians are protected under subsection (a) from liability for releasing information "pursuant

6. 1986 Ga. Laws 1277 (formerly found at O.C.G.A. § 24-9-40 (Supp. 1992)).

7. O.C.G.A. § 24-9-40(b) (Supp. 1993).

8. *Id.* § 24-9-40 (Supp. 1993).

9. *Id.* § 24-9-40(b) (Supp. 1993).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *See* 1978 Ga. Laws 1657 (formerly found at O.C.G.A. § 24-9-40 (1982)).

16. O.C.G.A. § 24-9-40(a) (Supp. 1993).

17. *Id.* § 24-9-40(b) (Supp. 1993).

18. Madden Interview, *supra* note 2.

19. *See* 1978 Ga. Laws 1657 (formerly found at O.C.G.A. § 29-4-40 (1982)).

to law, statute, or regulation.”²⁰ Subsection (b) pertaining to pharmacists provides no such protection.²¹ Pharmacists, unlike physicians, are not required to release medical information pursuant to law, statute, or regulation.²² Consequently, the General Assembly did not provide the protection from liability for such disclosure that is afforded to physicians.²³

The Act also has a slightly different waiver provision than the one applicable to physicians. Patients of pharmacists waive the privilege to the extent that they place their treatment or injuries at issue in an “administrative, civil, or criminal proceeding.”²⁴ However, the waiver only applies to physicians’ patients who waive their privilege only when they place their treatment or injuries at issue in a “civil or criminal proceeding.”²⁵ The different language in subsection (b) encompasses administrative proceedings so that the privilege will be waived to the extent that treatment or injuries are placed at issue in a workers’ compensation hearing.²⁶

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20. See O.C.G.A. § 24-9-40(a) (Supp. 1993).

21. *Id.* § 24-9-40(b) (Supp. 1993).

22. *Id.* § 24-9-40 (Supp. 1993).

23. Madden Interview, *supra* note 2.

24. O.C.G.A. § 24-9-40(b) (Supp. 1993).

25. *Id.* § 24-9-40(a) (Supp. 1993).

26. Madden Interview, *supra* note 2.