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# PROFESSIONS AND BUSINESSES Physicians, Physician's Assistants, and Respiratory Care: Authorize Prescription of Certain Controlled Substances and Medical Devices by Physician's Assistants

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## PROFESSIONS AND BUSINESSES

### *Physicians, Physician's Assistants, and Respiratory Care: Authorize Prescription of Certain Controlled Substances and Medical Devices by Physician's Assistants*

CODE SECTIONS: O.C.G.A. §§ 43-34-102 to -103 (amended)  
BILL NUMBER: HB 285  
ACT NUMBER: 386  
GEORGIA LAWS: 1995 Ga. Laws 827  
SUMMARY: The Act allows physician's assistants to prescribe certain controlled substances pursuant to authority delegated by their supervising physician. The Act establishes requirements for both the physician's assistant and the supervising physician in prescribing controlled substances. Additionally, the Act provides that there shall be no presumption of civil or criminal liability against a pharmacist who fills a prescription issued by a physician's assistant. Lastly, the Act requires the Composite Board of Medical Examiners to adopt certain rules and regulations consistent with the Act.

EFFECTIVE DATE: July 1, 1995

#### *History*

Increased health care costs, coupled with a shortage of primary-care physicians, have led many states to allow nurse practitioners and physician's assistants to broaden their roles in providing medical care.<sup>1</sup> Approximately three years ago, the Georgia Association of Physician Assistants (GAPA)<sup>2</sup> began

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1. Telephone Interview with Rep. Jim Martin, House District No. 47 (Apr. 27, 1995) [hereinafter Martin Interview]; see also Steve Sternberg, *Introducing—Dr. Nurse*, ATLANTA J. & CONST., Aug. 15, 1993, at G1.

2. It is the author's understanding that the GAPA prefers the term "physician assistant." However, the author will use the term "physician's assistant" because that is the term used in the Act.

urging the Georgia General Assembly to follow the lead of thirty-six other states and the District of Columbia by allowing physician's assistants to write prescriptions for controlled substances.<sup>3</sup> The GAPA, along with the Medical Association of Georgia, worked with the Georgia General Assembly to produce this legislation, which is intended to improve access to health care without harming the quality of care.<sup>4</sup>

### *HB 285*

The purpose of the Act is to grant physician's assistants the authority to issue prescriptions for certain controlled substances in order to improve access to health care.<sup>5</sup> The Act amends Code section 43-34-103 by adding subsection (e.1).<sup>6</sup> Subsection (e.1)(1) permits physician's assistants to issue prescriptions for any drug or device, as defined in Code section 26-4-2, or any Schedule III, IV, or V controlled substance, as defined in Code section 16-13-21.<sup>7</sup>

After being introduced on the House floor, HB 285 was sent to the Committee on Health and Ecology.<sup>8</sup> The Committee provided a substitute bill that made several additions to the original bill while preserving most of the original language.<sup>9</sup> First, the Committee added a definition for the phrase "carry out a prescription drug or device order."<sup>10</sup> This change was necessary to provide a working definition for the phrase because it was substituted throughout the bill for the term "issue."<sup>11</sup> The House Committee made this change because "carry out" is a term of art within the medical profession.<sup>12</sup> Thus, the substitution was

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3. Martin Interview, *supra* note 1.

4. Martin Interview, *supra* note 1. The Medical Association of Georgia, which opposed the bill, successfully introduced measures to strengthen the control aspects of the legislation. Martin Interview, *supra* note 1.

5. Martin Interview, *supra* note 1.

6. O.C.G.A. § 43-34-103(e.1)(1)-(10) (Supp. 1995).

7. *Id.* § 43-34-103(e.1)(1).

8. Final Composite Status Sheet, Mar. 17, 1995.

9. Compare HB 285, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. §§ 43-34-102 to -103 (Supp. 1995).

10. HB 285 (HCS), 1995 Ga. Gen. Assem.

11. Compare HB 285, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 43-34-103(e.1)(1) (Supp. 1995).

12. Martin Interview, *supra* note 1.

necessary to comport with proper medical terminology.<sup>13</sup> This committee substitute was approved by both the House and Senate.<sup>14</sup>

### *Job Descriptions; Presumptions*

The Act requires that the physician's assistant's job description include the authority to issue such prescriptions.<sup>15</sup> Additionally, the Act provides that there shall be no presumption of civil or criminal liability against a licensed pharmacist who in good faith fills a prescription issued pursuant to this subsection.<sup>16</sup> Furthermore, the Act creates a presumption that the prescription was ordered by a qualified physician's assistant and that the prescribed pharmaceutical agent is an approved pharmaceutical agent, unless the pharmacist has actual or constructive knowledge to the contrary.<sup>17</sup>

To carry out a prescription, the physician's assistant's job description must include express authority from a supervising physician.<sup>18</sup> The job description must list the specific drugs or devices that the physician's assistant is permitted to prescribe, and the job description must be approved by the Composite Board of Medical Examiners (Board).<sup>19</sup>

### *Unauthorized Prescriptions; Required Information*

The Act amends Code section 43-34-103 to provide that nothing in this Code section authorizes a physician's assistant to prescribe a Schedule I or II controlled substance.<sup>20</sup> This

13. Martin Interview, *supra* note 1.

14. Final Composite Status Sheet, Mar. 17, 1995.

15. O.C.G.A. § 43-34-103(e.1)(1) (Supp. 1995).

16. *Id.* § 43-34-103(e.1)(2).

17. *Id.*

18. *Id.* § 43-34-103(e.1)(1).

19. *Id.* §§ 43-34-103(e.1), (9), -102(1); Martin Interview, *supra* note 1; Telephone Interview with Rep. E.M. "Buddy" Childers, House District No. 13 (Apr. 27, 1995) [hereinafter Childers Interview]. According to both Rep. Childers and Rep. Martin, the Board will provide the specifics as to how detailed a job description must be. See O.C.G.A. § 43-34-103(e.1)(9)(c) (Supp. 1995). For example, whether each particular drug must be designated according to its brand name or whether generic terms may be used will be left for the Board to decide. Childers Interview, *supra*; Martin Interview, *supra* note 1.

20. O.C.G.A. § 43-34-103(e.1)(2) (Supp. 1995).

language did not exist in the original version of the bill<sup>21</sup> and was added to expressly prohibit such conduct by a physician's assistant.<sup>22</sup> Because Schedule I and II controlled substances are so dangerous and seldomly prescribed, the General Assembly believed that prohibiting the prescription of these substances would not interfere with the goals of the legislation.<sup>23</sup>

Additionally, the Act provides a detailed description of the language that must appear on the form on which a physician's assistant carries out a prescription order.<sup>24</sup> Specifically, the form must include the "name, address, and telephone number of the prescribing supervising physician, the patient's name and address, the drug or device prescribed, the number of refills, and directions to the patient with regard to the taking and dosage of the drug."<sup>25</sup> The Act also requires that the signature line of the form include the following language: "This prescription authorized through: (*the prescribing supervising physician*) (M.D. or D.O.) by (*the physician's assistant*) PHYSICIAN'S ASSISTANT."<sup>26</sup> The supervising physician's name must also be handwritten in the appropriate space.<sup>27</sup> The handwriting requirement protects against improper use of the form and provides notice to the patient that the physician's assistant's authority is derived from the supervising physician.<sup>28</sup> Any form that fails to include the above-listed information is invalid and shall not be accepted by any pharmacist.<sup>29</sup>

### *Supervisory Controls*

The Act establishes regulations to which the physician's assistant and supervising physician must adhere when carrying out prescriptions under this Code section.<sup>30</sup> For example, the Act

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21. See HB 285, as introduced, 1995 Ga. Gen. Assem.

22. Martin Interview, *supra* note 1; Childers Interview, *supra* note 19.

23. Martin Interview, *supra* note 1; Childers Interview, *supra* note 19.

24. O.C.G.A. § 43-34-103(e.1)(3) (Supp. 1995).

25. *Id.*

26. *Id.*

27. *Id.*

28. Childers Interview, *supra* note 19; Martin Interview, *supra* note 1.

29. O.C.G.A. § 43-34-103(e.1)(3) (Supp. 1995).

30. See *id.* § 43-34-103(e.1)(4), (5), (8) (concerning physician's assistant's duties); *id.* § 43-34-103(e.1)(6), (7)(B) (concerning supervising physician's duties).

requires the physician's assistant to notify patients of their right to see the physician regarding the prescription before it is carried out.<sup>31</sup> This notice requirement was included to protect the rights of the patient by ensuring that the patient knows a physician's assistant, not a physician, is prescribing the drug or device.<sup>32</sup>

The Act also restricts the supply of the prescription ordered by the physician's assistant to a thirty-day supply.<sup>33</sup> However, a ninety-day supply may be ordered if the prescription is for a chronic illness.<sup>34</sup> The Act limits the time period during which refills may be obtained to six months from the date of the original prescription.<sup>35</sup> In the case of oral contraceptives or other drugs or devices approved by the Board, refills may be obtained up to twelve months from the date of the original prescription.<sup>36</sup> The Committee added these regulations to permit better supervision of physician's assistants.<sup>37</sup>

The Act also places requirements on the physician.<sup>38</sup> Specifically, it requires the supervising physician to personally evaluate every patient receiving a prescription under this Code section.<sup>39</sup> The evaluation must be conducted at least every three months for patients receiving controlled substances and at least every six months for patients receiving other prescription drugs or devices.<sup>40</sup>

The supervising physician is also required by the Act to maintain a record of any prescription carried out under this Code section.<sup>41</sup> This record shall include a copy of the prescription form and a countersignature by the supervising physician.<sup>42</sup> The

31. *Id.* § 43-34-103(e.1)(4).

32. Childers Interview, *supra* note 19 (noting that the Medical Association of Georgia insisted on the inclusion of this provision).

33. O.C.G.A. § 43-34-103(e.1)(5) (Supp. 1995).

34. *Id.*

35. *Id.*

36. *Id.*

37. Martin Interview, *supra* note 1; Childers Interview, *supra* note 19.

38. Martin Interview, *supra* note 1 (noting some concern that a few physicians might misuse physician's assistants to broaden a practice and fail to supervise adequately the physician's assistant); Childers Interview, *supra* note 19 (noting some concern that physician's assistants might abuse the power without adequate supervision).

39. O.C.G.A. § 43-34-103(e.1)(6) (Supp. 1995).

40. *Id.*

41. *Id.* § 43-34-103(e.1)(7).

42. *Id.*

Act provides that the form be countersigned within a reasonable time, not to exceed seven working days, unless a separate regulation, policy, or requirement demands that it be performed sooner.<sup>43</sup>

*Board Authority*

Finally, the Committee inserted language that requires the Board to adopt rules regulating the practice and procedure of carrying out prescriptions under this Code section.<sup>44</sup> The Committee included this provision because the Board is in a better position than the General Assembly to provide the details necessary for effective regulation of the health care industry.<sup>45</sup>

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43. *Id.*

44. *Id.* § 43-34-103(e.1)(9).

45. Childers Interview, *supra* note 19.