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## PROFESSIONS AND BUSINESSES Physicians, Physician's Assistants, and Respiratory Care: Allow Access to Experimental or Nonconventional Methods of Medical Treatment

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## PROFESSIONS AND BUSINESSES

### *Physicians, Physician's Assistants, and Respiratory Care: Allow Access to Experimental or Nonconventional Methods of Medical Treatment*

CODE SECTION:	O.C.G.A. § 43-34-42.1 (new)
BILL NUMBER:	SB 341
ACT NUMBER:	404
GEORGIA LAWS:	1997 Ga. Laws 1100
SUMMARY:	The Act relates to the licensure of medical practice and provides individuals the right to be provided with any medical treatment desired or authorized under certain conditions. The Act specifically authorizes treatment that is experimental or nonconventional. A person licensed to practice medicine is given immunity from disciplinary actions that involve unprofessional practice or conduct in relation to treatment that complies with this Code section.
EFFECTIVE DATE:	April 22, 1997 <sup>1</sup>

#### *History*

In the past, doctors had reason to be wary of providing experimental or nonconventional treatment to a person diagnosed with a potentially life-threatening or chronically disabling disease. A doctor could be disciplined or lose his license to practice medicine if the State Composite Board of Medical Examiners decided that the doctor was breaching his duty to the patient by providing experimental or nonconventional treatment to the patient.<sup>2</sup> Further, patients' reliance and hope in an experimental method of treatment that failed would often lead to malpractice suits.<sup>3</sup>

Georgia Senator Ed Gochenour can personally relate to the frustration of trying to receive experimental treatment for a life-threatening disease.<sup>4</sup> Senator Gochenour was diagnosed with a brain tumor shortly after being re-elected in November 1996.<sup>5</sup> After several doctors told Senator Gochenour that his brain tumor was inoperable, he

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1. The Act became effective upon approval by the Governor.
  2. See Telephone Interview with Sen. Ed Gochenour, Senate District No. 27 (Apr. 21, 1997) [hereinafter Gochenour Interview].
  3. See Telephone Interview with Rep. Buddy Childers, House District No. 13 (Apr. 18, 1997) [hereinafter Childers Interview].
  4. Gochenour Interview, *supra* note 2.
  5. See *id.*

opted to undergo experimental treatment.<sup>6</sup> The treatment Senator Gochenour sought was provided by Dr. Stanislaw Burzynski in Houston, Texas.<sup>7</sup> Entering the treatment at the Burzynski Research Institute cost \$14,000, plus \$5000 for the first treatment and \$9000 per month thereafter.<sup>8</sup> Senator Gochenour predicts that he will stay on the drug for about eight to nine months.<sup>9</sup> Since the treatment cost was not covered by Senator Gochenour's state insurance, a large number of Georgia lawmakers donated money to aid the Senator in his battle against his brain tumor.<sup>10</sup>

Although the Act will not aid Senator Gochenour in his personal battle with cancer, he hopes that it will make it easier for people in the future to receive the medical attention they desire.<sup>11</sup> Senator Gochenour's quest for treatment made him aware of the need for SB 341.<sup>12</sup> Senator Gochenour stated that to his knowledge there had never been an attempt to pass similar legislation in Georgia; however, Alaska and Oregon may already have statutes similar to the Access to Medical Treatment Act.<sup>13</sup>

### SB 341

#### *Introduction*

The Access to Medical Treatment Act amends article 2 of chapter 34 of title 43 of the Code relating to physicians. Specifically, the Act relates to licenses to practice medicine in Georgia. The Act adds a new Code section that provides individuals the right to be provided with any medical treatment desired or authorized under certain conditions and gives doctors immunity from actions relating to unprofessional practice or conduct when they have complied with the Act.<sup>14</sup> In order for the patient to have the right to nonconventional or experimental treatment, the illness or disease must be potentially life-threatening or chronically disabling.<sup>15</sup> Further, the treatment being administered cannot pose an unreasonable and significant risk of danger to the patient.<sup>16</sup>

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6. See Russ Bynum, *The Associated Press Political Service*, ASSOCIATED PRESS, Mar. 3, 1997 (available in 1997 WL 2505427).

7. See *id.*

8. See *id.*

9. See *id.*

10. See *id.*

11. Gochenour Interview, *supra* note 2.

12. See *id.*

13. *Id.*

14. O.C.G.A. § 43-34-42.1 (Supp. 1997).

15. See *id.*

16. See *id.*

*Procedure*

SB 341 was introduced in the Senate on March 3, 1997.<sup>17</sup> The Senate referred the bill to the Senate Health and Human Services Committee.<sup>18</sup> The Senate passed the bill on March 14, 1997, and it went to the House of Representatives.<sup>19</sup> The House sent the bill to the House Health and Ecology Committee.<sup>20</sup> On March 25, 1997, the bill was amended on the House floor.<sup>21</sup> After the House passed the bill, the amended version was transferred back to the Senate for concurrence.<sup>22</sup> However, the Senate, lead by Senator Gochenour, refused to concur in the House amendments.<sup>23</sup>

As a result of the deadlock between the House and Senate, a Conference Committee was organized to work out the differences.<sup>24</sup> The Conference Committee consisted of three Senate members and three House members.<sup>25</sup> The Senators involved in the Conference Committee were Senators Eric Johnson, David Ralston, and Ed Gochenour.<sup>26</sup> The House members in the Conference Committee included Representatives E.M. (Buddy) Childers, Earl O'Neal, and Tommy Smith.<sup>27</sup> After the Conference Committee agreed upon the final version of the bill, the bill had to go back for a vote in both the Senate and House.<sup>28</sup> Senator Gochenour described this period of time for the Act as "sink or swim because it was the last chance for the bill to be passed."<sup>29</sup> The Act passed the Senate and the House on March 28, 1997.<sup>30</sup>

*Amendments*

The Senate Health and Human Services Committee amended the original version of the bill by changing the protection for medical practitioners from shielding against "unprofessional practice or conduct" to failure to be "subject to disciplinary action by the board solely on the

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17. See Final Composite Status Sheet, Mar. 28, 1997.

18. See SB 341 (SCS), 1997 Ga. Gen. Assem.

19. See Final Composite Status Sheet, Mar. 28, 1997.

20. See SB 341 (HCS), 1997 Ga. Gen. Assem.

21. See Final Composite Status Sheet, Mar. 28, 1997.

22. See *id.*

23. See Gochenour Interview, *supra* note 2.

24. See *id.*

25. See Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 21, 1997) [hereinafter Skipper Interview].

26. See SB 341 (CCS), 1997 Ga. Gen. Assem.

27. See *id.*

28. See Skipper Interview, *supra* note 25.

29. Gochenour Interview, *supra* note 2.

30. See Final Composite Status Sheet, Mar. 28, 1997.

basis that [the treatment administered was] in compliance with this Code section."<sup>31</sup>

The House Health and Ecology Committee amended the bill by changing the protection provided to medical practitioners back to the original language of "practic[ing] medicine under this article shall not by itself constitute unprofessional practice or conduct."<sup>32</sup> The House Committee also amended the bill to require a doctor to warn a patient before providing treatment that the treatment "is experimental, not approved by the FDA for such indication, and [of] available alternatives."<sup>33</sup> The Conference Committee amended the House Committee's version of the bill by including language that the "treatment offered is experimental or nonconventional, that the drug or medical device has not been approved by the Food and Drug Administration for any indication" in the warning to patients and took out the language requiring notification of possible alternative methods of treatment.<sup>34</sup> This version of the bill passed the Senate and the House without amendments.<sup>35</sup>

### *Objections and Supporting Arguments*

The Act does not require that a person exhaust the normal medical procedures or techniques before trying alternative methods of treatment.<sup>36</sup> Thus, Representative Tom Bordeaux worries that "this bill may result in a license to steal and practice voodoo."<sup>37</sup> Some believe it is a legitimate concern that unorthodox doctors will prescribe "colored water" to treat a serious disease.<sup>38</sup> If a person is desperate to save his life or cure a serious illness, he may be very vulnerable to a treatment that seems too good to be true.

However, proponents of the Act, like Senator Gochenour and Representative Buddy Childers, believe that people have the right to make their own decisions regarding medical treatment.<sup>39</sup> Representative Childers stated that "requiring people to exhaust the traditional methods of treatment could severely limit the effectiveness

31. Compare SB 341, as introduced, 1997 Ga. Gen. Assem. with SB 341 (SCS), 1997 Ga. Gen. Assem.

32. SB 341 (HCS), 1997 Ga. Gen. Assem.

33. *Id.*

34. Compare SB 341 (CCS), 1997 Ga. Gen. Assem. with O.C.G.A. § 43-34-42.1 (Supp. 1997).

35. See Final Composite Status Sheet, Mar. 28, 1997.

36. See O.C.G.A. § 43-34-42.1 (Supp. 1997).

37. Telephone Interview with Rep. Tom Bordeaux, House District No. 151 (Apr. 22, 1997).

38. See Joan Kirchner, *Experimental Drugs Backed, House Approves Trial Treatments*, FLA. TIMES UNION, Mar. 27, 1997, at B6.

39. Gochenour Interview, *supra* note 2; Childers Interview, *supra* note 3.

of the Act because people who want to try a cutting edge or experimental technique, but only after exhausting traditional methods, may not be as healthy after going through the traditional treatment."<sup>40</sup> Therefore, the person's body may never recover from the traditional technique and he may not be able to reap the full benefits of the experimental or nonconventional method because he did not start the treatment before the disease or illness progressed.<sup>41</sup>

*Andrew J. Surdykowski*

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40. Childers Interview, *supra* note 3.

41. *See id.*