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PROFESSIONS AND BUSINESSES

Physicians, Physician's Assistants, and Respiratory Care: Require Out-of-State Physicians Who Provide Patient Care in Georgia Via Telemedicine to Hold Georgia License

CODE SECTION:	O.C.G.A. § 43-34-31.1 (new)
BILL NUMBER:	SB 107
ACT NUMBER:	276
GEORGIA LAWS:	1997 Ga. Laws 697
SUMMARY:	The Act requires physicians who are located outside the State of Georgia, but provide patient care inside the state via telemedicine, to be licensed to practice medicine in Georgia. The Act carves out limited exceptions, including a consultation at the request of a Georgia-licensed physician or where the consultation is provided at no charge.
EFFECTIVE DATE:	July 1, 1997

History

The technological advances of telemedicine¹ are erasing geographical constraints on the provision of healthcare to the benefit of patients.² Without leaving their offices, physicians can make "electronic house calls"³ across town to frail, chronically ill patients who need frequent check-ups.⁴ Patients in medically under-served rural areas of the state can obtain the expertise of a big city specialist without a time-consuming relocation that would delay the start of treatment.⁵ Also, large healthcare consumers, such as corporate medical plans, can shop around for the best deal on non-emergency services, seeking out the highest quality and most economical provider whether it is located across the state or across the continent.⁶

1. Telemedicine refers to "the provision of health care services at a distance with the aid of interactive telecommunications and computer technology." Joseph B. McMenamen, *Telemedicine's Legal Hurdles, Potential for Product Liability May Lie Ahead*, FULTON COUNTY DAILY REP., Mar. 14, 1997, at 7.

2. See Phyllis F. Granade & Jay H. Sanders, *The Licensure Issue in Telemedicine*, 1 NEW MEDICINE 47 (1997).

3. See Anne Rochell, *A New Kind of House Call Cyber Docs: Rapid Advances in Telemedicine are Bringing Physicians Into the Homes of Chronically Ill Patients*, ATLANTA J. & CONST., Jan. 4, 1997, at E1.

4. See *id.*

5. See Stacey Swatek Huie, *Facilitating Telemedicine: Reconciling National Access with State Licensing Laws*, 18 HASTINGS COMM. & ENT. L. J. 377, 383 (1996).

6. See Barry B. Cepelewicz, *Telemedicine: A Virtual Reality, But Many Issues Need*

Georgia is a leader in the telemedicine field, with a \$9 million network that links community health centers throughout the state to the Medical College of Georgia in Augusta.⁷ Georgia is not the only state with such a program. Telemedicine projects in other states include the following: Iowa links eight hospitals in rural areas so that physicians can consult with specialists in Mason City or Des Moines; Kansas enables nurses to contact patients through a video-conferencing system for daily check-ups; Minnesota allows emergency room personnel in Buffalo to examine patients at smaller hospitals; and Pennsylvania enables X-rays taken at the scene of accidents to be viewed at the University of Pittsburgh before the patient is moved to a hospital.⁸

The ability of physicians to use telemedicine technology to make interstate consultations as easily as intrastate consultations has sparked two movements—one calling for changes to facilitate the national practice of medicine, the other seeking to erect barriers at the state level to bar the entry of outside providers unless they obtain a local license.⁹ SB 107 falls into the latter category.

Senator Charles Walker was the primary sponsor of SB 107, which had the backing of the Medical Association of Georgia.¹⁰ “Right now, telemedicine is wide open for fraud and quackery,” Senator Walker said.¹¹ Under a managed care environment, a medical doctor in Pennsylvania can perform services on a patient in Georgia without being licensed in Georgia to do so.¹² To do whatever these physicians are doing, Senator Walker said, they should be licensed in Georgia.¹³ Siobhan Rieger, a lobbyist for the Medical Association of Georgia, stated: “What’s behind it is safety for the patients through and

Resolving, 13 MED. MALPRACTICE L. & STRATEGY 1, 2 (1996). The Harris Corp., a worldwide electronics firm based in Melbourne, Fla., uses a teleradiology network to send images to a California medical center because it is more economical and provides a higher quality of care than that available from local radiologists. *See id.*

7. *See* Ann Hardie, *Telemedicine, The Future is Now, Program is a New Link in Improvement of Medical Care, Allowing Doctors to Exam Patients Who are Miles Away*, ATLANTA J. & CONST., Feb. 7, 1996, at B1.

8. *See* Tara Meyer, *Doctor's Bag Stays Home with Telemedicine*, AUGUSTA CHRON. ONLINE, Feb. 1, 1997.

9. *See* Phyllis F. Granade, *Implementing Telemedicine on a National Basis—A Legal Analysis of the Licensure Issues*, 83 FED’N BULL., J. OF MED. LICENSURE & DISCIPLINE 7 (1996).

10. *See* Telephone Interview with Sen. Charles Walker, Senate District No. 22 (Apr. 15, 1997) [hereinafter Walker Interview]; Telephone Interview with Siobhan Rieger, Government Relations Associate, Medical Association of Georgia (Apr. 15, 1997) [hereinafter Rieger Interview].

11. *See* Paul Garber, *Locals Await Session*, AUGUSTA CHRON., Jan. 12, 1997, at C1.

12. *See* Walker Interview, *supra* note 10.

13. *Id.*

through."¹⁴ She added: "I think it is to the benefit of all Georgia patients."¹⁵ Pointing out that the American Medical Association backs such legislation, Rieger said similar measures have been adopted in eleven other states.¹⁶

Dr. Jay Sanders labeled SB 107 as economic protectionism, not patient protection.¹⁷ He stated: "It's another example of—I'll be kind—the near-sightedness and self-centeredness of the medical board that got the legislature to pass this. . . . [The medical association members] are functioning as a trade union."¹⁸ Dr. Sanders is an advocate of national licensure of physicians because they are trained and licensed according to national and international standards, not state standards.¹⁹ He added: "Telemedicine shines a light on an outdated [state licensing] system that should have been done away with years ago."²⁰

Senator Walker said he did not hear any opposition from critics such as Dr. Sanders, and he was unaware of legislation pending in Congress²¹ asking the U.S. Secretary of Health and Human Services to study state licensing barriers to telemedicine practitioners.²²

14. Rieger Interview, *supra* note 10.

15. *Id.*

16. *Id.* For example, the Alabama legislature during its 1997 session adopted a special purpose license requirement to practice medicine or osteopathy across state lines. 1997 Ala. Acts 97-166. The Act provides that a three-year special purpose license will be issued only to physicians who practice in states that provide for reciprocal licenses to physicians and osteopaths who practice in the State of Alabama. *Id.*

17. Telephone Interview with Jay Sanders, M.D., F.A.C.P., President & CEO of the Global Telemedicine Group, and President of the American Telemedicine Association (Apr. 18, 1997).

18. *Id.*

19. *Id.*

20. *Id.*

21. H.R. 1101, introduced by U.S. Senator Kent Conrad of North Dakota would create the Comprehensive Telehealth Act of 1997. H.R. 1101, 105th Cong. (1997). It would accomplish the following: (1) make telemedicine services eligible for Medicaid and Medicare reimbursement; (2) require a study of state licensing barriers for health professionals who provide telemedicine services; (3) require annual reports to Congress from the Federal Joint Working Group on Telehealth; and (4) provide for grants and loans to develop telemedicine networks and to foster rural economic development. *Id.*

22. Walker Interview, *supra* note 10. Senator Guy Middleton, a co-sponsor of SB 107 and chair of the Senate Health and Human Services Committee which offered a Committee substitute to the original version of the bill, believed a "tightening up" of the definition of telemedicine was in order, and deferred to Senator Walker who agreed as the primary sponsor. Telephone Interview with Sen. Guy Middleton, Senate District No. 50 (Apr. 15, 1997).

SB 107

The Act creates new Code section 43-34-31.1, requiring physicians of other states or foreign countries who enter this state for consultation via telemedicine to be licensed in the State of Georgia.²³ Subsection (a) provides that a person “physically located” outside Georgia who “performs an act that is part of a patient care service located in this state . . . is engaged in the practice of medicine in this state.”²⁴ The Act provides that the patient information can be transmitted to the outside physician “through the use of any means, including electronic, radiographic, or other means of telecommunication. . . .”²⁵ The Act relates to patient care services in Georgia “including but not limited to the initiation of imaging procedures or the preparation of pathological material for examination, and [acts] that would affect the diagnosis or treatment of the patient.”²⁶

In subsection (b), the Act creates exceptions for out-of-state physicians or osteopaths who provide a consultation at the request of a Georgia-licensed physician or “[p]rovide[] such services on an occasional rather than on a regular or routine basis.”²⁷ The Act also exempts consultations in the case of an emergency; consultations “without compensation, remuneration, or other expectation thereof”; and consultations to a medical school located within Georgia.²⁸ In addition, the Act exempts out-of-state physicians or osteopaths who provide continuing professional education through a medical school or medical society.²⁹

The Act provides in subsection (c) that the Code section “shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting or in a manner not otherwise authorized by the laws of this state.”³⁰

Out-of-state physicians who practice in Georgia via telemedicine must comply with this state’s laws “relating to the maintenance of patient records and the confidentiality of patient information, regardless of where such physician or health care provider may be located and regardless of where or how the records of any patient located in this state are maintained.”³¹

23. O.C.G.A. § 43-34-31.1 (Supp. 1997).

24. *Id.* § 43-34-31.1(a).

25. *Id.*

26. *Id.*

27. *Id.* § 43-34-31.1(b).

28. *Id.*

29. *Id.*

30. *Id.* § 43-34-31.1(c).

31. *Id.* § 43-34-31.1(d).

As introduced in the Senate, subsection (a) contained a less descriptive definition of telemedicine, referring to "the use of any medium, including an electronic medium."³² That language was changed by the Senate Health and Human Services Committee to refer to "the use of any electronic medium through which medical data is transferred through interactive audio, visual, or data communication."³³ The House Committee on Health and Ecology further changed that language to "the use of any means, including electronic, radiographic, or other means of telecommunication, through which medical information or data is transmitted."³⁴ This language remains in the Act.³⁵ The changes were made in both committees in an effort to ensure that the references covered all forms of electronic contact.³⁶

The House Health and Ecology Committee also changed the word "initiated" to "located" in referring to where the patient services were being provided.³⁷ In addition, the House Health and Ecology Committee expanded the exemption in the original bill, which referred to the provision of services "without the expectation of compensation" to refer to "without compensation, remuneration, or other expectation thereof."³⁸ Another change the House Health and Ecology Committee made was the addition of the words "or osteopath" to the reference to exempting physicians from the licensure requirements if they were providing continuing education.³⁹

The original bill would have created another new Code section 43-34-31.2 dealing with patient rights.⁴⁰ It called for the following: a patient to retain the option "to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the individual would otherwise be entitled";⁴¹ "existing confidentiality protections [to] apply to information transmitted via telemedicine";⁴² no "[d]issimination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities . . . without

32. SB 107, as introduced, 1997 Ga. Gen. Assem.

33. SB 107 (SCS), 1997 Ga. Gen. Assem.

34. SB 107 (HCS), 1997 Ga. Gen. Assem.

35. O.C.G.A. § 43-34-31.1(a) (Supp. 1997).

36. See Walker Interview, *supra* note 10.

37. Compare SB 107, as introduced, 1997 Ga. Gen. Assem. with SB 107 (HCS), 1997 Ga. Gen. Assem.

38. *Id.*

39. *Id.*

40. SB 107, as introduced, 1997 Ga. Gen. Assem.

41. *Id.*

42. *Id.*

the patient's consent";⁴³ and the patient to have "access to all medical information transmitted during a telemedicine consultation, and copies of the information . . . available for a reasonable fee."⁴⁴ Senator Walker did not recall why the patients rights provisions were taken out,⁴⁵ but the Medical Association lobbyist said they were already covered by existing law.⁴⁶ The House Health and Ecology Committee added a provision that persons covered by the Code section must "comply with all applicable requirements of the laws of this state relating to the maintenance of patient records and the confidentiality of patient information, regardless of where such physician or health care provider may be located and regardless of where or how the records of any patient located in this state are maintained."⁴⁷

When SB 107 was debated on the House floor, Representative Roger C. Byrd proposed an amendment to ensure that the measure would not apply to registered nurses who practice in rural areas or in a public health capacity.⁴⁸ Representative Byrd pointed out that in his district "some things are being done that are creative and are taking advantage of the services of registered professional nurses, and we don't want to preclude these people by saying you have to have a license to practice medicine."⁴⁹ Representative Buddy Childers, the chair of the House Health and Ecology Committee who was handling the bill for Senator Walker, told Representative Byrd that he would prefer that a separate bill be offered to address the nursing issue.⁵⁰ Representative Byrd's amendment was defeated by a voice vote,⁵¹ and the House went on to approve the bill 162-1.⁵²

The Senate agreed to the House version of the bill without making any further changes.⁵³

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43. *Id.*

44. *Id.*

45. Walker Interview, *supra* note 10.

46. See Reiger Interview, *supra* note 10.

47. SB 107 (HCS), 1997 Ga. Gen. Assem.

48. Record of Proceedings in the House of Representatives (Feb. 27, 1997) (remarks by Rep. Roger C. Byrd) (available in Georgia State University College of Law Library).

49. *Id.*

50. *Id.* (remarks by Rep. Buddy Childers).

51. See *id.*

52. See *id.*

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