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PROFESSIONS AND BUSINESSES

Professional Counselors, Social Workers, and Marriage and Family Therapists: Provide for Mental and Physical Examinations of Licensees in Cases of Suspected Incapacity

CODE SECTION:	O.C.G.A. § 43-10A-17 (amended)
BILL NUMBER:	HB 273
ACT NUMBER:	822
GEORGIA LAWS:	1996 Ga. Laws 718
SUMMARY:	This Act provides for methods of enforcing licensing law provisions for various specialties by the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists (Board). The Act requires licensees governed by this Code section to submit to mental and physical examinations if the Board reasonably believes that the licensee is unable to practice his or her specialty with reasonable skill and safety to the public due to illness or substance abuse. The Act also allows the Board to obtain all records relating to any such incapacitation. If the licensee fails either to submit to an examination or to provide such records, the Board may summarily suspend that licensee's license if the circumstances require such action.
EFFECTIVE DATE:	July 1, 1996

History

Previously, Code section 43-10A-17 provided that the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists (Board) shall have the authority to revoke or refuse to grant the license of a person licensed by the Board upon a finding by a majority of the entire Board that the licensee or applicant engaged in any unprofessional, immoral, unethical, or deceptive conduct or practice harmful to the public.[1] This Code section also provided that the Board shall have the authority to revoke or refuse to grant a license if the licensee or applicant displayed an

1. 1984 Ga. Laws 1406, § 1 (codified at O.C.G.A. § 43-10A-17 (1994)).

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inability to perform the specialty "with reasonable skill and safety to the public . . . by reason of illness" or use of any chemical substance.[2]

The Code did not, however, provide specific enforcement methods for this particular subsection. Instead, it provided generally that the Board may subpoena, upon reasonable grounds, any and all records relating to the physical and mental condition of the licensee and that such records would be admissible in any hearing by the Board.[3]

Because the law of each professional licensing board within the division has to be amended individually, the Board approached the State Examining Boards' office of the Secretary of State.[4] The Board wanted the authority to order an applicant or licensee to undergo a mental or physical evaluation when the Board receives information that indicates that person may be impaired.[5] The Board wanted to bring the applicable law up to the ethical standards of other medical boards that already had this type of power.[6] Most boards that oversee other health-related professions already had this type of enforcement ability, and the Board felt that because it is not in the public's best interest for practitioners in these specialties to be under the influence of alcohol or drugs, it was necessary that these disciplinary procedures be implemented.[7] Representative Childers sponsored the bill in the House for substantially the same reasons; he felt it was in the public's best interest to give the Board these kinds of disciplinary procedures, allowing disciplinary action against any licensee who was not in compliance with this rule.[8]

HB 273

The Act amends the Professional Counselors, Social Workers, and Marriage and Family Therapists Act of 1984 by amending Code section 43-10A-17.[9] The Act retained provisions in the Code which granted the licensing board for practitioners in these specialties the authority to revoke or refuse to grant a license if a majority of the entire Board finds that the licensee displayed an inability to practice the specialty with reasonable skill due to illness or use of any chemical substance.[10]

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2. *Id.* at 1420 (codified at O.C.G.A. § 43-10A-17(a)(10) (1994)).
3. *Id.* at 1421 (codified at O.C.G.A. § 43-10A-17(c) (1994)).
4. Telephone Interview with Bill Miller, Joint Secretary, State Examining Boards (May 3, 1996) [hereinafter Miller Interview].
5. *Id.*
6. Telephone Interview with Rep. E.M. "Buddy" Childers, House District No. 13 (Apr. 23, 1996) [hereinafter Childers Interview].
7. Childers Interview, *supra* note 6; Miller Interview, *supra* note 4.
8. Childers Interview, *supra* note 6.
9. *See* 1996 Ga. Laws 718.
10. 1984 Ga. Laws 1406, § 1, at 1420 (codified at O.C.G.A. § 43-10A-17(a)(10) (1994)).

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The Act amended the Code to provide that if the Board has a reasonable basis for believing that the licensee displayed such inability, the Board may require the licensee or applicant to submit to a mental or physical examination by an appropriate licensed practitioner and that any and all results shall be admissible in any hearing before the Board, notwithstanding any privilege claim.[11]

Furthermore, if the Board has a reasonable basis for believing that the licensee cannot perform his or her duties because of substance abuse or mental or physical illness, the Board may require the licensee to either produce or give the Board permission to obtain any and all records relating to any such incapacitation.[12] These records will also be admissible in any hearing before the Board.[13] If the licensee either fails to submit to a mental or physical examination or fails to produce or give permission to the Board to obtain any and all medical records, "the board may summarily suspend the license of such licensee, if the public health, safety, and welfare imperatively require such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal."[14]

No amendments were proposed to the bill; thus the Act passed in both the House of Representatives and the Senate in its original form.[15]

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11. O.C.G.A. § 43-10A-17(a)(10)(A) (Supp. 1996).
12. *Id.* § 43-10A-17(a)(10)(A), (B).
13. *Id.* § 43-10A-17(a)(10)(B).
14. *Id.* § 43-10A-17(a)(10)(A), (B).
15. Childers Interview, *supra* note 6; Miller Interview, *supra* note 4.

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