

HOUSE BILL 458¹: GEORGIA COMPOSITE MEDICAL BOARD; REQUIRE CERTAIN
TRAINING RELATING TO SEXUAL MISCONDUCT FOR MEMBERS

First signature: Representative Sharon Cooper (43rd)

Co-Sponsors: Representative Scott Holcomb (81st), Representative Houston Gaines (117th), Representative Mark Newton (123rd), Representative Lee Hawkins (27th)

Summary: “A BILL to be entitled an Act to amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician assistants, and others, so as to require certain training relating to sexual misconduct for members of the Georgia Composite Medical Board; to amend Chapter 34A of Title 43 of the Official Code of Georgia Annotated, relating to patient right to know, so as to provide for annual reporting to the General Assembly of the number of physicians investigated or disciplined for the sexual assault of patients; to provide for definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: Signed by Governor, effective date te July 01, 2021.³

TEXT OF HOUSE BILL 458⁴

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended in Code Section 43-11-46.1, relating to continuing education requirements and waivers for dentists, by adding a new subsection to read as follows:

"(e) On and after January 1, 2022, continuing education requirements for dentists shall include legal ethics and professionalism in the practice of

¹ H.B. 458, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/202496> (last visited October 2, 2022)

² *2021-2022 Regular Session-HB 458, Georgia Composite Medical Board; require certain training relating to sexual misconduct for members*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/59653> (last visited October 2, 2022) [*hereinafter H.B. 458 Status Sheet*].

³ *Id.*

⁴ H.B. 458, *supra* note 1.

dentistry, which shall include, but shall not be limited to, education and training regarding professional boundaries; unprofessional conduct relating to the commission of acts of sexual intimacy, abuse, misconduct, or exploitation with regard to the practice of dentistry; legislative updates and changes to the laws relating to the practice of dentistry and rules, policies, and advisory opinions and rulings issued by the board; professional conduct and ethics; proper billing practices; professional liability; and risk management."

SECTION 2.

Said title is further amended in Code Section 43-34-2, relating to the creation of the Georgia Composite Medical Board, its members, physician assistants advisory committee, and review of qualifications, by revising subsection (g), which is reserved, as follows:

"(g) On and after January 1, 2022, all newly appointed board members shall be required to participate in training and education to support greater understanding of sexual misconduct, sexual boundaries, and impacts of trauma and implicit bias within three months of such appointment. All board members in office as of January 1, 2022, shall be required to participate in such training and education by March 30, 2022. Reserved."

SECTION 3.

Said title is further amended in Code Section 43-34-8, relating to the authority of the Georgia Composite Medical Board to refuse license, certificate, or permit or issue discipline, by adding a new paragraph to subsection (a) and a new subsection to read as follows:

"(15.1)(A) Pled guilty to committing a sexual assault on a patient; or (B) Been found guilty by a court of law of committing a sexual assault on a patient."

"(a.2) Upon a finding by the board that the public health, safety, or welfare imperatively requires emergency action pursuant to an alleged sexual assault on a patient by a licensee, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceeding shall be promptly instituted and determined."

SECTION 4.

Said title is further amended in Code Section 43-34-11, relating to continuing education requirements for physicians, by adding a new paragraph to subsection (a) to read as follows:

"(6) On and after January 1, 2022, all physicians shall be required to receive one-time education and training, for a minimum of two hours, regarding professional boundaries and physician sexual misconduct. Such education and training shall include subject matter relating to how to proceed with basic as well as sensitive or intimate examinations and the communication with patients that is required as a component of such examinations. Such education and training shall be established by the board and shall be informed by members of the public, as best possible."

SECTION 5.

Said title is further amended by adding a new Code section to Article 1, relating to the Georgia Composite Medical Board, to read as follows:

"43-34-14.

No later than January 1, 2022, the board shall develop and identify educational resources and materials for physicians, board members, and board staff to support greater understanding of sexual misconduct, sexual boundaries, and impacts of trauma and implicit bias. Such information shall include resources and materials to help physicians develop better insight into their own behavior and its impacts on others. Resources and materials shall be developed and identified in collaboration with national medical boards associations, national medical associations, state physician health programs, state medical associations, hospital medical staffs, other organized physician groups, and medical schools and training programs."

SECTION 6.

Said title is further amended in Code Section 43-34-26, relating to license requirement for persons engaged in practice of medicine, qualifications, evaluation program, and examinations, by revising subsection (a) as follows:

"(a)(1)(A) Any person who wishes to obtain the right to practice medicine in this state and who was not, prior to March 16, 1970, registered or licensed to practice medicine, either by the State Board of Medical Examiners or the State Board of Examiners in Osteopathy, shall, before it shall be lawful for him or her to practice medicine in this state, make

application to the board through the executive director, upon such forms and in such manner as shall be adopted and prescribed by the board, and shall obtain from the board a license to practice medicine. Any person who practices medicine without first having obtained a license shall be deemed to have violated this article. All applicants for a license to practice medicine or for a renewal of any such license which has been revoked shall furnish the board with evidence of good moral character. Applications from candidates to practice medicine or surgery in any of its branches shall be accompanied by proof that the applicant is a graduate of some legally incorporated medical school or osteopathic medical school.

(B) The board by rule or regulation may establish standards for evaluating, inspecting, and approving any medical school or osteopathic medical school. The evaluation procedure may include consideration of reports from any outside agency having expertise in medical school or osteopathic medical school evaluation; provided, however, that the board shall make the final decision on approval of medical schools and osteopathic medical schools. Nothing contained in this Code section shall prevent the approval of medical schools outside of the United States or the licensing of graduates of medical schools outside of the United States if such schools and their graduates comply with the standards established in this Code section and by rule of the board.

(2) Each medical school or osteopathic medical school in good standing with the board shall have a minimum preliminary educational requirement of the completion of a two-year premedical college course. On and after June 30, 2022, each medical school or osteopathic medical school in good standing with the board shall include education and training regarding professional boundaries and physician sexual misconduct for its medical students. Such education and training shall include subject matter relating to how to proceed with basic as well as sensitive or intimate examinations and the communication with patients that is required as a component of such examinations.

(3) Graduates of board approved medical schools or osteopathic medical schools and persons who graduated on or before July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must complete one year of a postgraduate residency training program. Persons who graduated after July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must

complete three years of residency, fellowship, or other postgraduate medical training that is approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), or the board to be eligible for a license to practice medicine in this state. Current certification of any applicant by a member board of the American Board of Medical Specialties may be considered by the board as evidence that such applicant's postgraduate medical training has satisfied the requirements of this paragraph. However, before any such person shall be eligible to receive a license to practice medicine in this state, he or she shall furnish the board with satisfactory evidence of attainments and qualifications under this Code section and the rules and regulations of the board. Nothing contained in this Code section shall be construed so as to require a person who has previously passed an examination given by the board for a license to practice medicine in this state to stand another examination.

(4) If the applicant submits proof that he or she has had postgraduate training as required in paragraph (3) of this subsection and if he or she furnishes satisfactory evidence of qualifications under this article and the rules and regulations of the board, he or she shall be eligible to receive a license from the board giving him or her absolute authority to practice medicine in this state.

(5) If the date of graduation from an institution mentioned in subparagraph (B) of paragraph (1) of this subsection is on or before January 1, 1967, no proof of postgraduate training in an approved hospital need be submitted to obtain a license from the board."

SECTION 7.

Said title is further amended by adding a new Code section to Article 2, relating to medical practice, to read as follows:

"43-34-47.

(a) As used in this Code section, the term:

(1) 'Health care provider' means:

(A) A physician;

(B) A registered professional nurse or licensed practical nurse licensed as such under Chapter 26 of this title; or

(C) A physician assistant licensed under Article 4 of this chapter.

(2) 'Sexual assault' shall have the same meaning as provided in Code Section 15-24-1.

(b) A health care provider in this state shall report the name of a physician to the board if such health care provider has actual knowledge that such physician has committed sexual assault on a patient. A health care provider shall not be required to duplicate a report if such health care provider has knowledge that such report has been made to the board. A health care provider shall not be required to report a physician to the board under this Code section as a result of professional knowledge obtained in the course of the health care provider-patient relationship when the physician is the patient.

(c) No health care provider required to report a physician to the board under this Code section who in good faith either reports or fails to report shall be subject to civil or criminal liability or discipline for unprofessional conduct for such action or inaction.

(d) Any health care provider required to report a physician to the board under this Code section who knowingly and willfully fails to do so shall be subject to a fine of no less than \$1,000.00 or greater than \$5,000.00 as determined by such health care provider's respective licensing board and may be subject to other disciplinary action in such respective licensing board's discretion.

(e) Law enforcement officers, when investigating cases of alleged sexual assaults on a patient by a physician, are authorized to send pertinent records on such cases to the board. Such records shall be confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board."

SECTION 8.

Said title is further amended by revising Code Section 43-34A-9, relating to annual report pertaining to patient right to know, as follows:

"43-34A-9.

(a) On January 1 of each year, the board shall compile a report for the Governor and General Assembly containing a statistical and comparative data analysis using information obtained from the physician profiles in addition to other information collected by the board. The board shall not be required to distribute copies of the report to the Governor or members of the General Assembly but shall provide notification of the availability

of the report in the manner which it deems to be the most effective and efficient.

(b) The report shall include, but shall not be limited to, the following information:

- (1) The number of physicians for which it has created physician profiles;
- (2) The specialty board certification of such physicians;
- (3) The geographic regions of the primary practices;
- (4) The number of physicians participating in the Medicaid program; ~~and~~
- (5) The number of physicians carrying any medical malpractice insurance and the specialty and current hospital privileges of the physicians not carrying such insurance and whether such physicians are actively seeing patients; and

(6) The number of physicians on whom the board has conducted investigations for committing an act of sexual assault pursuant to paragraph (15.1) of subsection (a) of Code Section 43-34-8 or an act of sexual abuse, misconduct, or exploitation of a patient pursuant to paragraph (15) of subsection (a) of Code Section 43-34-8, and the outcome of the investigation which shall include whether the board refused, revoked, or suspended a license, or issued a private or public disciplinary order. In no event shall any identifying information be included in such report for any physician on whom the board conducted an investigation."

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR'S RATIONALE

During the House Third Reader for H.B 458, Representative Sharon Cooper, the lead sponsor, stated that the Bill was brought to her by the Georgia Composite Medical Board.⁵ Cooper stated that this Bill was proposed in response to the need for "members to be updated about sexual boundaries, sexual misconduct, and exploitation of patients."⁶ Furthermore, she went on to state that this Bill would require all members to attend a one-

⁵ Georgia House of Representatives, *House Floor: Day 24 02.26.21 Part 1*, YouTube (Feb. 26, 2021), https://www.youtube.com/watch?v=5hXfufW_cuw.

⁶ *Id.*

time training related to sexual misconduct, and that medical schools would also put this training into their curriculum.⁷ By implementing this one-time training the intention is that “young physicians coming out of school will know that “times have changed,” and that “there are certain things that are no longer accepted.”⁸ Representative Scott Holcomb who is also an outspoken co-sponsor for H.B. 458, stated that the Bill “is an important step forward to protect patients in Georgia,” and that he is “very pleased that the Bill passed the House.”⁹ Holcomb expressed a strong belief that the “relationship between a doctor and patient is significant,” and if that duty of care is breached, it has a long term harm on the willingness of patients to get care in the future.¹⁰ Additionally, Representative Holcomb, after conducting an investigation on the Georgia Composite Medical Board, deduced that the board had total discretion as to whether they would, and how they would address sexual misconduct incidents.¹¹ Furthermore, Holcomb concluded that there was a lack of transparency, when it came to informing patients of the past conduct of many accused and convicted doctors who remain in the profession, but noted that there was strong support among members of the Board to implement a law that would assist them with bridging the gap.¹² Alexander S. Gross, a former Georgia Composite Medical Board/Chair member, stated that “the public needs to understand that the board is committed to [their mission to protect the public],” and that H.B. 458 “will be a tool that helps [the board] do that.”¹³

OPPOSITION’S RATIONALE

Fifteen members in the House of Representative voted against House Bill 458.¹⁴ Despite the difficulties with locating public opposition, I was able to compare House Bill 458 to other state statutes that criminalizes sexual misconduct of doctors, and it is evident that Georgia went a step further. States such as Florida¹⁵, Alabama¹⁶, Texas¹⁷, and Minnesota¹⁸, along

⁷ *Id.*

⁸ *Id.*

⁹ Carrie Teegardin, *House Passes Bill On Physician Sex Abuse*, The Atlanta J. Const. (Feb. 26, 2021) <https://www.ajc.com/politics/georgia-state-legislature/house-passes-bill-on-physician-sex-abuse/6QMTXO7QPVCJDFPNHNVA23FDAA/>

¹⁰ Telephone Interview with Scott Holcomb, Georgia Representative 81st District, (September 28, 2022). [hereinafter Holcomb Interview].

¹¹ *Id.*

¹² *Id.*

¹³ Teegardin, *supra* note 9.

¹⁴ H.B. 458 Status Sheet, *supra* note 2.

with various others, seem to stop their codes at criminalizing the sexual misconduct of doctors and reminding all physicians of their duty to report incidents of which they know. Nevertheless, Georgia appears to be one of the only states that require by law that incoming/current doctors appointed to the medical board participate in educational training that support a greater understanding of sexual misconduct.¹⁹ Currently there is a pattern where some doctors who are accused of sexual misconduct submit themselves to rehabilitative programs, but rarely any references to mandatory training.²⁰ The concerns surrounding the rehabilitative programs was that “while physician health programs may pave the way for doctors to return to practice, no good data exist on how many of the doctors repeat as sexual abusers.”²¹ Those same concerns may apply to the Georgia Medical Board in terms of implementing and tracking the success of the required course with regards to combatting sexual misconduct.

Furthermore, other concerns that tend to arise in a few states with bills of similar stature is that they may promote decisions that have negative effects on the communities and medical facilities where doctors are investigated.²² After doctors are investigated, the discussion then turns to the different facilities that they owned or worked at as employees.²³ These facilities then come under scrutiny for failing to report or even follow up on complaints.²⁴ In Delaware, where a doctor was investigated for sexual abuse of more than a dozen children, "Wayne Smith of the Delaware Healthcare Association, which represents the state's seven medical centers, stated that any action against the Beebe Medical Center will affect the whole town of Lewes."²⁵ His remark was made with the understanding that "there is real

¹⁵ Fla. Stat. Ann. § 468.301 (<https://www.flsenate.gov/laws/statutes/2011/468.301>)

¹⁶ Ala. Admin. Code r. 545-X-4-.07

¹⁷ Tex. Stat. § 130.57

¹⁸ Minn. Stat. § 147.091 (<https://www.revisor.mn.gov/statutes/cite/147.091>)

¹⁹ H.B. 458, *supra* note 1.

²⁰ Carrie Teegardin & Lois Norder, *Abusive Doctors: How the Atlanta Newspaper Exposed a System That Tolerates Sexual Misconduct by Physicians*, Bioethics Today (January 28, 2019), <https://bioethicstoday.org/blog/abusive-doctors-how-the-atlanta-newspaper-exposed-a-system-that-tolerates-sexual-misconduct-by-physicians>

²¹ *Id.*

²² Jamie Tarabay, *Child Sex Abuse Case Brings Tough Laws To Delaware*, NPR (July 1, 2010, 12:00 AM), <https://www.npr.org/2010/07/01/128222269/child-sex-abuse-case-brings-tough-laws-to-delaware>.

²³ *Id.*

²⁴ *Id.*

²⁵ Trabay, *supra* note 22.

concern that [the] lawsuits [would] hurt the [community] and hospital's finances, which is something that all of its employees [relied] on."²⁶ Even though Mr. Smith supported the law being changed to better protect the citizens, he was also aware of the effects it would have on communities that may lose the limited amount of doctors and facilities they have.²⁷ That view is shared by other individuals such as Larry Dixon, a former executive director of the Alabama Board of Medical Examiners, who stated that "it's wrong to believe all physicians who engage in sexual misconduct should automatically be barred from practicing."²⁸ He believed that "If you graduate a class of more than 100 people out of the University of Alabama medical school, the resources that have been poured into that education almost demand that you try to salvage that physician - if it's possible."²⁹ The same sentiments were echoed by Vann Craig, the former executive director of the Mississippi State Board of Medical Licensure, who stated that "If [a doctor] can be safely monitored and rehabilitated, [he] don't see why they can't come back from drugs, alcohol or sexual misconduct."³⁰

IMPLICATIONS IN GEORGIA

House Bill 458 "would require the state's physicians, medical students, and medical licensing board members to be trained on physician sexual misconduct and professional boundaries.³¹ Doctors would also be required to report other doctors who have sexually abused patients."³² If, however, a doctor "knowingly and willfully" fails to report another doctor, then they "shall be subject to a fine of no less than \$1,000.00 or greater than \$5,000.00 as determined by [the Medical Board]."³³ Furthermore the doctor may be "subject to other disciplinary actions in the [Medical] Board's discretion."³⁴ "In addition, the legislation would specifically authorize the

²⁶ *Id.*

²⁷ *Id.*

²⁸ AP, *Report: Sexual abuse by doctors sometimes goes unpunished*, CBSNEWS (July 6, 2016, 3:57 PM), <https://www.cbsnews.com/news/report-sexual-abuse-by-doctors-sometimes-goes-unpunished/>

²⁹ *Id.*

³⁰ *Id.*

³¹ Teegardin, *supra* note 9.

³² *Id.*

³³ Caitlin Lentz, *HB 458: Georgia Legislation Responding to Sexual Misconduct in Healthcare & New Mandatory Reporting Requirements*, Total Health Law (Aug. 7, 2021), <https://www.totalhealthlaw.com/hb-458-georgia-legislation-responding-to-sexual-misconduct-in-healthcare-new-mandatory-reporting-requirements/>.

³⁴ *Id.*

Georgia Composite Medical Board to revoke or suspend a license if a physician is found guilty of sexually assaulting a patient in a criminal case.”³⁵ Furthermore, “the board itself would be required to report on its handling of sex abuse cases, including indicating how many cases were handled through private actions hidden from the public.”³⁶ “Jan. 1 [was] the deadline for the medical board to begin reporting on its handling of abuse cases.”³⁷ The report that was released in the year 2022 stated that the Board received fifty-one complaints of sexual misconduct, but there was no breakdown of how the cases were handled.³⁸ The report also stated that “beginning January 1, 2022 a new question will be on the physician license renewal application asking if the licensee has completed education and training in professional boundaries and physician sexual misconduct.”³⁹ This [would] allow the Board to ensure physicians are completing the training, as required in O.C.G.A. § 43-34-11(a)(6).⁴⁰ With physicians now required to complete this education and training, they [believed that the training] will [help doctors to] be better equipped to recognize and prevent potential boundary violations, ultimately leading to a safer environment for patients seeking medical care.”⁴¹ The annual report for this year 2023 has not been released as yet.⁴²

LEGISLATIVE GENEALOGY

House Bill 458 was entered into the House Hopper on February 11th, 2021.⁴³ The House first readers were on February 16th, 2021.⁴⁴ The House second readers occurred on February 17, 2021.⁴⁵ The House committee favorably reported by substitute on February 24, 2021.⁴⁶ The House had its third readers on February 26, 2021.⁴⁷ The House passed/adopted H.B. 458

³⁵ Teegardin, *supra* note 9.

³⁶ *Id.*

³⁷ Associated Press, *Tax breaks, physician abuse training among new Georgia laws*, AP NEWS (Dec. 30, 2021), <https://www.gpb.org/news/2021/12/30/tax-breaks-physician-abuse-training-among-new-georgia-laws>.

³⁸ *View the board's annual reports*, Ga. Medical Composite Board, <https://medicalboard.georgia.gov/about-us/view-boards-annual-reports>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ H.B. 458 Status Sheet, *supra* note 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

by substitute on February 26, 2021.⁴⁸ The Senate read and referred on March 01, 2021.⁴⁹ The Senate committee then favorably reported by substitute on March 25, 2021.⁵⁰ The Senate read H.B. 458 for a second time on March 25, 2021.⁵¹ The Senate tabled the vote on March 29, 2021.⁵² The Bill was taken from table on March 29, 2021.⁵³ The Senate read H.B. 458 for a third time on March 29, 2021.⁵⁴ The Senate passed/adopted H.B. 458 by substitute on March 29, 2021.⁵⁵ House then agreed to senate amendment or substitution on March 31, 2021.⁵⁶ The House sent H.B. 458 to the Governor on April 07, 2021.⁵⁷ The House date signed by Governor was on May 10, 2021.⁵⁸ Then on May 10, 2021, the Bill was titled Act 291. Lastly, H.B. 458 became effective on July 01, 2021.⁵⁹

Prepared by: *Shinnay Richards*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ H.B. 458 Status Sheet, *supra* note 2.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ H.B. 458 Status Sheet, *supra* note 2.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*