

**CODE OF GEORGIA
TITLE 31. HEALTH**

CHAPTER 9. CONSENT FOR SURGICAL OR MEDICAL TREATMENT

31-9-1 Short title.

This chapter shall be known and may be cited as the "Georgia Medical Consent Law."

31-9-2 Persons authorized to consent to surgical or medical treatment.

(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

(1) Any adult, for himself, whether by living will or otherwise;

(1.1) Any person authorized to give such consent for the adult under a health care agency complying with Chapter 36 of Title 31, the "Durable Power of Attorney for Health Care Act";

(2) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his minor child;

(3) Any married person, whether an adult or a minor, for himself and for his spouse;

(4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care; and any guardian, for his ward;

(5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth;

(6) Upon the inability of any adult to consent for himself and in the absence of any person to consent under paragraphs (2) through (5) of this subsection the following persons in the following order of priority:

(A) Any adult child for his parents;

(B) Any parent for his adult child;

(C) Any adult for his brother or sister; or

(D) Any grandparent for his grandchild.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided.

(c) For purposes of this Code section, "inability of any adult to consent for himself" shall mean a

determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult "lacks sufficient understanding or capacity to make significant responsible decisions" regarding his medical treatment or the ability to communicate by any means such decisions.

31-9-3 Emergencies.

(a) As used in this Code section, the term "emergency" means a situation wherein (1) according to competent medical judgment, the proposed surgical or medical treatment or procedures are reasonably necessary and (2) a person authorized to consent under Code Section 31-9-2 is not readily available and any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected or could reasonably result in disfigurement or impaired faculties.

(b) In addition to any instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a duly licensed physician will be implied where an emergency exists.

31-9-4 Applicability of chapter to care and treatment of mentally ill.

This chapter shall be applicable to the care and treatment of patients in facilities for the mentally ill as defined in paragraph (7) of Code Section 37-3-1.

31-9-5 Applicability of chapter to abortion and sterilization procedures.

This chapter shall not apply in any manner whatsoever to abortion and sterilization procedures, which procedures shall continue to be governed by existing law independently of the terms and provisions of this chapter.

31-9-6 Construction of chapter; requirements of valid consent.

(a) This chapter shall be liberally construed, and all relationships set forth in this chapter shall include the adoptive, foster, and step relations as well as blood relations and the relationship by common-law marriage as well as ceremonial marriage.

(b) A consent by one person authorized and empowered to consent to surgical or medical treatment shall be sufficient.

(c) Any person acting in good faith shall be justified in relying on the representations of any person purporting to give consent, including, but not limited to, his identity, his age, his marital status, his emancipation, and his relationship to any other person for whom the consent is purportedly given.

(d) A consent to surgical or medical treatment which discloses in general terms the treatment or course of treatment in connection with which it is given and which is duly evidenced in writing and signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter shall be conclusively presumed to be a valid consent in the absence of fraudulent misrepresentations of material facts in obtaining the same.

31-9-6.1 Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.

(a) Except as otherwise provided in this Code section, any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia or any person who undergoes an

amniocentesis diagnostic procedure or a diagnostic procedure which involves the intravenous or intraductal injection of a contrast material must consent to such procedure and shall be informed in general terms of the following:

- (1) A diagnosis of the patient's condition requiring such proposed surgical or diagnostic procedure;
- (2) The nature and purpose of such proposed surgical or diagnostic procedure;
- (3) The material risks generally recognized and accepted by reasonably prudent physicians of infection, allergic reaction, severe loss of blood, loss or loss of function of any limb or organ, paralysis or partial paralysis, paraplegia or quadriplegia, disfiguring scar, brain damage, cardiac arrest, or death involved in such proposed surgical or diagnostic procedure which, if disclosed to a reasonably prudent person in the patient's position, could reasonably be expected to cause such prudent person to decline such proposed surgical or diagnostic procedure on the basis of the material risk of injury that could result from such proposed surgical or diagnostic procedure;
- (4) The likelihood of success of such proposed surgical or diagnostic procedure;
- (5) The practical alternatives to such proposed surgical or diagnostic procedure which are generally recognized and accepted by reasonably prudent physicians; and
- (6) The prognosis of the patient's condition if such proposed surgical or diagnostic procedure is rejected.

(b)

- (1) If a consent to a surgical or diagnostic procedure is required to be obtained under this Code section and such consent is not obtained in writing in accordance with the requirements of this Code section, then no presumption shall arise as to the validity of such consent.
- (2) If a consent to a diagnostic or surgical procedure is required to be obtained under this Code section and such consent discloses in general terms the information required in subsection (a) of this Code section, is duly evidenced in writing, and is signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter, then such consent shall be rebuttably presumed to be a valid consent.

(c) In situations where a consent to a surgical or diagnostic procedure is required under this Code section, it shall be the responsibility of the responsible physician to ensure that the information required by subsection (a) of this Code section is disclosed and that the consent provided for in this Code section is obtained. The information provided for in this Code section may be disclosed through the use of video tapes, audio tapes, pamphlets, booklets, or other means of communication or through conversations with nurses, physician's assistants, trained counselors, patient educators, or other similar persons known by the responsible physician to be knowledgeable and capable of communicating such information; provided,

however, that for the purposes of this Code section only, if any employee of a hospital or ambulatory surgical treatment center participates in any such conversations at the request of the responsible physician, such employee shall be considered for such purposes to be solely the agent of the responsible physician.

(d) A failure to comply with the requirements of this Code section shall not constitute a separate cause of action but may give rise to an action for medical malpractice as defined in Code Section 9-3-70 and as governed by other provisions of this Code relating to such actions; and any such action shall be brought against the responsible physician or any hospital, ambulatory surgical treatment center, professional corporation, or partnership of which the responsible physician is an employee or partner and which is responsible for such physician's acts, or both, upon a showing:

(1) That the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure;

(2) That information concerning the injury suffered was not disclosed as required by this Code section; and

(3) That a reasonably prudent patient would have refused the surgical or diagnostic procedure or would have chosen a practical alternative to such proposed surgical or diagnostic procedure if such information had been disclosed; provided, however, that, as to an allegation of negligence for failure to comply with the requirements of this Code section, the expert's affidavit required by Code Section 9-11-9.1 shall set forth that the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure and that such injury was a material risk required to be disclosed under this Code section.

(e) The disclosure of information and the consent provided for in this Code section shall not be required if:

(1) An emergency exists as defined in Code Section 31-9-3;

(2) The surgical or diagnostic procedure is generally recognized by reasonably prudent physicians to be a procedure which does not involve a material risk to the patient involved;

(3) If a patient or other person or persons authorized to give consent pursuant to this chapter make a request in writing that the information provided for in this Code section not be disclosed;

(4) A prior consent, within 30 days of the surgical or diagnostic procedure, complying with the requirements of this Code section to the surgical or diagnostic procedure has been obtained as a part of a course of treatment for the patient's condition; provided, however, that if such consent is obtained in conjunction with the admission of the patient to a hospital for the performance of such procedure, the consent shall be valid for a period of 30 days from the date of admission or for the period of time the person is confined in the hospital for that purpose, whichever is greater; or

(5) The surgical or diagnostic procedure was unforeseen or was not known to be needed at the time consent was obtained, and the patient has consented to allow the responsible physician to make the decision concerning such procedure.

(f) A prior consent to surgical or diagnostic procedures obtained pursuant to the provisions of this Code section shall be deemed to be valid consent for the responsible physician and all medical personnel under the direct supervision and control of the responsible physician in the performance of such surgical or diagnostic procedure and for all other medical personnel otherwise involved in the course of treatment of the patient's condition.

(g) The Composite State Board of Medical Examiners shall be required to adopt and have the authority to promulgate rules and regulations governing and establishing the standards necessary to implement this chapter specifically including but not limited to the disciplining of a physician who fails to comply with this Code section.

(h) As used in this Code section, the term "responsible physician" means the physician who performs the procedure or the physician under whose direct orders the procedure is performed by a nonphysician.

31-9-7 Right of persons who are at least 18 years of age to refuse to consent to treatment.

Nothing contained in this chapter shall be construed to abridge any right of a person 18 years of age or over to refuse to consent to medical and surgical treatment as to his own person.