

# Let's Talk Law with Anesthesiologists

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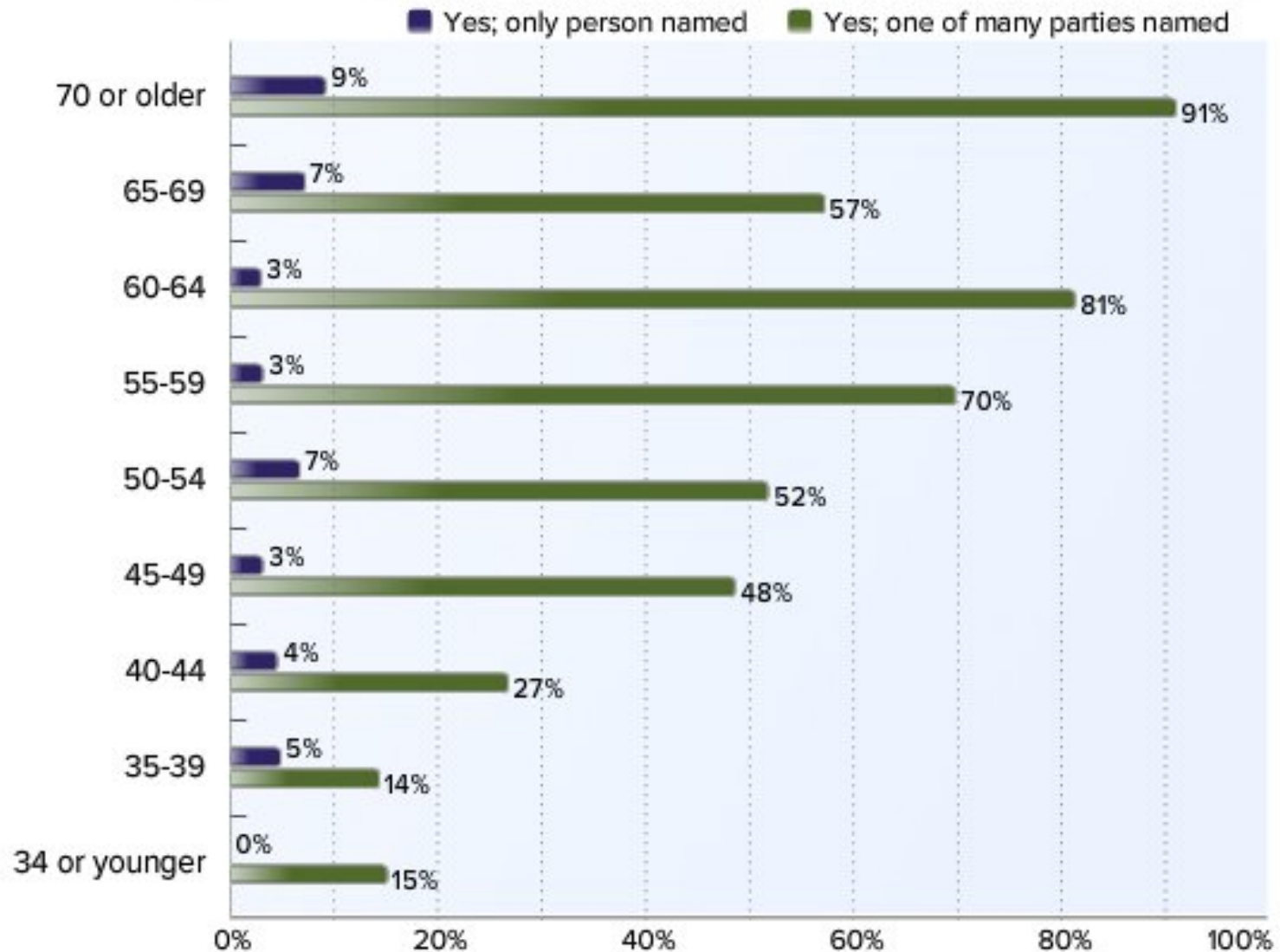
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# Litigation Background

- Medical malpractice is when a doctor or other health care provider treats a patient in a manner that deviates from the medical standard or care, and the patient suffers harm as a result.
- Please know that residents and fellows can be separately named as defendants in medical malpractice claims along with the attendings.

## How Likely Are Anesthesiologists to Be Sued by the End of Their Career?



# O.C.G.A. 9-11-9.1 – Expert Affidavit

(a) In any action for damages alleging professional malpractice against:

(1) A professional licensed by the State of Georgia and listed in subsection (g) of this Code section;

(2) A domestic or foreign partnership, corporation, professional corporation, business trust, general partnership, limited partnership, limited liability company, limited liability partnership, association, or any other legal entity alleged to be liable based upon the action or inaction of a professional licensed by the State of Georgia and listed in subsection (g) of this Code section; or

(3) Any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection (g) of this Code section,

the plaintiff shall be required to file with the complaint an affidavit of an expert competent to testify, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim.

# What is the standard of care?

- The degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances.
- This is a NATIONAL standard.



# Example of Anesthesia Expert Affidavit

- Affiant states that, based upon his review of the records referenced herein, and upon his education, knowledge, training and experience as an anesthesiologist specializing in the administration of general anesthetics, specializing in the supervision and care of patients who are under the influence of a general anesthetic, including patients who sustain surgical complications and/or injuries, including blood loss, during surgery, and Affiant's familiarity with the applicable standard of care ordinarily exercised by health care providers generally under the same or similar conditions and like surrounding circumstances, it is his opinion, with a reasonable degree of medical certainty, that the anesthesiologist departed from the standard of care in the treatment rendered to patient in that he...
- (1) failed to take adequate measures to resuscitate her during her total hip replacement surgery after she experienced blood loss following the injury to her superficial femoral vein.
- (2) failed to take earlier and more frequent arterial blood gases and complete blood counts during the total hip replacement surgery.
- (3) failed to use additional peripheral intravenous lines to resuscitate her during her total hip replacement surgery.
- (4) failed to stop the surgery until the patient had been satisfactorily resuscitated and her metabolic status returned to approaching normal values.



# Problems with Electronic Medical Records

- It is easy to copy and paste.
  - It is repeated over and over in the medical records.
  - It is not always accurate information.
  - “I” becomes “you”

## Anesthesia Attestation Note

Patient: [REDACTED] MRN: [REDACTED] 0 FIN [REDACTED]  
Age: 63 years Sex: Male DOB: [REDACTED]  
Associated Diagnoses: None  
Author: [REDACTED]

### Review / Management

**Anesthesia Pre-Op Info:** Date scheduled: 6/13/2017.

#### Brief History of Present Illness:

Per the service : This is a 63 year old man who presents for consultation regarding his incidental intracranial aneurysm. This was discovered in workup for dizziness. He has no family history of aneurysm and he does not smoke. A catheter angiogram was performed showing a 1 cm anterior communicating artery region aneurysm that fills from the right side.

- The quick and easy drop down boxes.
  - This turns your brain on auto pilot.
  - Often times you can add more.



# What can you testify about in a lawsuit?

- You can testify about your personal knowledge.
- You can testify about your routine practice.
- You can refresh your recollection by reviewing the medical records and testify about your knowledge of the facts after review of the records.

# What is Privileged?

- Attorney – Client
- Husband – Wife
- Clergyman (Priest/Rabbi)
- Psychiatrist/Psychologist – patient
  
- Peer-Review – O.C.G.A. 31-7-133
- (a) Except in proceedings alleging violation of this article, the proceedings and records of a review organization shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action; and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of such organization or as to any findings, recommendations, evaluations, opinions, or other actions of such organization or any members thereof.

# What's not privileged? Text Messages

██████████ is here too. She checked pt and she was 6.5/90/0

Having some small variables and some early decels now. Ctx not adequate so ██████████ said to do pit at 2 mu/min and hold it and see what happens with baby. I would love for you to come look though if you will. Baby is starting to get tachy again

In parking lot on

In parking lot on phone....did ██████████ leave...I texted her and told her I was back

She did leave about 30 minutes ago

And tracing is all over the place.

# What's not? Text Messages

How did [REDACTED] do?

Aborted after 3 hours

Complete disaster

Wtf?

She's fine but I can't even go into it

I'm so angry with the whole situation - I'll forward you the email I just finishing writing to head of anesthesia

We're going to kill this girl

OMG

OMG

What's the plan? She needs to go somewhere else where she can get good care.

Care.

Maybe retry Friday. Or shunt and bring back electively

In literally nauseous about the whole thing

Again, OMG



iMessage



How's [REDACTED]?

Ok sounds good. She's about the same. Got over sedated today and wasn't following commands and ICU freaked out and sent her for stat ct which was stable

Have you ever seen the brain path?

youtube.com



This is what was shoved into her brain

I went to a course about it and was mortified 😊

I feel like I'm going to throw up

What happened this time?

Stealth was off. Blood in ventricles. Poor surgical technique. Bad ju ju

Wed, Mar 30, 5:43 PM

Please tell me that [REDACTED] got extubated today!

Yes she did. But she's aphasia

Completely? F\$&k



Have you heard anything else about the pt from last night? Did he make it?

9:35 AM

Alive but very sick with shock liver. He did arrest in ambulance but then convert to sinus in icu. I guess youve learned not to trust that idiot



9:51 AM



Most definitely. [redacted] is a moron and an embarrassment to my race.

9:54 AM



Nice

9:56 AM

# E-mails

From: [REDACTED]  
Date: [REDACTED]  
To: [REDACTED]  
Subject: RE: [REDACTED] ICU sign out

Hi [REDACTED]

Attached the sign out.

Apparently bed 1 now has a blown pupil. I asked [REDACTED] for a stat head CT and for her to call radiology to get him in. We recently had trouble with timely CT scans necessitating calling code strokes to get a patient to the CT.

Thank you-

[REDACTED]

# Audio Recordings

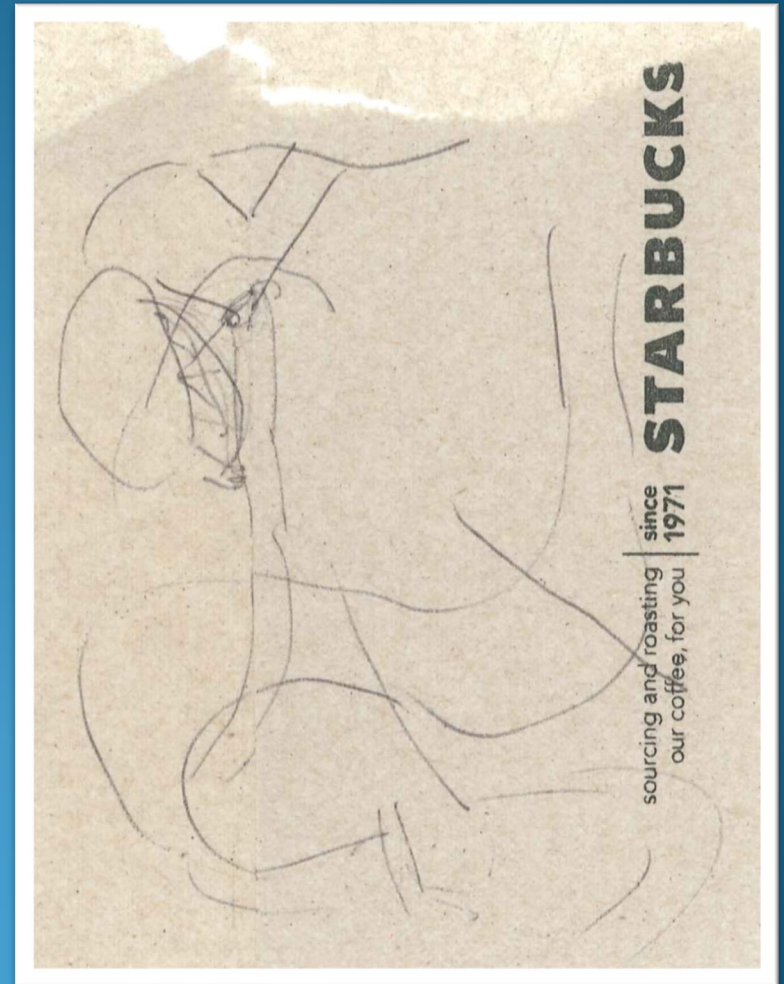
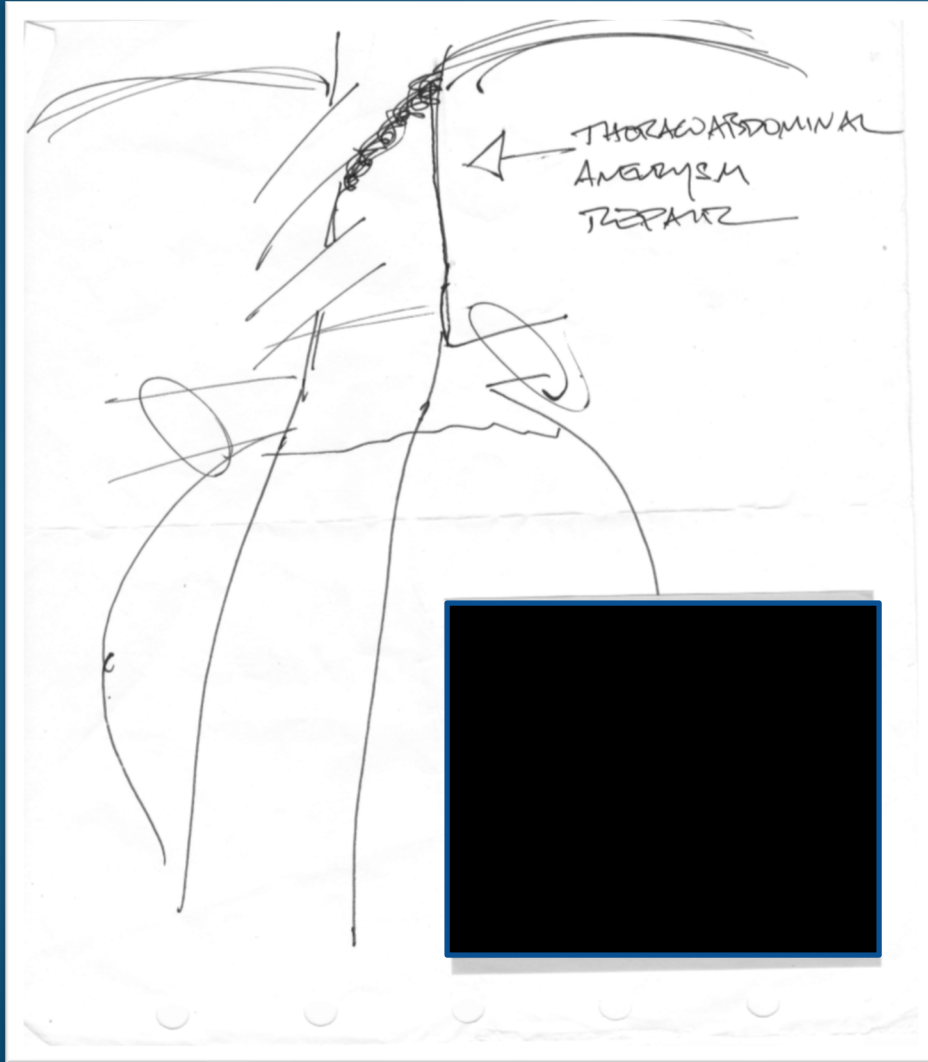
- Under Georgia law, specifically O.C.G.A. § 16-11-66, you can record a conversation in Georgia if you are a party to the conversation without the knowledge or consent of the other party. This can be either on the phone or in any public or private place. The recordings will likely be admissible evidence at any hearing.



# Audio Recordings

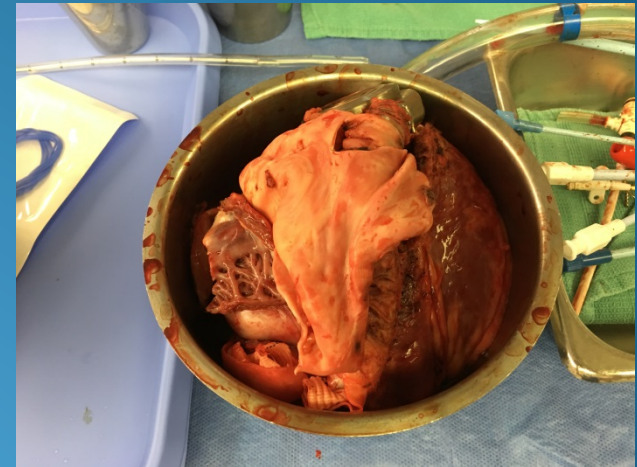
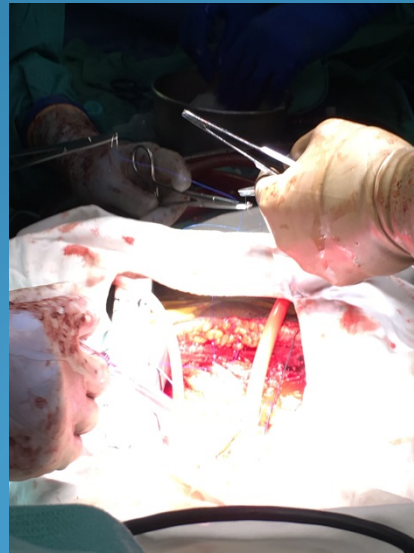
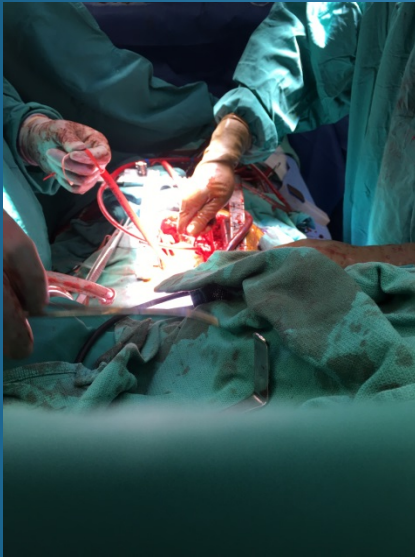
- M.D.: Okay? So, that's a lot of information and most of what I have said is in the negative or depressing category. There is good news. We got through a very, very, very challenging operation, very trying, one of the hardest ones, certainly in these repairs that I have ever done, you know. His blood pressure is fine. We caused gases, acid level, his potassium and all that are doing okay. His heart is doing fine. His lungs are doing fine, so there are a lot of things in the plus category as well.
- Wife: Okay.
- M.D.: And we just need to support him now as his body heals from this.
- Daughter: Are we in any with all of this, like tonight? I mean, I don't know like the terms, but is anything critical?
- M.D.: Yes. I tried to, that's your dad, right?
- Daughter: Yes.
- M.D.: I mean, we were very frank with each other about this. This is always a difficult conversation because you don't want to be overly negative or dramatic, on the other hand, you know, we need to be realistic about what we are dealing with. So, is there a chance that he will take a turn for the worst tonight? Yes. Is there is a chance that he will not survive? Yes. We are not out of the woods by any means. The timeframe right now is basically hour-to-hour. We worry about (1) bleeding, (2) bleeding, (3) bleeding.
- Daughter: Oh.
- M.D.: Once we get sort of through tonight, you know, assuming that is not a problem, we start then looking at kidneys. We have given him probably 25, 26 Cell Savers.
- Fellow: We've got 10 units of blood, Cell Savers, and 22 liters of fluid.
- M.D.: He has gotten 20, close to 30 liters of fluid, if you can image that. All that fluid will go to his lungs and we've got to get that fluid off. If his kidneys can't get it off on their own then we will need to dialyze him to get that fluid off. But then it becomes tricky because for him to maintain his blood pressure he needs the fluid, so the lungs don't want the fluid, the rest of his body does want the fluid and you kind of play this balancing game. Alright?
- Daughter: Huh-huh.
- M.D.: I don't think the paralysis will be as much of an issue based on where we clamped, but we will obviously wake him up and do that. So, lots of issues to deal with.

# Hand Drawing



# Phones in the Operating Room

- <https://www.wsbtv.com/news/2-investigates/doctor-who-made-music-videos-in-operating-room-facing-several-malpractice-suits/751266828>



# Social Media



# Georgia Composite Medical Board

## Georgia Composite Medical Board

Executive Director  
LaSharn Hughes, MBA



Chairperson  
J. Jeffrey Marshall, MD, FACC  
Vice Chairperson  
Ronnie Wallace, MBA

2 Peachtree Street, NW • 6<sup>th</sup> Floor • Atlanta, Georgia 30303 • (404) 656-3913 • [www.medicalboard.georgia.gov](http://www.medicalboard.georgia.gov)

Re: [REDACTED]

Dear Dr. [REDACTED]:

The Georgia Composite Medical Board has received a formal complaint against you. At this time, we are at the information-gathering stage of our investigation into this complaint and have not initiated formal proceedings in this matter. The complaint concerns the following:

- Alleged physician [REDACTED]

The Board respectfully requests that you provide a written response to the allegations of this complaint within fifteen (15) days of the receipt of this letter. Additionally, please provide a certified (notarized) copy of the patient's records. **SEND ORIGINAL CERTIFICATION FORM ONLY. COPIES CANNOT BE ACCEPTED BY THE BOARD.** A subpoena is attached to facilitate the release of the records. If you no longer have access or are no longer custodian of the records, please call to inform of such so that arrangements can be made to properly obtain them. A records certification form is also enclosed for your convenience. Please return the original notarized certification along with the records. Upon receipt of your response to the complaint, a review of the investigative file will be made by the Board as to whether further action is warranted.

Thank you in advance for your cooperation in this matter. You will be advised of any Board action when a final decision has been rendered. If you have any questions, please contact Alexis Nelson at 404-463-8903 or by email at [alexis.nelson@dch.ga.gov](mailto:alexis.nelson@dch.ga.gov).

Sincerely,

Handwritten signature of Patricia Sherman in cursive.

Patricia Sherman  
Enforcement Supervisor  
PS/an

# O.C.G.A. § 43-34A-6

- **§ 43-34A-6. Right to file grievance with state board; display of declaration of rights in waiting rooms; board review of complaints; inclusion in physician profile**
- The patient or any person that the board deems to have a legitimate interest has the right to file a grievance with the board concerning a physician, staff, office, or treatment received.
- A declaration of the patient's rights shall be prominently displayed in conspicuous language in the physician's waiting room. This declaration may be contained in the same notice as the right to obtain physician profiles. The declaration of rights shall contain the following statement:
  - "The patient has the right to file a grievance with the Georgia Composite Medical Board concerning the physician, staff, office, and treatment received. The patient should either call the board with such a complaint or send a written complaint to the board. The patient should be able to provide the physician or practice name, the address, and the specific nature of the complaint."
- Such notice shall include the current phone number and address of the board.
- The board must review every complaint received to determine if there is sufficient evidence to warrant an investigation according to a procedure established by board regulation. Only investigated complaints upon which the board has taken disciplinary action shall be included in a physician's profile. The board must take the appropriate action as set forth in the regulations promulgated by the board. The board must respond in writing to the complaint within 60 days. In the response, the board shall inform the person whether the complaint is being referred for investigation, and if the complaint has been investigated, the results of the investigation or whether further investigation is required, and any board action taken.
- THIS IS CONFIDENTIAL; IT IS NOT PUBLIC KNOWLEDGE.

# GA Composite Medical Board Discipline

- Close the matter
- Letter of concern
- Private Consent Order
- Public Consent Order

# Take Home Points

- GA law requires an expert affidavit.
- The standard of care is at the national level.
- Anesthesia medical records are crucial to the defense of your case.
- Most communications are NOT privileged; be careful with what you say and what you type.
- Social Media can be dangerous.
- GA Medical Board is not out to get you.



