

SUBSTITUTE FOR
HOUSE BILL NO. 5793

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 16279 and 16279a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16279. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 A LICENSEE OR REGISTRANT SHALL NOT PERFORM A MEDICAL TREATMENT,
3 PROCEDURE, OR EXAMINATION ON A PATIENT WHO IS A MINOR THAT INVOLVES
4 THE VAGINAL OR ANAL PENETRATION OF THE MINOR UNLESS ALL OF THE
5 FOLLOWING ARE MET:

6 (A) THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS WITHIN
7 THE SCOPE OF PRACTICE OF THE LICENSEE'S OR REGISTRANT'S HEALTH
8 PROFESSION.

9 (B) A MEDICAL ASSISTANT OR ANOTHER LICENSEE OR REGISTRANT IS
10 IN THE ROOM WHILE THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION

1 IS PERFORMED. THE PERSON PROVIDING CONSENT UNDER SUBDIVISION (C)
2 MAY WAIVE THE REQUIREMENT DESCRIBED IN THIS SUBDIVISION.

3 (C) BEFORE PERFORMING THE MEDICAL TREATMENT, PROCEDURE, OR
4 EXAMINATION, THE LICENSEE OR REGISTRANT OBTAINS THE WRITTEN CONSENT
5 OF A PARENT, GUARDIAN, OR PERSON IN LOCO PARENTIS OF THE MINOR OR
6 THE CONSENT OF ANY PERSON THAT IS AUTHORIZED BY LAW TO PROVIDE
7 CONSENT, ON THE FORM CREATED IN SECTION 16279A OR ON ANOTHER FORM
8 THAT INCLUDES THE SAME INFORMATION AS THE FORM CREATED IN SECTION
9 16279A. THE WRITTEN CONSENT DESCRIBED IN THIS SUBDIVISION MAY BE
10 OBTAINED THROUGH ELECTRONIC MEANS.

11 (2) A LICENSEE OR REGISTRANT WHO OBTAINS THE CONSENT REQUIRED
12 UNDER SUBSECTION (1) FOR A MEDICAL TREATMENT, PROCEDURE, OR
13 EXAMINATION THAT REQUIRES SUBSEQUENT VISITS TO PERFORM THE SAME
14 TREATMENT, PROCEDURE, OR EXAMINATION ON THE MINOR MAY PERFORM THE
15 SUBSEQUENT TREATMENT, PROCEDURE, OR EXAMINATION ON THE MINOR
16 WITHOUT OBTAINING THE CONSENT REQUIRED UNDER SUBSECTION (1) IF THE
17 SUBSEQUENT TREATMENT, PROCEDURE, OR EXAMINATION IS PERFORMED WITHIN
18 6 MONTHS FROM THE DATE OF OBTAINING THE CONSENT REQUIRED UNDER
19 SUBSECTION (1).

20 (3) SUBSECTION (1) DOES NOT APPLY IN ANY OF THE FOLLOWING
21 CIRCUMSTANCES:

22 (A) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS
23 NECESSARY AND IS ASSOCIATED WITH OR INCIDENT TO A MEDICAL
24 EMERGENCY. AS USED IN THIS SUBDIVISION, "MEDICAL EMERGENCY" MEANS A
25 CIRCUMSTANCE THAT, IN THE LICENSEE'S OR REGISTRANT'S GOOD-FAITH
26 MEDICAL JUDGMENT, CREATES AN IMMEDIATE THREAT OF SERIOUS RISK TO
27 THE LIFE OR PHYSICAL HEALTH OF THE PATIENT.

1 (B) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION
2 PRIMARILY RELATES TO THE PATIENT'S UROLOGICAL, GASTROINTESTINAL,
3 REPRODUCTIVE, GYNECOLOGICAL, OR SEXUAL HEALTH.

4 (C) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS
5 PERFORMED AT A CHILDREN'S ADVOCACY CENTER. AS USED IN THIS
6 SUBDIVISION, "CHILDREN'S ADVOCACY CENTER" MEANS THAT TERM AS
7 DEFINED IN SECTION 2 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL
8 722.622.

9 (D) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS
10 PERFORMED FOR PURPOSES OF A SEXUAL ASSAULT MEDICAL FORENSIC
11 EXAMINATION UNDER SECTION 21527.

12 (E) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS
13 PERFORMED FOR THE PURPOSE OF MEASURING THE PATIENT'S TEMPERATURE.

14 (F) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION IS
15 PERFORMED FOR THE PURPOSE OF RECTALLY ADMINISTERING A DRUG OR
16 MEDICINE.

17 (4) THE CONSENT FORM REQUIRED UNDER SUBSECTION (1) MUST BE
18 MAINTAINED IN A PATIENT'S MEDICAL RECORD FOR NOT LESS THAN 15 YEARS
19 FROM THE DATE ON WHICH THE MEDICAL TREATMENT, PROCEDURE, OR
20 EXAMINATION WAS PERFORMED.

21 (5) A PERSON THAT KNOWINGLY VIOLATES SUBSECTION (1) IS GUILTY
22 OF A FELONY PUNISHABLE AS FOLLOWS:

23 (A) FOR THE FIRST OFFENSE, BY IMPRISONMENT FOR NOT MORE THAN 2
24 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

25 (B) FOR A SECOND OR SUBSEQUENT OFFENSE, BY IMPRISONMENT FOR
26 NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN \$10,000.00, OR
27 BOTH.

1 (6) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING CHARGED
2 WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF LAW THAT
3 IS COMMITTED BY THAT PERSON WHILE VIOLATING THIS SECTION.

4 (7) A COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR A
5 VIOLATION OF THIS SECTION TO BE SERVED CONSECUTIVELY TO A TERM OF
6 IMPRISONMENT IMPOSED FOR ANY OTHER CRIME, INCLUDING ANY OTHER
7 VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE
8 VIOLATION OF THIS SECTION.

9 SEC. 16279A. (1) THE DEPARTMENT SHALL CREATE AND MAY
10 PERIODICALLY UPDATE A STANDARDIZED CONSENT FORM TO BE USED BY A
11 LICENSEE OR REGISTRANT WHO PROVIDES A MEDICAL TREATMENT, PROCEDURE,
12 OR EXAMINATION TO A MINOR UNDER SECTION 16279. THE DEPARTMENT SHALL
13 USE GENERALLY ACCEPTED STANDARDS OF MEDICAL PRACTICE IN DETERMINING
14 THE INFORMATION TO BE INCLUDED ON THE FORM. THE FORM MUST INCLUDE
15 AT LEAST ALL OF THE FOLLOWING STATEMENTS:

16 (A) THAT GLOVES ARE GENERALLY USED FOR A MEDICAL TREATMENT,
17 PROCEDURE, OR EXAMINATION INVOLVING VAGINAL OR ANAL PENETRATION.

18 (B) THAT THE PERSON PROVIDING CONSENT UNDER SECTION 16279 HAS
19 THE RIGHT TO REQUEST INFORMATION ON WHETHER THERE IS A REASONABLE
20 ALTERNATIVE TO THE TREATMENT, PROCEDURE, OR EXAMINATION THAT DOES
21 NOT CONSIST OF ANAL OR VAGINAL PENETRATION.

22 (C) THAT THE PERSON PROVIDING CONSENT UNDER SECTION 16279 HAS
23 THE RIGHT TO REQUEST A CLEAR EXPLANATION OF THE NATURE OF THE
24 TREATMENT, PROCEDURE, OR EXAMINATION.

25 (D) THAT THE PERSON PROVIDING CONSENT UNDER SECTION 16279 MAY
26 REQUEST THAT GLOVES BE USED DURING THE TREATMENT, PROCEDURE, OR
27 EXAMINATION.

1 (E) THAT A LICENSEE OR REGISTRANT GENERALLY CANNOT BE ALONE IN
2 THE ROOM WITH THE PATIENT WHILE THE TREATMENT, PROCEDURE, OR
3 EXAMINATION IS BEING PERFORMED.

4 (2) THE DEPARTMENT SHALL MAKE THE FORM PUBLICLY AVAILABLE ON
5 ITS WEBSITE.

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act does not take effect
9 unless House Bill No. 5783 of the 99th Legislature is enacted into
10 law.