



**House
Legislative
Analysis
Section**

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DELEGATED SURGERY: PATIENT INFO

House Bill 4193 as introduced
First Analysis (2-28-89)

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Sponsor: Rep. Nick Ciaramitaro
Committee: Public Health

Mich. State Law Library

THE APPARENT PROBLEM:

An industrial accident resulted in the partial amputation of two of a worker's fingers. The worker went to an industrial clinic, where an unlicensed clinic staffer attempted to reattach the severed fingertips. However, gangrene later set in and the worker lost the severed parts of his fingers. Although the facility did not have the equipment needed to perform microsurgery, and although neither the unlicensed staffer nor the licensed physician who delegated the surgery was trained to do the kind of microvascular surgery required for successful treatment of the worker's injury, the physician was held harmless because of Public Health Code provisions allowing physicians to delegate tasks. Legislation to prevent future such incidents has been proposed.

THE CONTENT OF THE BILL:

The Public Health Code allows people licensed by the code (other than those in a health profession subfield) to delegate certain tasks to a licensed or unlicensed person if that person is otherwise qualified by education, training, or experience to perform the task. The task must be performed under the licensee's supervision, but the licensee need not be physically present when the delegated task is carried out.

The bill would amend the Public Health Code to require that if a licensee delegated a task that involved doing surgery, either the licensee or another licensee who was authorized to independently do the surgery would have to be physically present. This requirement would be waived either if the patient's life or health were in imminent danger or if the licensee decided that it would be more dangerous to transfer the patient to another health facility than to have the surgery performed.

The bill also would require that someone who had been given a surgical task to perform tell the patient (a) who had delegated the task, (b) who was supervising the individual, and (c) that the individual was not licensed in the same profession as the licensee who had delegated the task.

MCL 333.16215

FISCAL IMPLICATIONS:

A Department of Public Health analysis of a similar bill introduced last session reported that that bill had no fiscal implications for the state. (1-15-87)

ARGUMENTS:

For:

Reportedly, it is not uncommon for industrial clinics to be run by physicians from their homes. The physician is never actually present in the clinic, but merely delegates to the personnel staffing the clinic the standing authority to perform tasks in the physician's absence, as the Public

Health Code allows. Clearly, this has sometimes resulted in otherwise avoidable damage to patients, as the case of the worker with the severed fingertips shows. More generally, however, patients going to free-standing medical-surgical clinics should — at the very least — know whether or not the person treating them is licensed to perform the treatment, and, if not, who it is who has delegated the authority for performing the treatment. The bill would protect patients, at least to the extent that it would give patients information that current law does not require them to be given.

Against:

Although the incident in the industrial clinic is unfortunate, the delegation provisions of the health code need a far more thorough revision than the bill would provide. For example, currently the code allows licensees to delegate tasks to licensed or unlicensed people if, in the licensee's opinion, the person's education, training, or experience qualifies him or her to perform the task. But the patient has no way of knowing whether or not the person is qualified, and who is to say that the licensee is qualified to make this judgment? In the specific case prompting the bill, neither the unlicensed clinic staffer nor the physician delegating the surgery was qualified to do the appropriate surgery. What is to prevent future injury to patients due to the failure of an individual licensee to consistently and accurately determine whether or not someone can carry out a particular procedure? The whole point of licensing and regulation is to insure that objective minimum standards of competency are met by health professionals before they are allowed to practice, and that is the issue that needs addressing, not just informing patients that the people treating them may be unlicensed.

Response: While the bill may not address the larger issue of whether or not health professionals licensed under the code should be able to delegate certain tasks to other (licensed or unlicensed) people, it does provide additional safeguards to patients by requiring certain information be given and by requiring that in the case of delegation of surgery, the licensee (or someone else licensed to do the surgery) be physically present, thus curbing some of the worst abuses of "supervision" by physicians who are never physically present in the clinics they are supposedly supervising.

POSITIONS:

There are no positions on the bill.

H.B. 4193 (2-28-89)