

SENATE BILL No. 141

February 28, 1991, Introduced by Senators WELBORN, DINGELL, DILLINGHAM, PRIDNIA, VAN REGENMORTER, HART, CARL, DI NELLO, GEAKE, EMMONS, BARCIA, WARTNER, HONIGMAN and MC MANUS and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 17015 and 17515.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221 and 16226 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 15 of the Public Acts
3 of 1989, being sections 333.16221 and 333.16226 of the Michigan
4 Compiled Laws, are amended and sections 17015 and 17515 are added
5 to read as follows:

6 Sec. 16221. The department may investigate activities
7 related to the practice of a health profession by a licensee, a
8 registrant, or an applicant for licensure or registration. The

1 department may hold hearings, administer oaths, and order
2 relevant testimony to be taken and shall report its findings to
3 the appropriate board or appropriate task force. ~~The~~ A board
4 shall proceed under section 16226 if the board finds that any of
5 the following grounds exist:

6 (a) A violation of general duty, consisting of negligence or
7 failure to exercise due care, including negligent delegation to
8 or supervision of employees or other individuals, whether or not
9 injury results, or any conduct, practice, or condition which
10 impairs, or may impair, the ability to safely and skillfully
11 practice the health profession.

12 (b) Personal disqualifications, consisting of any of the
13 following:

14 (i) Incompetence.

15 (ii) Substance abuse as defined in section 6107.

16 (iii) Mental or physical inability reasonably related to and
17 adversely affecting the licensee's ability to practice in a safe
18 and competent manner.

19 (iv) Declaration of mental incompetence by a court of compe-
20 tent jurisdiction.

21 (v) Conviction of a misdemeanor or felony reasonably related
22 to and adversely affecting the licensee's ability to practice in
23 a safe and competent manner. A certified copy of the court
24 record ~~shall be~~ IS conclusive evidence of the conviction.

25 (vi) Lack of good moral character.

26 (vii) Conviction of a criminal offense under sections 520a
27 to ~~520i~~ 520M of the Michigan penal code, Act No. 328 of the

1 Public Acts of 1931, being sections 750.520a to ~~750.520i~~
2 750.520M of the Michigan Compiled Laws. A certified copy of the
3 court record ~~shall be~~ IS conclusive evidence of the
4 conviction.

5 (viii) Conviction of a violation of section 492a of the
6 Michigan penal code, Act No. 328 of the Public Acts of 1931,
7 being section 750.492a of the Michigan Compiled Laws. A certi-
8 fied copy of the court record ~~shall be~~ IS conclusive evidence
9 of the conviction.

10 (ix) Conviction of a misdemeanor or felony involving fraud
11 in obtaining or attempting to obtain fees related to the practice
12 of a health profession. A certified copy of the court record
13 ~~shall be~~ IS conclusive evidence of the conviction.

14 (c) Prohibited acts, consisting of any of the following:

15 (i) Fraud or deceit in obtaining or renewing a license.

16 (ii) Permitting the license to be used by an unauthorized
17 person.

18 (iii) Practice outside the scope of a license.

19 (iv) Obtaining, possessing, or attempting to obtain or pos-
20 sess a controlled substance as defined in section 7104 or a drug
21 as defined in section 7105 without lawful authority; or selling,
22 prescribing, giving away, or administering drugs for other than
23 lawful diagnostic or therapeutic purposes.

24 (d) Unethical business practices, consisting of any of the
25 following:

26 (i) False or misleading advertising.

1 (ii) Dividing fees for referral of patients or accepting
2 kickbacks on medical or surgical services, appliances, or
3 medications purchased by or in behalf of patients.

4 (iii) Fraud or deceit in obtaining or attempting to obtain
5 third party reimbursement.

6 (e) Unprofessional conduct, consisting of any of the
7 following:

8 (i) Misrepresentation to a consumer or patient or in obtain-
9 ing or attempting to obtain third party reimbursement in the
10 course of professional practice.

11 (ii) Betrayal of a professional confidence.

12 (iii) Promotion for personal gain of an unnecessary drug,
13 device, treatment, procedure, or service.

14 (iv) Directing or requiring an individual to purchase or
15 secure a drug, device, treatment, procedure, or service from
16 another person, place, facility, or business in which the
17 licensee has a financial interest.

18 (f) Failure to report a change of name or address within 30
19 days after the change occurs.

20 (g) A violation, or aiding or abetting in a violation, of
21 this article or of rules promulgated under this article.

22 (h) Failure to comply with a subpoena issued pursuant to
23 this part.

24 (i) Failure to pay an installment of an assessment levied
25 pursuant to section 2504 of the insurance code of 1956, Act
26 No. 218 of the Public Acts of 1956, as amended, being section

1 500.2504 of the Michigan Compiled Laws, within 60 days after
2 notice by the appropriate board.

3 (j) A violation of section 17013 or 17513.

4 (K) A VIOLATION OF SECTION 17015 OR 17515.

5 Sec. 16226. (1) After finding the existence of 1 or more of
6 the grounds for board action listed in section 16221, a board
7 shall impose 1 or more of the following sanctions for each
8 violation:

9 <u>Violations of Section 16221</u>	<u>Sanctions</u>
10 Subdivision (a),	Probation, limitation, denial,
11 (b) (ii),	suspension, revocation,
12 (b) (iv),	restitution, or fine.
13 (b) (vi), or	
14 (b) (vii)	
15 Subdivision (b) (viii)	Revocation.
16 Subdivision (b) (i),	Limitation, suspension,
17 (b) (iii),	revocation, denial,
18 (b) (v), or (b) (ix)	probation, restitution, or
19	fine.
20 Subdivision (c) (i)	Denial, revocation, suspension,
21	probation, limitation, or
22	fine.
23 Subdivision (c) (ii)	Denial, suspension, revocation,
24	restitution, or fine.

1	Subdivision (c) (iii)	Probation, denial, suspension,
2		revocation, restitution, or
3		fine.
4	Subdivision (c) (iv)	Fine, probation, denial,
5	or (d) (iii)	suspension, revocation,
6		or restitution.
7	Subdivision (d) (i)	Reprimand, fine, probation,
8	or (d) (ii)	or restitution.
9	Subdivision (e) (i)	Reprimand, fine, probation,
10		limitation, suspension, or
11		restitution.
12	Subdivision (e) (ii)	Reprimand, probation,
13	or (h)	suspension, restitution, or
14		fine.
15	Subdivision (e) (iii)	Reprimand, fine, probation,
16	or (e) (iv)	suspension, revocation, limita-
17		tion, or restitution.
18	Subdivision (f)	Reprimand or fine.
19	Subdivision (g)	Reprimand, probation, denial,
20		suspension, revocation, limita-
21		tion, restitution, or fine.
22	Subdivision (i)	Suspension or fine.
23	Subdivision (j)	Reprimand or fine.
24	SUBDIVISION (K)	DENIAL, REVOCATION, RESTITUTION,
25		OR FINE.
26	(2) Determination of sanctions for violations under section	
27	16226 shall be made by a board. If, during judicial review, a	

1 court holds that a sanction is unlawful under section 106 of the
2 administrative procedures act of 1969, Act No. 306 of the Public
3 Acts of 1969, being section 24.306 of the Michigan Compiled Laws,
4 the court shall state on the record the reasons for the holding
5 and may remand the case to the board for further consideration.

6 (3) A board created under part 170 or 175 may impose a fine
7 of up to, but not exceeding, \$250,000.00 for a violation of
8 section 16221(a) or (b).

9 SEC. 17015. (1) BEGINNING JANUARY 1, 1992, A PHYSICIAN,
10 BEFORE PERFORMING AN ABORTION ON A PATIENT, SHALL DO ALL OF THE
11 FOLLOWING:

12 (A) CONFIRM ACCORDING TO HIS OR HER BEST MEDICAL JUDGMENT
13 THAT THE PATIENT IS PREGNANT.

14 (B) INFORM THE PATIENT OF HER RIGHT TO WITHHOLD OR WITHDRAW
15 HER CONSENT TO THE ABORTION PROCEDURE AT ANY TIME BEFORE THE
16 ABORTION PROCEDURE.

17 (C) PRESENT TO THE PATIENT, BOTH ORALLY AND IN WRITING, THE
18 FOLLOWING INFORMATION NOT LESS THAN 24 HOURS BEFORE THE ABORTION
19 PROCEDURE:

20 (i) THE GESTATIONAL AGE OF THE FETUS.

21 (ii) A DESCRIPTION IN NONTECHNICAL TERMS OF THE PROBABLE
22 ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE FETUS AT THE
23 DETERMINED GESTATIONAL AGE.

24 (iii) AN EXPLANATION OF THE MEDICAL PROCEDURE THAT WILL BE
25 USED TO ABORT THE FETUS, AND THE NAME OF THE PHYSICIAN WHO WILL
26 PERFORM THE PROCEDURE.

1 (iv) PROCEDURES FOR WHAT TO DO AND WHOM TO CONTACT IF
2 COMPLICATIONS ARISE FROM THE ABORTION PROCEDURE.

3 (v) AN INDICATION OF THE RISK TO THE PATIENT, BASED ON HER
4 PARTICULAR MEDICAL CONDITION AND HISTORY, OF THE FOLLOWING PHYSI-
5 CAL COMPLICATIONS THAT HAVE BEEN ASSOCIATED WITH THE MEDICAL PRO-
6 CEDURE IDENTIFIED IN SUBPARAGRAPH (iii): RETAINED FETAL TISSUE;
7 DAMAGE TO THE CERVIX; HEMORRHAGE; INFECTION; PERFORATION OF THE
8 UTERUS; STERILITY; INCREASED RISK OF COMPLICATIONS IN SUBSEQUENT
9 PREGNANCIES; DEATH; AND LIVE BIRTH.

10 (vi) THAT SOME PSYCHOLOGICAL EFFECTS HAVE BEEN ASSOCIATED
11 WITH ABORTION, INCLUDING: POSTTRAUMATIC STRESS DISORDER, SEVERE
12 DEPRESSION, AND ANNIVERSARY SYNDROME.

13 (vii) THAT SERVICES ARE AVAILABLE THROUGH PUBLIC AND PRIVATE
14 AGENCIES TO ASSIST THE PATIENT DURING HER PREGNANCY AND AFTER THE
15 BIRTH OF HER CHILD, SHOULD SHE CHOOSE TO GIVE BIRTH AND MAINTAIN
16 CUSTODY OF THE CHILD.

17 (viii) THAT SERVICES ARE AVAILABLE THROUGH PUBLIC AND PRI-
18 VATE AGENCIES TO ASSIST THE PATIENT IN PLACING HER CHILD IN AN
19 ADOPTIVE OR FOSTER HOME, SHOULD SHE CHOOSE TO GIVE BIRTH BUT NOT
20 MAINTAIN CUSTODY OF HER CHILD.

21 (D) PROVIDE THE PATIENT WITH A COPY OF THE WRITTEN CONSENT
22 AND ACKNOWLEDGMENT FORM DESCRIBED IN SUBSECTION (3) OR (4).

23 (E) OBTAIN THE PATIENT'S SIGNATURE ON THE CONSENT AND
24 ACKNOWLEDGEMENT PORTIONS OF THE FORM DESCRIBED IN SUBSECTION (3)
25 OR (4), AND RETAIN A COPY IN THAT PATIENT'S MEDICAL RECORD.

26 (F) PROVIDE THE PATIENT WITH A PHOTOGRAPH SUPPLIED BY THE
27 DEPARTMENT OF PUBLIC HEALTH PURSUANT TO SUBSECTION (3) THAT IS A

1 MEDICALLY ACCURATE DEPICTION OF A FETUS AT THE GESTATIONAL AGE
2 NEAREST THE GESTATIONAL AGE OF THE FETUS THAT THE PATIENT IS
3 CARRYING.

4 (2) A PHYSICIAN IS IN FULL COMPLIANCE WITH THE ORAL AND
5 WRITTEN REQUIREMENTS OF SUBSECTION (1) (C) AND (D) IF THAT PHYSI-
6 CIAN DOES EACH OF THE FOLLOWING NOT LESS THAN 24 HOURS BEFORE
7 PERFORMING AN ABORTION ON A PATIENT:

8 (A) PROVIDES THAT PATIENT WITH EACH OF THE FOLLOWING:

9 (i) THE WRITTEN STANDARDIZED SUMMARY, ACKNOWLEDGMENT, AND
10 CONSENT FORM DESCRIBED IN SUBSECTION (3) OR THE ALTERNATIVE WRIT-
11 TEN SUMMARY DESCRIBED IN SUBSECTION (4).

12 (ii) A BRIEF DESCRIPTION OF PROBABLE ANATOMICAL AND PHYSIO-
13 LOGICAL CHARACTERISTICS OF A FETUS AT THE DETERMINED GESTATIONAL
14 AGE OF THE PATIENT'S FETUS.

15 (iii) A PHOTOGRAPH SUPPLIED BY THE DEPARTMENT OF PUBLIC
16 HEALTH PURSUANT TO SUBSECTION (3) THAT IS A MEDICALLY ACCURATE
17 DEPICTION OF A FETUS AT THE GESTATIONAL AGE NEAREST THE GESTA-
18 TIONAL AGE OF THE FETUS THAT THE PATIENT IS CARRYING.

19 (B) OBTAINS FROM THE PATIENT A COPY OF THE STANDARDIZED SUM-
20 MARY, ACKNOWLEDGMENT, AND CONSENT FORM DESCRIBED IN SUBSECTION
21 (3) OR THE ALTERNATIVE SUMMARY DESCRIBED IN SUBSECTION (4) THAT
22 HAS BEEN SIGNED BY THAT PATIENT.

23 (3) THE DEPARTMENT OF PUBLIC HEALTH SHALL DO EACH OF THE
24 FOLLOWING:

25 (A) PRODUCE PHOTOGRAPHS THAT ACCURATELY DEPICT THE DEVELOP-
26 MENT OF A HUMAN FETUS AT 2-WEEK INTERVALS FROM CONCEPTION TO
27 BIRTH.

1 (B) BY JANUARY 1, 1992, DEVELOP, DRAFT, AND PRINT, IN
2 NONTECHNICAL ENGLISH AND SPANISH, A WRITTEN STANDARDIZED SUMMARY,
3 ACKNOWLEDGMENT, AND CONSENT FORM THAT DOES EACH OF THE
4 FOLLOWING:

5 (i) LISTS THE PHYSICAL AND PSYCHOLOGICAL COMPLICATIONS THAT
6 HAVE BEEN ASSOCIATED WITH ABORTION, INCLUDING, BUT NOT LIMITED
7 TO, RETAINED FETAL TISSUE, DAMAGE TO THE CERVIX, HEMORRHAGE,
8 INFECTION, PERFORATION OF THE UTERUS, STERILITY, INCREASED RISK
9 OF COMPLICATIONS IN SUBSEQUENT PREGNANCIES, DEATH, LIVE BIRTH,
10 POSTTRAUMATIC STRESS DISORDER, SEVERE DEPRESSION, AND ANNIVERSARY
11 SYNDROME.

12 (ii) LISTS THE AVAILABILITY OF SERVICES PROVIDED BY PUBLIC
13 AND PRIVATE AGENCIES TO ASSIST THE PATIENT DURING HER PREGNANCY
14 AND AFTER THE BIRTH OF HER CHILD, SHOULD SHE CHOOSE TO GIVE BIRTH
15 AND MAINTAIN CUSTODY OF HER CHILD.

16 (iii) LISTS THE AVAILABILITY OF SERVICES PROVIDED BY PUBLIC
17 AND PRIVATE AGENCIES TO ASSIST THE PATIENT IN PLACING HER CHILD
18 IN AN ADOPTIVE OR FOSTER HOME, SHOULD SHE CHOOSE TO GIVE BIRTH
19 BUT NOT MAINTAIN CUSTODY OF HER CHILD.

20 (iv) PROVIDES THE FOLLOWING LANGUAGE ABOVE A SIGNATURE LINE
21 FOR THE PATIENT: "I HAVE RECEIVED AND REVIEWED THE ATTACHED SUM-
22 MARY, I ACKNOWLEDGE THAT I UNDERSTAND ITS CONTENTS, AND I CONSENT
23 TO AN ABORTION PROCEDURE TO TERMINATE MY PREGNANCY. I UNDERSTAND
24 THAT I HAVE A RIGHT TO WITHDRAW MY CONSENT TO THE ABORTION PROCE-
25 DURE AT ANY TIME PRIOR TO PERFORMANCE OF THAT PROCEDURE. I
26 ACKNOWLEDGE I HAVE RECEIVED THE FOLLOWING:

1 (A) THE PROBABLE GESTATIONAL AGE OF THE FETUS I AM
2 CARRYING.

3 (B) A PHOTOGRAPH DEPICTING A FETUS AT THE PROBABLE GESTA-
4 TIONAL AGE OF THE FETUS I AM CARRYING.

5 (C) THE NAME OF THE PHYSICIAN WHO WILL PERFORM THE ABORTION
6 PROCEDURE.

7 (D) A DESCRIPTION OF THE MEDICAL PROCEDURE THAT WILL BE USED
8 TO ABORT THE FETUS.

9 (E) PROCEDURES FOR WHAT TO DO AND WHOM TO CONTACT IN THE
10 EVENT THAT COMPLICATIONS ARISE FROM THE ABORTION PROCEDURE."

11 (C) MAKE AVAILABLE TO PHYSICIANS THROUGH THE MICHIGAN BOARD
12 OF MEDICINE AND THE MICHIGAN BOARD OF OSTEOPATHIC MEDICINE AND
13 SURGERY THE PHOTOGRAPHS DESCRIBED IN SUBDIVISION (A) AND THE SUM-
14 MARY, ACKNOWLEDGMENT, AND CONSENT FORM DESCRIBED IN SUBDIVISION
15 (B).

16 (D) APPROVE AN ALTERNATIVE WRITTEN SUMMARY, ACKNOWLEDGMENT,
17 AND CONSENT FORM SUBMITTED BY A PHYSICIAN FOR DEPARTMENT OF
18 PUBLIC HEALTH APPROVAL PURSUANT TO SUBDIVISION (B), IF THAT FORM
19 CONTAINS INFORMATION SUBSTANTIALLY SIMILAR TO THE INFORMATION IN
20 THE FORM DESCRIBED IN SUBDIVISION (B).

21 (4) FOR THE PURPOSES OF SUBSECTION (2), A PHYSICIAN MAY USE
22 AN ALTERNATIVE WRITTEN SUMMARY, ACKNOWLEDGMENT AND CONSENT FORM
23 THAT CONTAINS INFORMATION SUBSTANTIALLY SIMILAR TO THAT CONTAINED
24 IN THE STANDARDIZED WRITTEN SUMMARY, ACKNOWLEDGMENT, AND CONSENT
25 FORM DEVELOPED BY THE DEPARTMENT OF PUBLIC HEALTH, AND THAT IS
26 APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH.

1 (5) A PHYSICIAN'S DUTY TO INFORM A PATIENT UNDER THIS
2 SECTION DOES NOT REQUIRE DISCLOSURE OF INFORMATION BEYOND WHAT A
3 REASONABLY WELL-QUALIFIED PHYSICIAN LICENSED UNDER THIS ARTICLE
4 WOULD POSSESS.

5 (6) A PATIENT WHO SIGNS A FORM DESCRIBED IN SUBSECTION (3)
6 OR (4) IS BARRED FROM SUBSEQUENTLY BRINGING A CIVIL ACTION
7 AGAINST THE PHYSICIAN PROVIDING THE WRITTEN SUMMARY DESCRIBED IN
8 SUBSECTION (3) OR (4), BASED ON FAILURE TO OBTAIN INFORMED CON-
9 SENT, BUT ONLY IN REGARD TO INFORMATION PERTAINING TO ABORTION,
10 THE COMPLICATIONS ASSOCIATED WITH ABORTION, AND THE AVAILABILITY
11 OF SERVICES RELATED PRENATAL CARE, POSTNATAL CARE, AND ADOPTION.

12 (7) THE REQUIREMENTS OF SUBSECTION (1) DO NOT APPLY TO AN
13 ABORTION PERFORMED PURSUANT TO AN EMERGENCY.

14 (8) FOR THE PURPOSES OF THIS SECTION:

15 (A) "ABORTION" MEANS THE INTENTIONAL USE OF AN INSTRUMENT,
16 DRUG, OR OTHER SUBSTANCE OR DEVICE TO TERMINATE A WOMAN'S PREG-
17 NANCY FOR A PURPOSE OTHER THAN TO INCREASE THE PROBABILITY OF A
18 LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER
19 LIVE BIRTH, OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE
20 THE USE OR PRESCRIPTION OF A DRUG OR DEVICE INTENDED AS A
21 CONTRACEPTIVE.

22 (B) "EMERGENCY" MEANS A SITUATION IN WHICH CONTINUATION OF A
23 WOMAN'S PREGNANCY WOULD CREATE AN IMMEDIATE THREAT AND GRAVE RISK
24 TO THE LIFE OF THE WOMAN, AS CERTIFIED IN WRITING BY A
25 PHYSICIAN.

26 (9) THIS SECTION DOES NOT CREATE A RIGHT TO ABORTION.

1 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
2 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

3 SEC. 17515. BEGINNING JANUARY 1, 1992, A PHYSICIAN, PRIOR
4 TO PERFORMING AN ABORTION ON A PATIENT, SHALL COMPLY WITH SECTION
5 17015.