



HOUSE BILL No. 4363

February 9, 1995, Introduced by Reps. Mathieu, DeMars, DeHart, Randall, Porreca, Goschka, Berman, McNutt, LaForge, Alley, Agee, Gubow, Emerson, Hanley, Pitoniak and Willard and referred to the Committee on Health Policy.

A bill to amend section 16221 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 133 of the Public Acts of 1993, being section 333.16221 of the Michigan Compiled Laws; and to add sections 17013a and 17513a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 16221 of Act No. 368 of the Public Acts
2 of 1978, as amended by Act No. 133 of the Public Acts of 1993,
3 being section 333.16221 of the Michigan Compiled Laws, is amended
4 and sections 17013a and 17513a are added to read as follows:

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

1 relevant testimony to be taken and shall report its findings to
2 the appropriate disciplinary subcommittee. The disciplinary sub-
3 committee shall proceed under section 16226 if it finds that

4 ~~any~~ 1 OR MORE of the following grounds exist:

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

11 (b) Personal disqualifications, consisting of ~~any~~ 1 OR
12 MORE of the following:

13 (i) Incompetence.

14 (ii) Subject to sections 16165 to 16170a, substance abuse as
15 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 punishable by imprisonment
22 for a maximum term of 2 years, a misdemeanor involving the ille-
23 gal delivery, possession, or use of alcohol or a controlled sub-
24 stance, or a felony. A certified copy of the court record is
25 conclusive evidence of the conviction.

26 (vi) Lack of good moral character.

1 (vii) Conviction of a criminal offense under sections 520a
2 to 520l of the Michigan penal code, Act No. 328 of the Public
3 Acts of 1931, being sections 750.520a to 750.520l of the Michigan
4 Compiled Laws. A certified copy of the court record is conclu-
5 sive evidence of the conviction.

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

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

15 (x) Final adverse administrative action by a licensure, reg-
16 istration, disciplinary, or certification board involving the
17 holder of, or an applicant for, a license or registration regu-
18 lated by another state or a territory of the United States. A
19 certified copy of the record of the board is conclusive evidence
20 of the final action.

21 (xi) Conviction of a misdemeanor that is reasonably related
22 to or that adversely affects the licensee's ability to practice
23 in a safe and competent manner. A certified copy of the court
24 record is conclusive evidence of the conviction.

25 (c) Prohibited acts, consisting of ~~any~~ 1 OR MORE of the
26 following:

1 (i) Fraud or deceit in obtaining or renewing a license or
2 registration.

3 (ii) Permitting the license or registration to be used by an
4 unauthorized person.

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

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

11 (d) Unethical business practices, consisting of ~~any~~ 1 OR
12 MORE of the following:

13 (i) False or misleading advertising.

14 (ii) Dividing fees for referral of patients or accepting
15 kickbacks on medical or surgical services, appliances, or medica-
16 tions purchased by or ~~in~~ ON behalf of patients.

17 (iii) Fraud or deceit in obtaining or attempting to obtain
18 third party reimbursement.

19 (e) Unprofessional conduct, consisting of ~~any~~ 1 OR MORE of
20 the following:

21 (i) Misrepresentation to a consumer or patient or in obtain-
22 ing or attempting to obtain third party reimbursement in the
23 course of professional practice.

24 (ii) Betrayal of a professional confidence.

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

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

5 (f) Failure to report a change of name or mailing address
6 within 30 days after the change occurs.

7 (g) A violation, or aiding or abetting in a violation, of
8 this article or of ~~rules~~ A RULE promulgated under this
9 article.

10 (h) Failure to comply with a subpoena issued pursuant to
11 this part, failure to respond to a complaint issued under this
12 article or article 7, failure to appear at a compliance confer-
13 ence or an administrative hearing, or failure to report under
14 section 16222 or 16223.

15 (i) Failure to pay an installment of an assessment levied
16 pursuant to section 2504 of the insurance code of 1956, Act
17 No. 218 of the Public Acts of 1956, as amended, being section
18 500.2504 of the Michigan Compiled Laws, within 60 days after
19 notice by the appropriate board.

20 (j) A violation of section 17013 or 17513 OR A VIOLATION OF
21 SECTION 17013A OR 17513A.

22 (k) Failure to meet 1 or more of the requirements for licen-
23 sure or registration under section 16174.

24 (l) A violation of section 17015 or 17515.

25 SEC. 17013A. (1) BEGINNING APRIL 1, 1996, A PHYSICIAN WHO
26 IS ADMINISTERING THE PRIMARY TREATMENT FOR PROSTATE CANCER TO A
27 PATIENT WHO HAS BEEN DIAGNOSED AS HAVING PROSTATE CANCER SHALL

1 INFORM THE PATIENT, BOTH ORALLY AND IN WRITING, ABOUT ALTERNATIVE
2 METHODS OF TREATMENT OF THE CANCER, INCLUDING SURGICAL, RADIOLOG-
3 ICAL, AND CHEMOTHERAPEUTIC TREATMENTS, OTHER GENERALLY ACCEPTED
4 MEDICAL TREATMENT, AND EXPERIMENTAL TREATMENT THAT IS KNOWN TO
5 THE PHYSICIAN BUT THAT IS NOT YET GENERALLY ACCEPTED BY THE MEDI-
6 CAL COMMUNITY. THE PHYSICIAN ALSO SHALL INFORM THE PATIENT ABOUT
7 THE ADVANTAGES, DISADVANTAGES, AND RISKS OF EACH METHOD OF TREAT-
8 MENT AND ABOUT THE PROCEDURES INVOLVED IN EACH METHOD OF
9 TREATMENT.

10 (2) IF A PHYSICIAN DESCRIBED IN SUBSECTION (1) GIVES A
11 PATIENT A STANDARDIZED WRITTEN SUMMARY DESCRIBED IN THIS SUBSEC-
12 TION OR A BROCHURE DESCRIBED IN SUBSECTION (3), THE PHYSICIAN IS
13 IN FULL COMPLIANCE WITH THIS SECTION, INCLUDING BOTH THE WRITTEN
14 AND ORAL REQUIREMENTS. THE DEPARTMENT OF PUBLIC HEALTH SHALL
15 DEVELOP THE STANDARD WRITTEN SUMMARY IN COOPERATION WITH THE
16 CHRONIC DISEASE ADVISORY COMMITTEE CREATED UNDER SECTION 5421 AND
17 IN CONSULTATION WITH APPROPRIATE PROFESSIONAL ORGANIZATIONS AND
18 PATIENT ADVOCATE GROUPS INCLUDING, BUT NOT LIMITED TO, THE ORGAN-
19 IZATION PATIENT ADVOCATES FOR ADVANCED CANCER TREATMENT OR ITS
20 SUCCESSOR. THE STANDARDIZED WRITTEN SUMMARY SHALL MEET ALL OF
21 THE FOLLOWING REQUIREMENTS:

22 (A) BE DRAFTED IN NONTECHNICAL TERMS THAT A PATIENT CAN
23 UNDERSTAND.

24 (B) INFORM THE PATIENT ABOUT ALTERNATIVE METHODS OF TREAT-
25 MENT OF PROSTATE CANCER, INCLUDING SURGICAL, RADIOLOGICAL, AND
26 CHEMOTHERAPEUTIC TREATMENTS, OTHER GENERALLY ACCEPTED MEDICAL
27 TREATMENT, AND EXPERIMENTAL TREATMENT THAT IS KNOWN TO THE

1 DEPARTMENT OF PUBLIC HEALTH OR THE CHRONIC DISEASE ADVISORY
2 COMMITTEE BUT THAT IS NOT YET GENERALLY ACCEPTED BY THE MEDICAL
3 COMMUNITY.

4 (C) INFORM THE PATIENT ABOUT THE ADVANTAGES, DISADVANTAGES,
5 AND RISKS OF EACH METHOD OF TREATMENT AND ABOUT THE PROCEDURES
6 INVOLVED IN EACH METHOD OF TREATMENT.

7 (3) FOR PURPOSES OF SUBSECTION (2), A PHYSICIAN MAY USE A
8 BROCHURE THAT CONTAINS INFORMATION THAT IS SUBSTANTIALLY SIMILAR
9 TO THE INFORMATION CONTAINED IN THE STANDARDIZED WRITTEN SUMMARY
10 DEVELOPED BY THE DEPARTMENT OF PUBLIC HEALTH IF THE BROCHURE HAS
11 BEEN APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH.

12 (4) THE DEPARTMENT OF PUBLIC HEALTH SHALL DEVELOP THE STAN-
13 DARDIZED WRITTEN SUMMARY DESCRIBED IN SUBSECTION (2) BY MARCH 1,
14 1996.

15 (5) THE DEPARTMENT OF PUBLIC HEALTH SHALL MAKE THE STANDARD-
16 IZED WRITTEN SUMMARY DESCRIBED IN SUBSECTION (2) AVAILABLE TO
17 PHYSICIANS THROUGH THE MICHIGAN BOARD OF MEDICINE AND THE
18 MICHIGAN BOARD OF OSTEOPATHIC MEDICINE AND SURGERY. THE MICHIGAN
19 BOARD OF MEDICINE AND THE MICHIGAN BOARD OF OSTEOPATHIC MEDICINE
20 AND SURGERY SHALL NOTIFY IN WRITING EACH PHYSICIAN SUBJECT TO
21 THIS SECTION OF THE REQUIREMENTS OF THIS SECTION AND THE AVAIL-
22 ABILITY OF THE STANDARDIZED WRITTEN SUMMARY BY MARCH 10, 1996.

23 (6) A PHYSICIAN DESCRIBED IN SUBSECTION (1) SHALL INCLUDE IN
24 THE PATIENT'S MEDICAL RECORD A FORM, SIGNED BY THE PATIENT, INDI-
25 CATING THAT THE PATIENT HAS BEEN GIVEN A COPY OF THE STANDARDIZED
26 WRITTEN SUMMARY DESCRIBED IN SUBSECTION (2) OR THE BROCHURE
27 DESCRIBED IN SUBSECTION (3).

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

5 (8) A PATIENT WHO SIGNS A FORM UNDER SUBSECTION (6) IS
6 BARRED FROM SUBSEQUENTLY BRINGING A CIVIL ACTION AGAINST THE PHY-
7 SICIAN PROVIDING THE STANDARDIZED WRITTEN SUMMARY DESCRIBED IN
8 SUBSECTION (2) OR THE BROCHURE DESCRIBED IN SUBSECTION (3) BASED
9 ON FAILURE TO OBTAIN INFORMED CONSENT, BUT ONLY IN REGARD TO
10 INFORMATION PERTAINING TO ALTERNATIVE METHODS OF TREATMENT OF
11 PROSTATE CANCER, AND THE ADVANTAGES, DISADVANTAGES, AND RISKS OF
12 EACH METHOD OF TREATMENT.

13 SEC. 17513A. (1) BEGINNING APRIL 1, 1996, A PHYSICIAN WHO
14 IS ADMINISTERING THE PRIMARY TREATMENT FOR PROSTATE CANCER TO A
15 PATIENT WHO HAS BEEN DIAGNOSED AS HAVING PROSTATE CANCER SHALL
16 INFORM THE PATIENT, BOTH ORALLY AND IN WRITING, ABOUT ALTERNATIVE
17 METHODS OF TREATMENT OF THE CANCER, INCLUDING SURGICAL, RADIOLOG-
18 ICAL, AND CHEMOTHERAPEUTIC TREATMENTS, OTHER GENERALLY ACCEPTED
19 MEDICAL TREATMENT, AND EXPERIMENTAL TREATMENT THAT IS KNOWN TO
20 THE PHYSICIAN BUT THAT IS NOT YET GENERALLY ACCEPTED BY THE MEDI-
21 CAL COMMUNITY. THE PHYSICIAN ALSO SHALL INFORM THE PATIENT ABOUT
22 THE ADVANTAGES, DISADVANTAGES, AND RISKS OF EACH METHOD OF TREAT-
23 MENT AND ABOUT THE PROCEDURES INVOLVED IN EACH METHOD OF
24 TREATMENT.

25 (2) IF A PHYSICIAN DESCRIBED IN SUBSECTION (1) GIVES A
26 PATIENT A STANDARDIZED WRITTEN SUMMARY OR A BROCHURE, AS
27 DESCRIBED IN SECTION 17013(2) OR (3), THE PHYSICIAN IS IN FULL

1 COMPLIANCE WITH THIS SECTION, INCLUDING BOTH THE WRITTEN AND ORAL
2 REQUIREMENTS.

3 (3) A PHYSICIAN DESCRIBED IN SUBSECTION (1) SHALL INCLUDE IN
4 THE PATIENT'S MEDICAL RECORD A FORM, SIGNED BY THE PATIENT, INDI-
5 CATING THAT THE PATIENT HAS BEEN GIVEN A COPY OF THE STANDARDIZED
6 WRITTEN SUMMARY DESCRIBED IN SECTION 17013(2) OR THE BROCHURE
7 DESCRIBED IN SECTION 17013(3).

8 (4) A PHYSICIAN'S DUTY TO INFORM A PATIENT UNDER THIS SEC-
9 TION DOES NOT REQUIRE THE DISCLOSURE OF INFORMATION BEYOND WHAT A
10 REASONABLY WELL-QUALIFIED PHYSICIAN LICENSED UNDER THIS ARTICLE
11 WOULD KNOW.

12 (5) A PATIENT WHO SIGNS A FORM UNDER SUBSECTION (3) IS
13 BARRED FROM SUBSEQUENTLY BRINGING A CIVIL ACTION AGAINST THE PHY-
14 SICIAN PROVIDING THE STANDARDIZED WRITTEN SUMMARY DESCRIBED IN
15 SECTION 17013(2) OR THE BROCHURE DESCRIBED IN SECTION 17013(3)
16 BASED ON FAILURE TO OBTAIN INFORMED CONSENT, BUT ONLY IN REGARD
17 TO INFORMATION PERTAINING TO ALTERNATIVE METHODS OF TREATMENT OF
18 PROSTATE CANCER, AND THE ADVANTAGES, DISADVANTAGES, AND RISKS OF
19 EACH METHOD OF TREATMENT.