

# HOUSE BILL No. 5793

April 12, 2018, Introduced by Reps. Theis, Hornberger, Kesto, Rendon and Iden and referred to the Committee on Law and Justice.

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.

1 (B) A MEDICAL ASSISTANT OR ANOTHER LICENSEE OR REGISTRANT IS  
2 IN THE ROOM WHILE THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION  
3 IS PERFORMED.

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

25 (B) IF THE MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION  
26 PRIMARILY RELATES TO THE PATIENT'S REPRODUCTIVE, GYNECOLOGICAL, OR  
27 SEXUAL HEALTH.

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

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

9 (4) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A FELONY  
10 PUNISHABLE AS FOLLOWS:

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

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

16 (5) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING CHARGED  
17 WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF LAW THAT  
18 IS COMMITTED BY THAT PERSON WHILE VIOLATING THIS SECTION.

19 (6) A COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR A  
20 VIOLATION OF THIS SECTION TO BE SERVED CONSECUTIVELY TO A TERM OF  
21 IMPRISONMENT IMPOSED FOR ANY OTHER CRIME, INCLUDING ANY OTHER  
22 VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE  
23 VIOLATION OF THIS SECTION.

24 SEC. 16279A. (1) THE DEPARTMENT SHALL CREATE A STANDARDIZED  
25 CONSENT FORM TO BE USED BY A LICENSEE OR REGISTRANT WHO PROVIDES A  
26 MEDICAL TREATMENT, PROCEDURE, OR EXAMINATION TO A MINOR UNDER  
27 SECTION 16279. THE FORM MUST INCLUDE AT LEAST ALL OF THE FOLLOWING

1 STATEMENTS:

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

4 (B) THAT THE PATIENT HAS THE RIGHT TO REQUEST INFORMATION ON  
5 WHETHER THERE IS A REASONABLE ALTERNATIVE TO THE TREATMENT,  
6 PROCEDURE, OR EXAMINATION THAT DOES NOT CONSIST OF ANAL OR VAGINAL  
7 PENETRATION.

8 (C) THAT THE PATIENT HAS THE RIGHT TO REQUEST A CLEAR  
9 EXPLANATION OF THE NATURE OF THE TREATMENT, PROCEDURE, OR  
10 EXAMINATION.

11 (D) THAT THE PATIENT MAY REQUEST THAT GLOVES BE USED DURING  
12 THE TREATMENT, PROCEDURE, OR EXAMINATION.

13 (E) THAT A LICENSEE OR REGISTRANT CANNOT BE ALONE IN THE ROOM  
14 WITH THE PATIENT WHILE THE TREATMENT, PROCEDURE, OR EXAMINATION IS  
15 BEING PERFORMED.

16 (2) THE DEPARTMENT SHALL MAKE THE FORM PUBLICLY AVAILABLE ON  
17 ITS WEBSITE.

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

20 Enacting section 2. This amendatory act does not take effect  
21 unless Senate Bill No.\_\_\_\_ or House Bill No. 5783 (request no.  
22 06082'18) of the 99th Legislature is enacted into law.