

HOUSE BILL No. 5918

March 29, 2006, Introduced by Rep. Mortimer and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 94 and section 16279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 94. CONSUMER HEALTH FREEDOM

2 SEC. 9401. (1) THIS PART SHALL BE KNOWN AND MAY BE CITED AS
3 THE "MICHIGAN HEALTH FREEDOM ACT".

4 (2) THE LEGISLATURE FINDS ALL OF THE FOLLOWING:

5 (A) BASED UPON STUDIES, RESEARCH, AND PUBLIC POLICY
6 DECLARATIONS BY STATE GOVERNMENTS, INCLUDING A COMPREHENSIVE REPORT
7 BY THE NATIONAL INSTITUTES OF MEDICINE AND A STUDY PUBLISHED BY THE
8 NEW ENGLAND JOURNAL OF MEDICINE, IT IS WIDELY RECOGNIZED THAT
9 THOUSANDS OF INDIVIDUALS IN THIS STATE ARE PRESENTLY RECEIVING A
10 SUBSTANTIAL AMOUNT OF HEALTH CARE FROM PROVIDERS OF COMPLEMENTARY

1 OR ALTERNATIVE HEALTH CARE SERVICES WHO ARE NOT LICENSED OR
2 REGISTERED BY THE STATE. THOSE STUDIES FURTHER INDICATE THAT
3 COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES ARE USED BY
4 INDIVIDUALS FROM A WIDE VARIETY OF AGE, ETHNIC, SOCIOECONOMIC, AND
5 OTHER DEMOGRAPHIC CATEGORIES.

6 (B) NOTWITHSTANDING THE WIDESPREAD USE OF COMPLEMENTARY OR
7 ALTERNATIVE HEALTH CARE SERVICES, ACCESS TO THESE SERVICES FOR
8 RESIDENTS OF THIS STATE HAS BEEN HAMPERED BY A FAILURE OF THIS
9 STATE TO OPENLY ACKNOWLEDGE THE EXISTENCE OF CERTAIN HEALTH CARE
10 PRACTICES, HEALING THERAPIES AND MODALITIES, AND METHODS THAT ARE
11 NOT SUITABLE FOR REGULATION OR LICENSURE UNDER THIS CODE. AS A
12 RESULT, THE PROVIDERS OF THESE SERVICES WHO ARE NOT LICENSED OR
13 REGISTERED BY THIS STATE AS HEALTH CARE PROFESSIONALS MAY BE
14 SUBJECT TO CHARGES OF ENGAGING IN THE PRACTICE OF A HEALTH
15 PROFESSION WITHOUT A LICENSE AND EXPOSED TO FINES, PENALTIES, OR
16 THE RESTRICTION OF THEIR PRACTICE DESPITE THE FACT THAT THESE
17 SERVICES HAVE NOT BEEN SHOWN TO POSE AN IMMINENT RISK OF
18 SIGNIFICANT AND DISCERNIBLE HARM TO THE PUBLIC'S HEALTH, SAFETY, OR
19 WELFARE. ACCORDINGLY, THE AVAILABILITY OF THE COMPLEMENTARY OR
20 ALTERNATIVE HEALING SERVICES HAS BEEN SIGNIFICANTLY, HARMFULLY, AND
21 UNNECESSARILY LIMITED BY POTENTIALLY SUBJECTING THE UNLICENSED
22 PROVIDERS OF THOSE SERVICES TO FINES, PENALTIES, AND RESTRICTION OF
23 THEIR PRACTICE.

24 (C) THAT THE UNREGULATED PRACTICE OF COMPLEMENTARY OR
25 ALTERNATIVE HEALTH CARE SERVICES IS SUITABLE AND DESIRABLE UNDER
26 CERTAIN CIRCUMSTANCES FOR THE PUBLIC'S HEALTH AND WELFARE AND THAT
27 BARRIERS TO THE PUBLIC'S ACCESS TO THE PERFORMANCE AND DELIVERY OF

1 THOSE COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES SHALL BE
2 REMOVED AND ACCESS ENHANCED.

3 SEC. 9403. (1) AS USED IN THIS PART:

4 (A) "COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES" MEANS,
5 SUBJECT TO SECTION 9405(1), A BROAD DOMAIN OF HEALTH CARE PRACTICES
6 AND SERVICES, INCLUDING METHODS, MODALITIES, TREATMENTS,
7 PROCEDURES, OR PROTOCOLS THAT HAVE NOT BEEN GENERALLY ADOPTED BY A
8 LICENSED HEALTH CARE PROFESSION, ARE NOT GENERALLY CONSIDERED BY
9 THAT PROFESSION TO BE WITHIN THE CURRENT ACCEPTABLE STANDARDS OF
10 CARE, OR ARE NOT STANDARD PRACTICES OF A PROFESSION IN A PARTICULAR
11 COMMUNITY, AND THAT DO NOT POSE A GREATER RISK OF DIRECT PHYSICAL
12 OR EMOTIONAL HARM TO A CLIENT WHEN USED AS DIRECTED THAN THAT OF
13 CONVENTIONAL PREDOMINANTLY USED TREATMENT PERFORMED UNDER A
14 PREVAILING AND ACCEPTED STANDARD OF CARE OF THAT LICENSED HEALTH
15 PROFESSION.

16 (B) "LICENSED HEALTH CARE PROFESSIONAL" MEANS AN INDIVIDUAL
17 LICENSED OR REGISTERED, OR OTHERWISE AUTHORIZED, UNDER ARTICLE 15
18 TO ENGAGE IN THE PRACTICE OF HIS OR HER HEALTH PROFESSION. LICENSED
19 HEALTH CARE PROFESSIONAL DOES NOT INCLUDE A SANITARIAN OR A
20 VETERINARIAN.

21 (C) "PRESCRIPTION DRUG" MEANS THAT TERM AS DEFINED UNDER
22 SECTION 17708.

23 (2) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
24 PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS CODE.

25 SEC. 9405. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
26 INDIVIDUAL OTHER THAN A LICENSED HEALTH CARE PROFESSIONAL MAY
27 PROVIDE COMPLEMENTARY OR ALTERNATIVE HEALING SERVICES AS AUTHORIZED

1 UNDER THIS PART. AN INDIVIDUAL OTHER THAN A LICENSED HEALTH CARE
2 PROFESSIONAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALING
3 SERVICES IS NOT ENGAGED IN THE UNLAWFUL PRACTICE OF A HEALTH
4 PROFESSION OR OTHERWISE IN VIOLATION OF THIS CODE UNLESS HE OR SHE
5 DOES ANY OF THE FOLLOWING:

6 (A) PERFORMS SURGERY OR ANY OTHER PROCEDURE THAT HARMFULLY
7 PUNCTURES THE SKIN.

8 (B) PRESCRIBES OR ADMINISTERS ANY PROCEDURE INVOLVING IONIZING
9 RADIATION.

10 (C) PRESCRIBES, DISPENSES, ADMINISTERS, OR RECOMMENDS THE
11 DISCONTINUANCE OF A PRESCRIPTION DRUG OR DEVICE.

12 (D) PERFORMS A CHIROPRACTIC ADJUSTMENT OF THE ARTICULATIONS OF
13 THE JOINTS OR SPINE.

14 (E) WILLFULLY PROVIDES A DIAGNOSIS OR TREATMENT OF A PHYSICAL
15 OR MENTAL HEALTH CONDITION OF AN INDIVIDUAL THAT DIRECTLY POSES TO
16 THE INDIVIDUAL DIAGNOSED OR TREATED A SIGNIFICANT RISK OF BODILY
17 INJURY, SIGNIFICANT PHYSICAL OR MENTAL ILLNESS, OR DEATH.

18 (F) HOLDS OUT, STATES, INDICATES, ADVERTISES, OR OTHERWISE
19 IMPLIES TO ANY PERSON THAT HE OR SHE IS A LICENSED HEALTH CARE
20 PROFESSIONAL.

21 (2) AN INDIVIDUAL OTHER THAN A LICENSED HEALTH CARE
22 PROFESSIONAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALING
23 SERVICES SHALL DO EACH OF THE FOLLOWING:

24 (A) PRIOR TO PROVIDING COMPLEMENTARY OR ALTERNATIVE HEALTH
25 CARE SERVICES, DISCLOSE TO THE RECIPIENT OF THE SERVICES IN A
26 PLAINLY WORDED WRITTEN STATEMENT THE FOLLOWING INFORMATION:

27 (i) THE NATURE OF THE SERVICES TO BE PROVIDED AND THE THEORY ON

1 WHICH THE SERVICES ARE BASED.

2 (ii) THE DEGREES, TRAINING, EXPERIENCE, CREDENTIALS, OR OTHER
3 QUALIFICATIONS OF THE INDIVIDUAL WITH REGARD TO THE SERVICES TO BE
4 PROVIDED.

5 (iii) A STATEMENT, PRINTED CLEARLY IN NOT LESS THAN 11-POINT
6 FONT AS FOLLOWS:

7 "I AM NOT LICENSED OR REGISTERED BY THE STATE OF MICHIGAN AS A
8 LICENSED HEALTH CARE PROFESSIONAL. MICHIGAN HAS NOT ADOPTED ANY
9 EDUCATIONAL AND TRAINING STANDARDS FOR UNLICENSED INDIVIDUALS WHO
10 PROVIDE COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES. THIS
11 STATEMENT OF CREDENTIALS IS FOR INFORMATIONAL PURPOSES ONLY."

12 (B) OBTAIN A WRITTEN ACKNOWLEDGMENT FROM THE RECIPIENT STATING
13 THAT HE OR SHE HAS BEEN PROVIDED WITH THE INFORMATION DESCRIBED
14 UNDER THIS SUBSECTION AND PROVIDE THE RECIPIENT WITH A COPY OF THIS
15 WRITTEN ACKNOWLEDGMENT.

16 SEC. 9407. (1) AN INDIVIDUAL WHO PROVIDES COMPLEMENTARY OR
17 ALTERNATIVE HEALTH CARE SERVICES AND ENGAGES IN ANY OF THE
18 ACTIVITIES PROSCRIBED UNDER SECTION 9405(1) IS GUILTY OF A FELONY
19 AS DESCRIBED UNDER SECTION 16294 AND REQUIRED TO MAKE RESTITUTION.

20 (2) AN INDIVIDUAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE
21 HEALTH CARE SERVICES AND FAILS TO COMPLY WITH SECTION 9405(2) MAY
22 BE SUBJECT TO AN ADMINISTRATIVE OR CIVIL FINE TO BE PAID TO THE
23 DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$500.00 FOR EACH VIOLATION.

24 SEC. 9409. NOTHING IN THIS PART SHALL BE CONSTRUED TO AFFECT
25 THE SCOPE OF PRACTICE OR THE STANDARD OF CARE APPLICABLE TO
26 LICENSED HEALTH CARE PROFESSIONALS IN THE PERFORMANCE OF
27 COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES.

1 SEC. 16279. (1) A LICENSEE OR REGISTRANT WHO OFFERS TO PROVIDE
2 A PATIENT WITH A COMPLEMENTARY OR ALTERNATIVE HEALTH SERVICE SHALL
3 DO ALL OF THE FOLLOWING:

4 (A) INFORM THE PATIENT OF THE NATURE OF THE SERVICE OR
5 SERVICES, ALONG WITH THE THEORY ON WHICH THOSE SERVICES ARE BASED,
6 AND EXPLAIN THE BENEFITS AND RISKS ASSOCIATED WITH SUCH SERVICES.

7 (B) INFORM THE PATIENT OF HIS OR HER DEGREES, TRAINING,
8 EXPERIENCE, CREDENTIALS, OR OTHER QUALIFICATIONS WITH REGARD TO THE
9 SERVICES BEING OFFERED.

10 (C) OBTAIN A WRITTEN ACKNOWLEDGMENT FROM THE PATIENT STATING
11 THAT HE OR SHE HAS BEEN PROVIDED WITH THE INFORMATION DESCRIBED
12 UNDER THIS SUBSECTION AND PROVIDE THE PATIENT WITH A COPY OF THIS
13 WRITTEN ACKNOWLEDGMENT.

14 (2) NOTHING IN THIS SECTION MODIFIES OR CHANGES THE SCOPE OF
15 PRACTICE OR THE STANDARD OF CARE FOR ANY PREVAILING OR CONVENTIONAL
16 TREATMENT METHODS USED THAT ARE APPLICABLE TO A LICENSEE OR
17 REGISTRANT.

18 (3) AS USED IN THIS SECTION, "COMPLEMENTARY OR ALTERNATIVE
19 HEALTH CARE SERVICE" MEANS THAT TERM AS DEFINED UNDER SECTION 9403.

20 Enacting section 1. This amendatory act takes effect July 1,
21 2006.