

HOUSE BILL No. 5940

March 30, 2006, Introduced by Reps. Kahn, Gaffney, Hune, Ball, Newell, David Law, Gleason, Adamini, Mortimer, Garfield, Schuitmaker, Gosselin, Taub, Lipsey, Tobocman, Wojno, Lemmons, Jr., Sheltroun, Vagnozzi, Jones, Condino, Bieda, Stewart and Lemmons, III and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16244, 21513, and 21515 (MCL 333.16244, 333.21513, and 333.21515), section 16244 as amended by 1993 PA 87 and section 21513 as amended by 2002 PA 125.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16244. (1) A person, including a state or county health
2 professional organization, a committee of the organization, or an
3 employee or officer of the organization furnishing information to,
4 or on behalf of, the organization, acting in good faith who makes a
5 report; assists in originating, investigating, or preparing a
6 report; or assists a board or task force, a disciplinary
7 subcommittee, a hearings examiner, the committee, or the department
8 in carrying out its duties under this article is immune from civil

1 or criminal liability including, but not limited to, liability in a
2 civil action for damages that might otherwise be incurred thereby
3 and is protected under the whistleblowers' protection act, ~~Act No.~~
4 ~~469 of the Public Acts of 1980, being sections 15.361 to 15.369 of~~
5 ~~the Michigan Compiled Laws 1980 PA 469, MCL 15.361 TO 15.369.~~ A
6 person making or assisting in making a report, or assisting a board
7 or task force, a hearings examiner, the committee, or the
8 department, is presumed to have acted in good faith. The immunity
9 from civil or criminal liability granted under this subsection
10 extends only to acts done pursuant to this article. ~~or section~~
11 ~~21513(e).~~

12 (2) The physician-patient privilege created in section 2157 of
13 the revised judicature act of 1961, ~~Act No. 236 of the Public Acts~~
14 ~~of 1961, being section 600.2157 of the Michigan Compiled Laws 1961~~
15 **PA 236, MCL 600.2157**, does not apply in an investigation or
16 proceeding by a board or task force, a disciplinary subcommittee, a
17 hearings examiner, the committee, or the department acting within
18 the scope of its authorization. Unless expressly waived by the
19 individual to whom the information pertains, the information
20 obtained is confidential and shall not be disclosed except to the
21 extent necessary for the proper functioning of a board or task
22 force, a disciplinary subcommittee, the committee, or the
23 department. Except as otherwise provided in this subsection, a
24 person shall not use or disseminate the information except pursuant
25 to a valid court order.

26 Sec. 21513. The owner, operator, and governing body of a
27 hospital licensed under this article:

1 (a) Are responsible for all phases of the operation of the
2 hospital, selection of the medical staff, and quality of care
3 rendered in the hospital.

4 (b) Shall cooperate with the department in the enforcement of
5 this part, and require that the physicians, dentists, and other
6 personnel working in the hospital who are required to be licensed
7 or registered are in fact currently licensed or registered.

8 (c) Shall assure that physicians and dentists admitted to
9 practice in the hospital are granted hospital privileges consistent
10 with their individual training, experience, and other
11 qualifications.

12 (d) Shall assure that physicians and dentists admitted to
13 practice in the hospital are organized into a medical staff to
14 enable an effective review of the professional practices in the
15 hospital for the purpose of reducing morbidity and mortality and
16 improving the care provided in the hospital for patients. The
17 review shall include the quality and necessity of the care provided
18 and the preventability of complications and deaths occurring in the
19 hospital.

20 (e) Shall not discriminate because of race, religion, color,
21 national origin, age, or sex in the operation of the hospital
22 including employment, patient admission and care, room assignment,
23 and professional or nonprofessional selection and training
24 programs, and shall not discriminate in the selection and
25 appointment of individuals to the physician staff of the hospital
26 or its training programs on the basis of licensure, ~~or~~
27 registration, **OR SPECIALTY CERTIFICATION** or professional education

1 **INTERNSHIP, RESIDENCY, OR OTHER TRAINING** as doctors of medicine,
2 osteopathic medicine and surgery, or podiatry.

3 (f) Shall assure that the hospital adheres to medical control
4 authority protocols according to section 20918.

5 (g) Shall assure that the hospital develops and maintains a
6 plan for biohazard detection and handling.

7 Sec. 21515. (1) The records, data, and knowledge collected for
8 or by individuals or committees assigned a review function
9 described in this article are confidential and shall be used only
10 for the purposes provided in this article, shall not be public
11 records, and shall not be available for court subpoena **EXCEPT AS**
12 **OTHERWISE PROVIDED UNDER THIS SECTION.**

13 (2) **A HEALTH CARE PROVIDER, ENTITY, OR PRACTITIONER MAY SEEK**
14 **JUDICIAL REVIEW OF A FINAL DETERMINATION, ORDER, OR DECISION MADE**
15 **BY AN INDIVIDUAL OR COMMITTEE ASSIGNED A REVIEW FUNCTION ON THE**
16 **GROUND THAT HIS OR HER SUBSTANTIVE OR PROCEDURAL OR ANY OTHER**
17 **LEGAL RIGHTS UNDER FEDERAL, STATE, OR COMMON LAW HAVE BEEN**
18 **VIOLATED. IF JUDICIAL REVIEW IS SOUGHT IN ACCORDANCE WITH THIS**
19 **SECTION, THEN ANY RECORDS, DATA, OR ANY OTHER INFORMATION COLLECTED**
20 **UNDER THIS SECTION IS NOT EXEMPT FROM SUBPOENA, DISCOVERY, OR**
21 **INTRODUCTION INTO EVIDENCE IN AN ACTION AS LONG AS THOSE RECORDS,**
22 **DATA, OR INFORMATION RELATE TO THE ALLEGED VIOLATION OF THE**
23 **PETITIONER'S SUBSTANTIVE, PROCEDURAL, OR OTHER LEGAL RIGHTS.**
24 **RECORDS, DATA, OR INFORMATION THAT MAY BE RELEASED IN ACCORDANCE**
25 **WITH THIS SUBSECTION MAY INCLUDE, BUT IS NOT LIMITED TO, RECORDS,**
26 **DATA, OR INFORMATION RELATED TO ANY OF THE FOLLOWING:**

27 (A) **MECHANISMS FOR THE SELECTION OF INDIVIDUALS OR COMMITTEES,**

1 OR BOTH, THAT ARE ASSIGNED A REVIEW FUNCTION.

2 (B) QUALIFICATIONS, COMPETENCE, AND EXPERIENCE OF AN
3 INDIVIDUAL WHO IS SELECTED AND APPOINTED TO A REVIEW ENTITY
4 EXCLUDING ANY COMMON IDENTIFIERS OR OTHER INFORMATION THAT WOULD
5 MAKE IT POSSIBLE TO IDENTIFY THAT INDIVIDUAL IN ANY MANNER OR IN
6 ANY CIRCUMSTANCE.

7 (C) RULES OF ORDER UTILIZED BY THE REVIEW ENTITY.

8 (D) PROTOCOLS FOR THE IDENTIFICATION AND PROTECTION AGAINST
9 CONFLICTS OF INTEREST WITHIN THE PEER REVIEW PROCESS.

10 (E) AGENDAS AND MEETING MINUTES AS LONG AS ANY PATIENT
11 IDENTIFYING INFORMATION IS EXTRACTED.