

**SUBSTITUTE FOR
HOUSE BILL NO. 5783**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16213, 16299, 20175, 20175a, and 20199 (MCL
333.16213, 333.16299, 333.20175, 333.20175a, and 333.20199),
sections 16213 and 20175a as added and section 20175 as amended by
2006 PA 481 and section 16299 as amended by 2012 PA 499, and by
adding sections 16213a, 16429, 17029, 17529, 17829, 17909, and
20175b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16213. (1) An individual licensed under this article
2 shall keep and maintain a record for each patient for whom he or
3 she has provided medical services, including a full and complete
4 record of tests and examinations performed, observations made, and

1 treatments provided. IF A MEDICAL SERVICE PROVIDED TO A PATIENT ON
2 OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
3 SENTENCE INVOLVES THE VAGINAL OR ANAL PENETRATION OF THE PATIENT,
4 AN INDIVIDUAL LICENSED UNDER THIS ARTICLE SHALL EXPRESSLY STATE IN
5 THE PATIENT'S RECORD THAT VAGINAL OR ANAL PENETRATION WAS PERFORMED
6 UNLESS THE MEDICAL SERVICE MEETS ANY OF THE CIRCUMSTANCES DESCRIBED
7 IN SUBSECTION (2) (B) (i) , (ii) , (iii) , OR (iv) .

8 (2) Unless a longer retention period is otherwise required
9 under federal or state laws or regulations or by generally accepted
10 standards of medical practice, a licensee shall keep and retain
11 each record ~~for~~ REQUIRED UNDER SUBSECTION (1) AS FOLLOWS:

12 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B) , FOR a
13 minimum of 7 years from the date of service to which the record
14 pertains.

15 (B) IF THE RECORD IS FOR A MEDICAL SERVICE PERFORMED ON OR
16 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
17 SUBDIVISION THAT INVOLVES THE VAGINAL OR ANAL PENETRATION OF A
18 PATIENT, FOR A MINIMUM OF 15 YEARS FROM THE DATE OF SERVICE TO
19 WHICH THE RECORD PERTAINS. THIS SUBDIVISION DOES NOT APPLY TO A
20 RECORD FOR ANY OF THE FOLLOWING:

21 (i) A MEDICAL SERVICE THAT PRIMARILY RELATES TO THE PATIENT'S
22 UROLOGICAL, GASTROINTESTINAL, REPRODUCTIVE, GYNECOLOGICAL, OR
23 SEXUAL HEALTH.

24 (ii) A MEDICAL SERVICE THAT IS NECESSARY AND ASSOCIATED WITH
25 OR INCIDENT TO A MEDICAL EMERGENCY. AS USED IN THIS SUBPARAGRAPH,
26 "MEDICAL EMERGENCY" MEANS A CIRCUMSTANCE THAT, IN THE LICENSEE'S
27 GOOD-FAITH MEDICAL JUDGMENT, CREATES AN IMMEDIATE THREAT OF SERIOUS

1 RISK TO THE LIFE OR PHYSICAL HEALTH OF THE PATIENT.

2 (iii) A MEDICAL SERVICE PERFORMED FOR THE PURPOSE OF RECTALLY
3 ADMINISTERING A DRUG OR MEDICINE.

4 (iv) A MEDICAL SERVICE PERFORMED TO MEASURE A PATIENT'S
5 TEMPERATURE.

6 (3) The records ~~shall~~**REQUIRED UNDER SUBSECTION (1) MUST** be
7 maintained in such a manner as to protect their integrity, to
8 ensure their confidentiality and proper use, and to ensure their
9 accessibility and availability to each patient or his or her
10 authorized representative as required by law.

11 (4) ~~A~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), A**
12 licensee may destroy a record **REQUIRED UNDER SUBSECTION (1)** that is
13 less than 7 years old only if both of the following are satisfied:

14 (a) The licensee sends a written notice to the patient at the
15 last known address of that patient informing the patient that the
16 record is about to be destroyed, offering the patient the
17 opportunity to request a copy of that record, and requesting the
18 patient's written authorization to destroy the record.

19 (b) The licensee receives written authorization from the
20 patient or his or her authorized representative agreeing to the
21 destruction of the record.

22 (5) ~~(2)~~—If a licensee is unable to comply with this section,
23 the licensee shall employ or contract, arrange, or enter into an
24 agreement with another health care provider, a health facility or
25 agency, or a medical records company to protect, maintain, and
26 provide access to those records required under subsection (1).

27 (6) ~~(3)~~—If a licensee or registrant sells or closes his or her

1 practice, retires from practice, or otherwise ceases to practice
2 under this article, the licensee or the personal representative of
3 the licensee, if the licensee is deceased, shall not abandon the
4 records required under this section and shall send a written notice
5 to the department that specifies who will have custody of the
6 medical records and how a patient may request access to or copies
7 of his or her medical records and shall do either of the following:

8 (a) Transfer the records required under subsection (1) to any
9 of the following:

10 (i) A successor licensee.

11 (ii) If requested by the patient or his or her authorized
12 representative, to the patient or a specific health facility or
13 agency or other health care provider licensed under article 15.

14 (iii) A health care provider, a health facility or agency, or
15 a medical records company with which the licensee had contracted or
16 entered into an agreement to protect, maintain, and provide access
17 to those records required under subsection (1).

18 (b) ~~In~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), AND IN**
19 ~~accordance with subsection (1),~~ **SUBSECTIONS (1) TO (4),** as long as
20 the licensee or the personal representative of the licensee, if the
21 licensee is deceased, sends a written notice to the last known
22 address of each patient for whom he or she has provided medical
23 services and receives written authorization from the patient or his
24 or her authorized representative, destroy the records required
25 under subsection (1). The notice ~~shall~~ **MUST** provide the patient
26 with 30 days to request a copy of his or her record or to designate
27 where he or she would like his or her medical records transferred

1 and ~~shall~~**MUST** request from the patient within 30 days written
2 authorization for the destruction of his or her medical records. ~~If~~
3 **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), IF** the patient
4 fails to request a copy or transfer of his or her medical records
5 or to provide the licensee with written authorization for the
6 destruction, then the licensee or the personal representative of
7 the licensee shall not destroy those records that are less than 7
8 years old but may destroy, in accordance with subsection ~~(4),~~ **(8)**,
9 those that are 7 years old or older.

10 **(7) A LICENSEE OR THE PERSONAL REPRESENTATIVE OF A LICENSEE,**
11 **IF THE LICENSEE IS DECEASED, SHALL ONLY DESTROY A RECORD DESCRIBED**
12 **IN SUBSECTION (2) (B) IN ACCORDANCE WITH SUBSECTION (8).**

13 **(8) ~~(4)~~**Except as otherwise provided under this section or
14 federal or state laws and regulations, records required to be
15 maintained under subsection (1), **OTHER THAN A RECORD DESCRIBED IN**
16 **SUBSECTION (2) (B)**, may be destroyed or otherwise disposed of after
17 being maintained for 7 years **AND RECORDS DESCRIBED IN SUBSECTION**
18 **(2) (B) MAY BE DESTROYED OR OTHERWISE DISPOSED OF AFTER BEING**
19 **MAINTAINED FOR 15 YEARS.** If records maintained in accordance with
20 this section are subsequently destroyed or otherwise disposed of,
21 those records ~~shall~~**MUST** be shredded, incinerated, electronically
22 deleted, or otherwise disposed of in a manner that ensures
23 continued confidentiality of the patient's health care information
24 and any other personal information relating to the patient. If
25 records are **NOT** destroyed or otherwise disposed of as provided
26 under this subsection, the department may take action including,
27 but not limited to, contracting for or making other arrangements to

1 ensure that those records and any other confidential identifying
2 information related to the patient are properly destroyed or
3 disposed of to protect the confidentiality of patient's health care
4 information and any other personal information relating to the
5 patient. Before the department takes action in accordance with this
6 subsection, the department, if able to identify the licensee
7 responsible for the improper destruction or disposal of the medical
8 records at issue, shall send a written notice to that licensee at
9 his or her last known address or place of business on file with the
10 department and provide the licensee with an opportunity to properly
11 destroy or dispose of those medical records as required under this
12 subsection unless a delay in the proper destruction or disposal may
13 compromise the patient's confidentiality. The department may assess
14 the licensee with the costs incurred by the department to enforce
15 this subsection.

16 (9) ~~(5) A~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 16213A, A**
17 person ~~who~~ **THAT** fails to comply with this section is subject to an
18 administrative fine of not more than \$10,000.00 if the failure was
19 the result of gross negligence or willful and wanton misconduct.

20 (10) ~~(6)~~ Nothing in this section shall be construed to create
21 or change the ownership rights to any medical records.

22 (11) ~~(7)~~ As used in this section:

23 (a) "Medical record" or "record" means information, oral or
24 recorded in any form or medium, that pertains to a patient's health
25 care, medical history, diagnosis, prognosis, or medical condition
26 and that is maintained by a licensee in the process of providing
27 medical services.

1 (b) "Medical records company" means a person who contracts for
2 or agrees to protect, maintain, and provide access to medical
3 records for a health care provider or health facility or agency in
4 accordance with this section.

5 (c) "Patient" means an individual who receives or has received
6 health care from a health care provider or health facility or
7 agency. Patient includes a guardian, if appointed, and a parent,
8 guardian, or person acting in loco parentis, if the individual is a
9 minor, unless the minor lawfully obtained health care without the
10 consent or notification of a parent, guardian, or other person
11 acting in loco parentis, in which case the minor has the exclusive
12 right to exercise the rights of a patient under this section with
13 respect to his or her medical records relating to that care.

14 **SEC. 16213A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS**
15 **(2) AND (3), A PERSON THAT VIOLATES SECTION 16213(1) REGARDING THE**
16 **DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL OR ANAL**
17 **PENETRATION IN A PATIENT'S MEDICAL RECORD IS SUBJECT TO AN**
18 **ADMINISTRATIVE FINE OR GUILTY OF A CRIME AS FOLLOWS:**

19 (A) FOR A FIRST VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
20 THAN \$1,000.00.

21 (B) FOR A SECOND VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
22 THAN \$2,500.00.

23 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, A MISDEMEANOR
24 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 180 DAYS OR A FINE OF
25 NOT MORE THAN \$5,000.00, OR BOTH.

26 (2) A PERSON THAT VIOLATES SECTION 16213(1) REGARDING THE
27 DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL OR ANAL

1 PENETRATION IN A PATIENT'S MEDICAL RECORD IS GUILTY OF A
2 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 180 DAYS
3 OR A FINE OF \$5,000.00, OR BOTH, IF THE VIOLATION WAS THE RESULT OF
4 GROSS NEGLIGENCE.

5 (3) A PERSON THAT INTENTIONALLY VIOLATES SECTION 16213(1)
6 REGARDING THE DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL
7 OR ANAL PENETRATION IN A PATIENT'S MEDICAL RECORD IS GUILTY OF A
8 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
9 FINE OF NOT MORE THAN \$7,500.00, OR BOTH.

10 (4) THIS SECTION DOES NOT LIMIT ANY OTHER SANCTION OR
11 ADDITIONAL ACTION A DISCIPLINARY SUBCOMMITTEE IS AUTHORIZED TO
12 IMPOSE OR TAKE.

13 Sec. 16299. (1) Except as otherwise provided in subsection
14 (2), a person who violates or aids or abets another in a violation
15 of this article, other than those matters described in sections
16 16294 and 16296, is guilty of a misdemeanor punishable as follows:

17 (a) For the first offense, by imprisonment for not more than
18 90 days ~~or~~ a fine of not more than \$100.00, or both.

19 (b) For the second or subsequent offense, by imprisonment for
20 not less than 90 days nor more than 6 months ~~or~~ a fine of not
21 less than \$200.00 nor more than \$500.00, or both.

22 (2) Subsection (1) does not apply to a violation of section
23 17015, 17015a, 17017, 17515, or 17517, **OR TO A VIOLATION OF THIS**
24 **ARTICLE FOR WHICH ANOTHER CRIMINAL PENALTY IS SPECIFICALLY**
25 **PRESCRIBED.**

26 **SEC. 16429. (1) THE BOARD SHALL CREATE A DOCUMENT THAT**
27 **PROVIDES GUIDANCE TO LICENSEES ON GENERALLY ACCEPTED STANDARDS OF**

1 PRACTICE FOR SERVICES INVOLVING VAGINAL OR ANAL PENETRATION,
2 INCLUDING INTERNAL PELVIC FLOOR TREATMENTS. IN CREATING THE
3 DOCUMENT DESCRIBED IN THIS SUBSECTION, THE BOARD SHALL CONSULT WITH
4 APPROPRIATE PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED
5 STAKEHOLDERS.

6 (2) THE BOARD SHALL MAKE THE DOCUMENT REQUIRED UNDER
7 SUBSECTION (1) PUBLICLY AVAILABLE BY 1 YEAR AFTER THE EFFECTIVE
8 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

9 SEC. 17029. (1) THE BOARD SHALL CREATE A DOCUMENT THAT
10 PROVIDES GUIDANCE TO LICENSEES ON GENERALLY ACCEPTED STANDARDS OF
11 MEDICAL PRACTICE FOR MEDICAL SERVICES INVOLVING VAGINAL OR ANAL
12 PENETRATION, INCLUDING INTERNAL PELVIC FLOOR TREATMENTS BUT
13 EXCLUDING MEDICAL SERVICES THAT PRIMARILY RELATE TO A PATIENT'S
14 UROLOGICAL, GASTROINTESTINAL, REPRODUCTIVE, GYNECOLOGICAL, OR
15 SEXUAL HEALTH, THAT ARE PERFORMED TO MEASURE A PATIENT'S
16 TEMPERATURE, OR THAT ARE PERFORMED FOR THE PURPOSE OF RECTALLY
17 ADMINISTERING A DRUG OR MEDICINE. IN CREATING THE DOCUMENT
18 DESCRIBED IN THIS SUBSECTION, THE BOARD SHALL CONSULT WITH
19 APPROPRIATE PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED
20 STAKEHOLDERS.

21 (2) THE BOARD SHALL MAKE THE DOCUMENT REQUIRED UNDER
22 SUBSECTION (1) PUBLICLY AVAILABLE BY 1 YEAR AFTER THE EFFECTIVE
23 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

24 SEC. 17529. (1) THE BOARD SHALL CREATE A DOCUMENT THAT
25 PROVIDES GUIDANCE TO LICENSEES ON GENERALLY ACCEPTED STANDARDS OF
26 MEDICAL PRACTICE FOR MEDICAL SERVICES INVOLVING VAGINAL OR ANAL
27 PENETRATION, INCLUDING INTERNAL PELVIC FLOOR TREATMENTS BUT

1 EXCLUDING MEDICAL SERVICES THAT PRIMARILY RELATE TO A PATIENT'S
2 UROLOGICAL, GASTROINTESTINAL, REPRODUCTIVE, GYNECOLOGICAL, OR
3 SEXUAL HEALTH, THAT ARE PERFORMED TO MEASURE A PATIENT'S
4 TEMPERATURE, OR THAT ARE PERFORMED FOR THE PURPOSE OF RECTALLY
5 ADMINISTERING A DRUG OR MEDICINE. IN CREATING THE DOCUMENT
6 DESCRIBED IN THIS SUBSECTION, THE BOARD SHALL CONSULT WITH
7 APPROPRIATE PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED
8 STAKEHOLDERS.

9 (2) THE BOARD SHALL MAKE THE DOCUMENT REQUIRED UNDER
10 SUBSECTION (1) PUBLICLY AVAILABLE BY 1 YEAR AFTER THE EFFECTIVE
11 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

12 SEC. 17829. (1) THE BOARD SHALL CREATE A DOCUMENT THAT
13 PROVIDES GUIDANCE TO LICENSEES ON GENERALLY ACCEPTED STANDARDS OF
14 PRACTICE FOR SERVICES INVOLVING VAGINAL OR ANAL PENETRATION,
15 INCLUDING INTERNAL PELVIC FLOOR TREATMENTS. IN CREATING THE
16 DOCUMENT DESCRIBED IN THIS SUBSECTION, THE BOARD SHALL CONSULT WITH
17 APPROPRIATE PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED
18 STAKEHOLDERS.

19 (2) THE BOARD SHALL MAKE THE DOCUMENT REQUIRED UNDER
20 SUBSECTION (1) PUBLICLY AVAILABLE BY 1 YEAR AFTER THE EFFECTIVE
21 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

22 SEC. 17909. (1) THE BOARD SHALL CREATE A DOCUMENT THAT
23 PROVIDES GUIDANCE TO LICENSEES ON GENERALLY ACCEPTED STANDARDS OF
24 PRACTICE FOR SERVICES INVOLVING VAGINAL OR ANAL PENETRATION,
25 INCLUDING INTERNAL PELVIC FLOOR TREATMENTS. IN CREATING THE
26 DOCUMENT DESCRIBED IN THIS SUBSECTION, THE BOARD SHALL CONSULT WITH
27 APPROPRIATE PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED

1 STAKEHOLDERS.

2 (2) THE BOARD SHALL MAKE THE DOCUMENT REQUIRED UNDER
3 SUBSECTION (1) PUBLICLY AVAILABLE BY 1 YEAR AFTER THE EFFECTIVE
4 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

5 Sec. 20175. (1) A health facility or agency shall keep and
6 maintain a record for each patient, including a full and complete
7 record of tests and examinations performed, observations made,
8 treatments provided, and in the case of a hospital, the purpose of
9 hospitalization. **IF A MEDICAL SERVICE PROVIDED TO A PATIENT ON OR
10 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
11 SENTENCE INVOLVES THE VAGINAL OR ANAL PENETRATION OF THE PATIENT, A
12 HEALTH FACILITY OR AGENCY SHALL ENSURE THAT THE PATIENT'S MEDICAL
13 RECORD EXPRESSLY STATES THAT VAGINAL OR ANAL PENETRATION WAS
14 PERFORMED UNLESS THE MEDICAL SERVICE MEETS ANY OF THE CIRCUMSTANCES
15 DESCRIBED IN SUBSECTION (2) (B) (i) (A), (B), (C), OR (D).**

16 (2) Unless a longer retention period is otherwise required
17 under federal or state laws or regulations or by generally accepted
18 standards of medical practice, a health facility or agency shall
19 keep and retain each record ~~for~~ **REQUIRED UNDER SUBSECTION (1) AS
20 FOLLOWS:**

21 (A) **EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), FOR a**
22 minimum of 7 years from the date of service to which the record
23 pertains.

24 (B) **FOR A MINIMUM OF 15 YEARS FROM THE DATE OF SERVICE TO
25 WHICH THE RECORD PERTAINS IF THE SERVICE IS PERFORMED ON OR AFTER
26 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
27 SUBDIVISION AND 1 OF THE FOLLOWING APPLIES:**

1 (i) THE RECORD INCLUDES A MEDICAL SERVICE INVOLVING THE
2 VAGINAL OR ANAL PENETRATION OF A PATIENT. THIS SUBPARAGRAPH DOES
3 NOT APPLY TO A RECORD FOR ANY OF THE FOLLOWING:

4 (A) A MEDICAL SERVICE THAT PRIMARILY RELATES TO THE PATIENT'S
5 UROLOGICAL, GASTROINTESTINAL, REPRODUCTIVE, GYNECOLOGICAL, OR
6 SEXUAL HEALTH.

7 (B) A MEDICAL SERVICE THAT IS NECESSARY AND ASSOCIATED WITH OR
8 INCIDENT TO A MEDICAL EMERGENCY. AS USED IN THIS SUB-SUBPARAGRAPH,
9 "MEDICAL EMERGENCY" MEANS A CIRCUMSTANCE THAT, IN THE GOOD-FAITH
10 MEDICAL JUDGMENT OF A HEALTH PROFESSIONAL WHO IS LICENSED UNDER
11 ARTICLE 15, CREATES AN IMMEDIATE THREAT OF SERIOUS RISK TO THE LIFE
12 OR PHYSICAL HEALTH OF THE PATIENT.

13 (C) A MEDICAL SERVICE PERFORMED FOR THE PURPOSE OF RECTALLY
14 ADMINISTERING A DRUG OR MEDICINE.

15 (D) A MEDICAL SERVICE PERFORMED TO MEASURE A PATIENT'S
16 TEMPERATURE.

17 (ii) THE PATIENT HAS FILED A COMPLAINT WITH THE HEALTH
18 FACILITY OR AGENCY ALLEGING SEXUAL MISCONDUCT BY AN INDIVIDUAL WHO
19 IS EMPLOYED BY, UNDER CONTRACT TO, OR GRANTED PRIVILEGES BY THE
20 HEALTH FACILITY OR AGENCY. AS USED IN THIS SUBPARAGRAPH, "SEXUAL
21 MISCONDUCT" MEANS THE CONDUCT DESCRIBED IN SECTION 90, 136, 145A,
22 145B, 145C, 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL
23 CODE, 1931 PA 328, MCL 750.90, 750.136, 750.145A, 750.145B,
24 750.145C, 750.520B, 750.520C, 750.520D, 750.520E, OR 750.520G,
25 REGARDLESS OF WHETHER THE CONDUCT RESULTED IN A CRIMINAL
26 CONVICTION.

27 (3) A health facility or agency shall maintain the records

1 **REQUIRED UNDER SUBSECTION (1)** in such a manner as to protect their
2 integrity, to ensure their confidentiality and proper use, and to
3 ensure their accessibility and availability to each patient or his
4 or her authorized representative as required by law.

5 (4) ~~A~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6),** A health
6 facility or agency may destroy a record **REQUIRED UNDER SUBSECTION**
7 **(1)** that is less than 7 years old only if both of the following are
8 satisfied:

9 (a) The health facility or agency sends a written notice to
10 the patient at the last known address of that patient informing the
11 patient that the record is about to be destroyed, offering the
12 patient the opportunity to request a copy of that record, and
13 requesting the patient's written authorization to destroy the
14 record.

15 (b) The health facility or agency receives written
16 authorization from the patient or his or her authorized
17 representative agreeing to the destruction of the record.

18 (5) Except as otherwise provided under federal or state laws
19 and regulations, records required to be maintained under ~~this~~
20 subsection **(1), OTHER THAN A RECORD DESCRIBED IN SUBSECTION (2) (B),**
21 may be destroyed or otherwise disposed of after being maintained
22 for 7 years, **AND RECORDS DESCRIBED IN SUBSECTION (2) (B) MAY BE**
23 **DESTROYED OR OTHERWISE DISPOSED OF AFTER BEING MAINTAINED FOR 15**
24 **YEARS.** If records maintained in accordance with this section are
25 subsequently destroyed or otherwise disposed of, those records
26 ~~shall~~**MUST** be shredded, incinerated, electronically deleted, or
27 otherwise disposed of in a manner that ensures continued

1 confidentiality of the patient's health care information and any
2 other personal information relating to the patient. If records are
3 **NOT** destroyed or otherwise disposed of as provided under this
4 subsection **OR SUBSECTION (4)**, the department may take action
5 including, but not limited to, contracting for or making other
6 arrangements to ensure that those records and any other
7 confidential identifying information related to the patient are
8 properly destroyed or disposed of to protect the confidentiality of
9 patient's health care information and any other personal
10 information relating to the patient. Before the department takes
11 action in accordance with this subsection, the department, if able
12 to identify the health facility or agency responsible for the
13 improper destruction or disposal of the medical records at issue,
14 shall send a written notice to that health facility or agency at
15 the last known address on file with the department and provide the
16 health facility or agency with an opportunity to properly destroy
17 or dispose of those medical records as required under this
18 subsection **OR SUBSECTION (4)**, unless a delay in the proper
19 destruction or disposal may compromise the patient's
20 confidentiality. The department may assess the health facility or
21 agency with the costs incurred by the department to enforce this
22 subsection. In addition to the sanctions set forth in section
23 20165, a hospital that fails to comply with this subsection **OR**
24 **SUBSECTION (4)** is subject to an administrative fine of \$10,000.00.

25 **(6) A HEALTH FACILITY OR AGENCY SHALL ONLY DESTROY A RECORD**
26 **DESCRIBED IN SUBSECTION (2) (B) IN ACCORDANCE WITH SUBSECTION (5).**

27 **(7) ~~(2)~~—A hospital shall take precautions to assure—ENSURE**

1 that the records required by ~~by~~ **UNDER** subsection (1) are not
2 wrongfully altered or destroyed. A hospital that fails to comply
3 with this subsection is subject to an administrative fine of
4 \$10,000.00.

5 **(8)** ~~(3)~~—Unless otherwise provided by law, the licensing and
6 certification records required by this article are public records.

7 **(9)** ~~(4)~~—Departmental officers and employees shall respect the
8 confidentiality of patient clinical records and shall not divulge
9 or disclose the contents of records in a manner that identifies an
10 individual except pursuant to court order or as otherwise
11 authorized by law.

12 **(10)** ~~(5)~~—A health facility or agency that employs, contracts
13 with, or grants privileges to a health professional licensed or
14 registered under article 15 shall report the following to the
15 department not more than 30 days after it occurs:

16 (a) Disciplinary action taken by the health facility or agency
17 against a health professional licensed or registered under article
18 15 based on the licensee's or registrant's professional competence,
19 disciplinary action that results in a change of employment status,
20 or disciplinary action based on conduct that adversely affects the
21 licensee's or registrant's clinical privileges for a period of more
22 than 15 days. As used in this subdivision, "adversely affects"
23 means the reduction, restriction, suspension, revocation, denial,
24 or failure to renew the clinical privileges of a licensee or
25 registrant by a health facility or agency.

26 (b) Restriction or acceptance of the surrender of the clinical
27 privileges of a licensee or registrant under either of the

1 following circumstances:

2 (i) The licensee or registrant is under investigation by the
3 health facility or agency.

4 (ii) There is an agreement in which the health facility or
5 agency agrees not to conduct an investigation into the licensee's
6 or registrant's alleged professional incompetence or improper
7 professional conduct.

8 (c) A case in which a health professional resigns or
9 terminates a contract or whose contract is not renewed instead of
10 the health facility **OR AGENCY** taking disciplinary action against
11 the health professional.

12 **(11)** ~~(6)~~—Upon request by another health facility or agency
13 seeking a reference for purposes of changing or granting staff
14 privileges, credentials, or employment, a health facility or agency
15 that employs, contracts with, or grants privileges to health
16 professionals licensed or registered under article 15 shall notify
17 the requesting health facility or agency of any disciplinary or
18 other action reportable under subsection ~~(5)~~ **(10)** that it has taken
19 against a health professional licensed or registered under article
20 15 and employed by, under contract to, or granted privileges by the
21 health facility or agency.

22 **(12)** ~~(7)~~—For the purpose of reporting disciplinary actions
23 under this section, a health facility or agency shall include only
24 the following in the information provided:

25 (a) The name of the licensee or registrant against whom
26 disciplinary action has been taken.

27 (b) A description of the disciplinary action taken.

1 (c) The specific grounds for the disciplinary action taken.

2 (d) The date of the incident that is the basis for the
3 disciplinary action.

4 **(13)** ~~(8)~~—The records, data, and knowledge collected for or by
5 individuals or committees assigned a professional review function
6 in a health facility or agency, or an institution of higher
7 education in this state that has colleges of osteopathic and human
8 medicine, are confidential, ~~shall~~**MUST** be used only for the
9 purposes provided in this article, are not public records, and are
10 not subject to court subpoena.

11 Sec. 20175a. (1) If a health facility or agency is unable to
12 comply with section 20175, the health facility or agency shall
13 employ or contract, arrange, or enter into an agreement with
14 another health facility or agency or a medical records company to
15 protect, maintain, and provide access to those records required
16 under section 20175(1).

17 (2) If a health facility or agency closes or otherwise ceases
18 operation, the health facility or agency shall not abandon the
19 records required to be maintained under section 20175(1) and shall
20 send a written notice to the department that specifies who will
21 have custody of the medical records and how a patient may request
22 access to or copies of his or her medical records and shall do
23 either of the following:

24 (a) Transfer the records required under section 20175(1) to
25 any of the following:

26 (i) A successor health facility or agency.

27 (ii) If designated by the patient or his or her authorized

1 representative, to the patient or a specific health facility or
2 agency or a health care provider licensed or registered under
3 article 15.

4 (iii) A health facility or agency or a medical records company
5 with which the health facility or agency had contracted or entered
6 into an agreement to protect, maintain, and provide access to those
7 records required under section 20175(1).

8 (b) ~~In~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 20175(6) AND IN**
9 accordance with section 20175(1) **TO (5)**, as long as the health
10 facility or agency sends a written notice to the last known address
11 of each patient for whom he or she has provided medical services
12 and receives written authorization from the patient or his or her
13 authorized representative, destroy the records required under
14 section 20175(1). The notice ~~shall~~ **MUST** provide the patient with 30
15 days to request a copy of his or her record or to designate where
16 he or she would like his or her medical records transferred and
17 ~~shall~~ **MUST** request from the patient within 30 days written
18 authorization for the destruction of his or her medical records. ~~It~~
19 **EXCEPT AS OTHERWISE PROVIDED IN SECTION 20175(6), IF** the patient
20 fails to request a copy or transfer of his or her medical records
21 or to provide the health facility or agency with written
22 authorization for the destruction, then the health facility or
23 agency shall not destroy those records that are less than 7 years
24 old but may destroy, in accordance with section 20175(1) **TO (5)**,
25 those that are 7 years old or older.

26 (3) Nothing in this section shall be conducted to create or
27 change the ownership rights to any medical records.

1 (4) A person that fails to comply with this section is subject
2 to an administrative fine of not more than \$10,000.00 if the
3 failure was the result of gross negligence or willful and wanton
4 misconduct.

5 (5) As used in this section:

6 (a) "Medical record" or "record" means information, oral or
7 recorded in any form or medium, that pertains to a patient's health
8 care, medical history, diagnosis, prognosis, or medical condition
9 and that is maintained by a licensee in the process of providing
10 medical services.

11 (b) "Medical records company" means a person who contracts for
12 or agrees to protect, maintain, and provide access to medical
13 records for a health facility or agency in accordance with section
14 20175.

15 (c) "Patient" means an individual who receives or has received
16 health care from a health care provider or health facility or
17 agency. Patient includes a guardian, if appointed, and a parent,
18 guardian, or person acting in loco parentis, if the individual is a
19 minor, unless the minor lawfully obtained health care without the
20 consent or notification of a parent, guardian, or other person
21 acting in loco parentis, in which case the minor has the exclusive
22 right to exercise the rights of a patient under this section with
23 respect to his or her medical records relating to that care.

24 **SEC. 20175B. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS**
25 **(2) AND (3), A PERSON THAT VIOLATES SECTION 20175(1) REGARDING THE**
26 **DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL OR ANAL**
27 **PENETRATION IN A PATIENT'S MEDICAL RECORD IS SUBJECT TO AN**

1 ADMINISTRATIVE FINE OR GUILTY OF A CRIME AS FOLLOWS:

2 (A) FOR A FIRST VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
3 THAN \$2,500.00.

4 (B) FOR A SECOND VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
5 THAN \$5,000.00.

6 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, A MISDEMEANOR
7 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 180 DAYS OR A FINE OF
8 NOT MORE THAN \$7,500.00, OR BOTH.

9 (2) A PERSON THAT VIOLATES SECTION 20175(1) REGARDING THE
10 DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL OR ANAL
11 PENETRATION IN A PATIENT'S MEDICAL RECORD IS GUILTY OF A
12 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 180 DAYS
13 OR A FINE OF \$10,000.00, OR BOTH, IF THE VIOLATION WAS THE RESULT
14 OF GROSS NEGLIGENCE.

15 (3) A PERSON WHO INTENTIONALLY VIOLATES SECTION 20175(1)
16 REGARDING THE DOCUMENTATION OF A MEDICAL SERVICE INVOLVING VAGINAL
17 OR ANAL PENETRATION IN A PATIENT'S MEDICAL RECORD IS GUILTY OF A
18 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
19 FINE OF NOT MORE THAN \$10,000.00, OR BOTH.

20 (4) THIS SECTION DOES NOT LIMIT ANY OTHER SANCTION THE
21 DEPARTMENT IS AUTHORIZED TO IMPOSE UNDER SECTION 20165.

22 Sec. 20199. (1) Except as **OTHERWISE** provided in subsection (2)
23 ~~or section 20142, OR THIS ARTICLE,~~ a person ~~who~~ **THAT** violates this
24 article or a rule promulgated or an order issued under this article
25 is guilty of a misdemeanor, punishable by **A** fine of not more than
26 \$1,000.00 for each day the violation continues or, in case of a
27 violation of sections 20551 to 20554, a fine of not more than

1 \$1,000.00 for each occurrence.

2 (2) A person ~~who~~**THAT** violates sections 20181 to 20184 is
3 guilty of a misdemeanor ~~—~~punishable by imprisonment for not more
4 than 6 months ~~—~~or a fine of not more than \$2,000.00, or both.

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