

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 219, L.D. 299, Bill, "An Act Pertaining to Breast Cancer Treatment"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 24 MRSA §2905-A is enacted to read:

§2905-A. Informed consent for breast cancer

1. Duty of physician. Notwithstanding section 2905, a physician who is administering the primary treatment for breast cancer shall inform the patient as provided in this section, orally and in writing, about alternative efficacious methods of treatment of breast cancer, including surgical, radiological or chemotherapeutic treatments or any other generally accepted medical treatment and the advantages, disadvantages and the usual and most frequent risks of each.

2. Written information. The duty to inform the patient in writing may be met by giving the patient a standardized written summary or brochure as described in subsections 3 and 4.

3. Standardized written summary. The standardized written summary may be developed by the Bureau of Health after consultation with the Cancer Advisory Committee.

4. Brochure. The brochure must be one which is approved or made available through the National Cancer Institute, the American Cancer Society, the American College of Surgeons or any other recognized professional organization approved by the Bureau of Health.

5. Signed form. A form, signed by the patient, indicating that the patient has been given the oral information required by this section and a copy of the brochure or the standardized written summary shall be included in the patient's medical record.

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3 6. Extent of duty. A physician's duty to inform a patient
5 under this section does not require disclosure of information
7 beyond what a reasonably well-qualified physician licensed under
9 Title 32 would know.

11 7. Actions barred. A patient who signs a form described in
13 subsection 5 is barred from bringing a civil action against the
15 physician, based on failure to obtain informed consent, but only
17 in regard to information pertaining to alternative forms of
19 treatment of breast cancer and the advantages, disadvantages, and
21 risks of each method.

23 8. Application of this section to common law rights.
25 Nothing in this section restricts or limits the rights of a
27 patient under common law.

29 Sec. 2. 32 MRSA §2591-A, sub-§2, ¶¶K and L, as enacted by PL
31 1983, c. 378, §38, are amended to read:

33 K. The revocation, suspension or denial of the individual's
35 license in any other state or territory of the United
37 States or any foreign country; ~~or~~

39 L. Division of professional fees not based on actual
41 services rendered; ~~;~~ or

43 Sec. 3. 32 MRSA §2591-A, sub-§2, ¶M is enacted to read:

45 M. Failure to comply with the requirements of Title 24,
47 section 2905-A.

49 Sec. 4. 32 MRSA §3282-A, sub-§2, ¶¶J and K, as enacted by PL
51 1983, c. 378, §53, are amended to read:

53 J. Prescribing narcotic or hypnotic or other drugs listed
55 as controlled substances by the Drug Enforcement
57 Administration for other than accepted therapeutic purposes;
59 ~~or~~

61 K. Failure to report to the secretary of the board a
63 physician licensed under this chapter for addiction to
65 alcohol or drugs or for mental illness in accordance with
67 Title 24, section 2505, except when the impaired physician
69 is or has been a patient of the licensee; ~~;~~ or

71 Sec. 5. 32 MRSA §3282-A, sub-§2, ¶L is enacted to read:

73 L. Failure to comply with the requirements of Title 24,
75 section 2905-A.'

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STATEMENT OF FACT

This amendment replaces the bill entirely and establishes an alternative method of ensuring that persons with breast cancer receive information necessary to give informed consent to treatment. The proposal is based on the law in effect since 1986 in Michigan. Oral information and written materials explaining the alternatives available must be provided by the physician to each patient. These materials could be either a standardized written summary approved by the Bureau of Health or a brochure obtained through organizations such as the National Cancer Institute or the American Cancer Society. Failure of a physician to abide by the provisions of the Maine Revised Statutes, Title 24, section 2905-A, could result in disciplinary action by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration. Patients receiving information required by this amendment would be barred from bringing a civil action against the physician for failure to obtain informed consent for failure to provide information on alternative forms of treatment. Nothing in this amendment is intended to restrict or limit the rights of a patient under common law.

Reported by the Majority of the Committee on Human Resources
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