



Alan Van Dyne

Bill Analysis

Legislative Service Commission

Sub. H.B. 90 123rd General Assembly (As Passed by the House)

Reps. Terwilleger, Krebs, D. Miller, Opfer, Pringle, Barrett, Roman, Barnes, Van Vyven, Gardner, Aslanides, Mottley, O'Brien, Mead, Allen, Sullivan, Grendell, Sutton, Bender

BILL SUMMARY

- Provides that a physician may use alternative medical treatments if the patient provides informed consent and the treatment is consistent with the medical practice standards enforced by the State Medical Board.
- Specifies that the use of an alternative medical treatment by a physician is not in and of itself a failure to provide a minimal standard of medical care.

CONTENT AND OPERATION

Use of alternative medical treatments

(sec. 4731.227)

The bill provides that a physician may use alternative medical treatments if the patient provides informed consent and the treatment is consistent with the medical practice standards enforced by the State Medical Board and any rules adopted by the Board. "Alternative medical treatment" is defined by the bill as treatment that differs from treatments used in accepted or prevailing standards of medical care but is reasonable when its benefits are compared to the risk of harm of the alternative treatment itself or of the failure to utilize accepted or prevailing standards of medical care.

Physician discipline

(sec. 4731.22)

Current law provides that the State Medical Board may discipline a physician for a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not

actual injury to a patient is established. The bill specifies that the use of an alternative medical treatment is not in and of itself a departure from or failure to conform to minimal standards of care.

COMMENT

The bill makes explicit the conclusion that can be drawn from existing law that a physician may use alternative medical treatments if the patient provides informed consent and the treatment is consistent with the medical practice standards enforced by the State Medical Board.

Informed consent

The physician's duty to obtain informed consent is governed by common law and statute. The duty to disclose the information on which the consent is based may be discharged orally or in writing. The Ohio Supreme Court has held that, under common law, a physician fails to obtain informed consent when: (1) the physician fails to disclose to the patient and discuss the material risks and dangers inherently and potentially involved with respect to the proposed therapy, if any, (2) the unrevealed risks and dangers which should have been disclosed by the physician actually materialize and are the proximate cause of injury to the patient, and (3) a reasonable person in the position of the patient would have decided against the therapy had the material risks and dangers inherent and incidental to treatment been disclosed prior to the therapy (*Nickell v. Gonzalez* (1985), 17 Ohio St.3d 136).

While a physician may discharge the duty to obtain informed consent orally, a statute provides that written consent to a medical procedure is presumed valid and effective if: (1) the consent form sets forth in general terms the nature and purpose of the procedure and what it is expected to accomplish, together with the reasonably known risks, and, except in emergency situations, gives the names of the physicians who will perform a surgical procedure, (2) the patient acknowledges having been given the information and having had any questions answered satisfactorily, and (3) the consent is signed by the patient or a person with authority to act on the patient's behalf (R.C. 2317.54).

Medical practice standards

Under the medical practice standards in existing law, the State Medical Board may discipline a physician for failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease (R.C. 4731.22(B)(2)). A physician is also subject to

discipline for a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to the patient is established, and for representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured (R.C. 4731.22(B)(6) and (7)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-99	pp. 117-118
Reported, H. Health, Retirement & Aging	09-30-99	p. 1231
Passed House (96-0)	10-13-99	pp. 1261-1262

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