

# HOUSE BILL No. 5101

October 12, 2017, Introduced by Reps. Bizon, Canfield, Webber, Lasinski, Frederick, Chirkun, LaGrand, Moss, Brinks, Camilleri, Wittenberg, Chang, Ellison, Green, Sabo, Liberati, Sneller, Sowerby, Pagan, Faris, Byrd, Yaroch, Hammoud, Scott, Geiss, Greimel, Zemke, Robinson and Gay-Dagnogo and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
 "The insurance code of 1956,"  
 by amending sections 3151 and 3153 (MCL 500.3151 and 500.3153) and  
 by adding section 3151a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3151. ~~When~~ **IF** the mental or physical condition of a  
 2 person is material to a claim that has been or may be made for past  
 3 or future personal protection insurance benefits, the person shall  
 4 submit to mental or physical examination by ~~physicians.~~ **A PHYSICIAN**  
 5 **AS PROVIDED IN SECTION 3151A.** A personal protection insurer may  
 6 include reasonable provisions in a personal protection insurance  
 7 policy for mental and physical examination of persons claiming  
 8 personal protection insurance benefits, **IF THE PROVISIONS DO NOT**  
 9 **CONTRADICT THIS CHAPTER.**

10           **SEC. 3151A. (1) THE NO-FAULT INDEPENDENT MEDICAL EXAMINATION**

1 BOARD IS CREATED WITHIN THE DEPARTMENT.

2 (2) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS, APPOINTED BY  
3 THE GOVERNOR:

4 (A) A MEMBER OF THE STATE BAR WHO IS FAMILIAR WITH AND  
5 EXPERIENCED IN PRACTICE UNDER THIS CHAPTER.

6 (B) A PHYSICIAN WHO IS A SPECIALIST IN ORTHOPEDIC MEDICINE.

7 (C) A PHYSICIAN WHO IS A SPECIALIST IN NEUROSURGERY.

8 (D) A PHYSICIAN WHO IS A SPECIALIST IN NEUROLOGY.

9 (E) A PHYSICIAN WHO IS A SPECIALIST IN NEUROPSYCHIATRY.

10 (F) A PHYSICIAN WHO IS A SPECIALIST IN PSYCHIATRY.

11 (G) A PHYSICIAN WHO IS A SPECIALIST IN PHYSICAL MEDICINE AND  
12 REHABILITATION.

13 (3) THE GOVERNOR SHALL APPOINT, AS PHYSICIAN MEMBERS OF THE  
14 BOARD, PHYSICIANS WHO ARE LICENSED IN THIS STATE AND THE MAJORITY  
15 OF WHOSE PROFESSIONAL PRACTICE CONSISTS OF THE ACTIVE CLINICAL  
16 PRACTICE OF THE APPLICABLE SPECIALTY AND NOT THE EXAMINATION OF  
17 INDIVIDUALS WHO ARE LITIGANTS OR POTENTIAL LITIGANTS IN LAWSUITS  
18 UNDER THIS CHAPTER.

19 (4) THE GOVERNOR SHALL APPOINT THE FIRST MEMBERS TO THE BOARD  
20 WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. MEMBERS OF  
21 THE BOARD SHALL SERVE FOR TERMS OF 4 YEARS OR UNTIL A SUCCESSOR IS  
22 APPOINTED, WHICHEVER IS LATER, EXCEPT THAT OF THE MEMBERS FIRST  
23 APPOINTED, 2 OF THE PHYSICIAN MEMBERS SHALL SERVE FOR 1 YEAR, 2 OF  
24 THE PHYSICIAN MEMBERS SHALL SERVE FOR 2 YEARS, AND THE FINAL 2  
25 PHYSICIANS AND THE LAWYER MEMBERS SHALL SERVE FOR 3 YEARS.

26 (5) IF A VACANCY OCCURS ON THE BOARD, THE GOVERNOR SHALL MAKE  
27 AN APPOINTMENT FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE

1 ORIGINAL APPOINTMENT.

2 (6) THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD FOR  
3 INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR  
4 NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

5 (7) THE FIRST MEETING OF THE BOARD SHALL BE CALLED BY THE  
6 DIRECTOR. AT THE FIRST MEETING, THE BOARD SHALL ELECT FROM AMONG  
7 ITS MEMBERS A CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS  
8 NECESSARY OR APPROPRIATE. AFTER THE FIRST MEETING, THE BOARD SHALL  
9 MEET AT LEAST QUARTERLY, OR MORE FREQUENTLY AT THE CALL OF THE  
10 CHAIRPERSON OR IF REQUESTED BY 3 OR MORE MEMBERS.

11 (8) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTE A QUORUM  
12 FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE BOARD. A  
13 MAJORITY OF THE MEMBERS PRESENT AND SERVING ARE REQUIRED FOR  
14 OFFICIAL ACTION OF THE BOARD.

15 (9) THE BOARD SHALL CONDUCT ITS BUSINESS AT PUBLIC MEETINGS  
16 HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL  
17 15.261 TO 15.275. HOWEVER, THE BOARD MAY GO INTO EXECUTIVE SESSION  
18 TO DISCUSS ANY MATTERS RELATED TO MATTERS THAT ARE PROTECTED BY THE  
19 PHYSICIAN-PATIENT PRIVILEGE, INCLUDING MATTERS THAT ARE REQUIRED TO  
20 BE DISCLOSED IN THE COURSE OF AN ACTION UNDER THIS CHAPTER.

21 (10) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR  
22 RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNCTION IS  
23 SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231  
24 TO 15.246. THIS SUBSECTION DOES NOT APPLY TO A WRITING THAT IS  
25 PROTECTED BY THE PHYSICIAN-PATIENT PRIVILEGE, INCLUDING A WRITING  
26 THAT IS REQUIRED TO BE DISCLOSED IN THE COURSE OF AN ACTION UNDER  
27 THIS CHAPTER.

1           (11) THE DIRECTOR SHALL DETERMINE THE AMOUNT OF COMPENSATION  
2 FOR THE MEMBERS OF THE BOARD. FROM APPROPRIATIONS FOR THE PURPOSE,  
3 THE DEPARTMENT SHALL COMPENSATE MEMBERS OF THE BOARD, REIMBURSE THE  
4 MEMBERS FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE  
5 PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD, AND  
6 PROVIDE THE BOARD WITH OFFICES AND STAFF AS NECESSARY TO PERFORM  
7 THE BOARD'S DUTIES UNDER THIS SECTION.

8           (12) THE BOARD SHALL DO ALL OF THE FOLLOWING:

9           (A) SELECT AND APPOINT PHYSICIANS WHO ARE LICENSED TO PRACTICE  
10 MEDICINE IN THIS STATE AND, AS NECESSARY, OTHER INDIVIDUALS WHO ARE  
11 LICENSED UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368,  
12 MCL 333.16101 TO 333.18838, TO CONDUCT EXAMINATIONS UNDER SECTION  
13 3151.

14           (B) APPROVE EXAMINATION FEES TO BE CHARGED BY INDIVIDUALS WHO  
15 CONDUCT EXAMINATIONS UNDER SECTION 3151.

16           (C) AS THE BOARD DETERMINES TO BE NECESSARY AND APPROPRIATE,  
17 ADOPT PROCEDURES AND STANDARDS TO BE USED BY INDIVIDUALS WHO  
18 CONDUCT EXAMINATIONS UNDER SECTION 3151.

19           (D) REVIEW REPORTS OF INDIVIDUALS WHO CONDUCT EXAMINATIONS  
20 UNDER SECTION 3151 AS THE BOARD DETERMINES NECESSARY TO MAINTAIN  
21 QUALITY AND INDEPENDENCE OF THE INDIVIDUALS WHO CONDUCT  
22 EXAMINATIONS UNDER SECTION 3151.

23           (E) INVESTIGATE AND TAKE ACTION ON COMPLAINTS ABOUT THE  
24 QUALITY AND INDEPENDENCE OF EXAMINATIONS CONDUCTED BY THE  
25 INDIVIDUALS SELECTED BY THE BOARD.

26           (F) ANYTHING ELSE THAT IS NECESSARY TO CARRY OUT THE BOARD'S  
27 DUTIES UNDER THIS SECTION.

1           (13) A PERSON THAT WISHES TO HAVE AN INJURED PERSON EXAMINED  
2 UNDER SECTION 3151 SHALL HAVE THE EXAMINATION CONDUCTED ONLY BY AN  
3 INDIVIDUAL APPOINTED BY THE BOARD UNDER SUBSECTION (12).

4           (14) AS USED IN THIS SECTION, "BOARD" MEANS THE NO-FAULT  
5 INDEPENDENT MEDICAL EXAMINATION BOARD CREATED BY THIS SECTION.

6           Sec. 3153. A court may make ~~such~~ orders in regard to ~~the~~ **A**  
7 refusal to comply with sections 3151 and ~~TO~~ 3152 as ~~THAT~~ are just,  
8 except that **THE COURT SHALL NOT ENTER** an order ~~shall not be entered~~  
9 directing the arrest of a person for disobeying an order to submit  
10 to a physical or mental examination. The orders that may be made in  
11 regard to ~~such a~~ **THE** refusal include, but are not limited to:

12           (a) An order that the mental or physical condition of the  
13 disobedient person ~~shall be~~ **IS** taken ~~to be~~ **AS** established for the  
14 purposes of the claim in accordance with the contention of the  
15 party obtaining the order.

16           (b) An order refusing to allow the disobedient person to  
17 support or oppose designated claims or defenses, or prohibiting him  
18 **OR HER** from introducing evidence of mental or physical condition.

19           (c) An order rendering judgment by default against the  
20 disobedient person as to his **OR HER** entire claim or a designated  
21 part of it.

22           (d) An order requiring the disobedient person to reimburse the  
23 insurer for reasonable attorneys' fees and expenses incurred in  
24 defense against the claim.

25           (e) An order requiring delivery of a report, in conformity  
26 with section 3152, on ~~such~~ terms as ~~THAT~~ are just, and if a  
27 physician fails or refuses to make the report, ~~a~~ **THE** court may

1 exclude ~~his~~**THE PHYSICIAN'S** testimony if offered at trial.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.