

Legal & Ethical Ramifications Outweigh Potential
Benefits of Expedited Partner Therapy (EPT):
Michigan Should Not Authorize Health
Professionals to Provide EPT

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I. INTRODUCTION

The Centers for Disease Control and Prevention (CDC) estimates that there are approximately nineteen million new occurrences of contracted sexually transmitted disease (STD) infections yearly in the United States.¹ Chlamydia and gonorrhea infections are the two most commonly reported STDs.² There are various options to either treat or prevent chlamydia and gonorrhea infections, including abstaining from sex, being in a long-term, mutually monogamous relationship, using condoms, and taking antibiotics.³ Traditional practices to inform, evaluate, and treat sex partners of infected persons rely upon patients or healthcare providers to notify those partners.⁴ As an alternative approach, expedited partner therapy (EPT) is a practice of authorizing medical practitioners to treat the sex partners of persons with STDs without an intervening medical evaluation or professional prevention

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1. *Chlamydia and Gonorrhea – Two Most Commonly Reported Infectious Diseases in the United States*, CDC, <http://www.cdc.gov/features/dsstddata/> (last updated April 22, 2011) [hereinafter *Chlamydia and Gonorrhea*].

2. *Id.*

3. *Id.*; *Gonorrhea Treatment Guidelines: Revised Guidelines to Preserve Last Effective Treatment Option*, CDC (July 2013), available at “Media Fact Sheet” at <http://www.cdc.gov/std/gonorrhea/treatment.htm>.

4. *Legal Status of Expedited Partner Therapy*, CDC, <http://www.cdc.gov/std/ept/legal/default.htm> (last updated September 27, 2013) [hereinafter *Legal Status*].

counseling.⁵ In this practice, medical practitioners provide their patients with sufficient medications directly or via prescription for the patients and their partners—without any prior evaluation of those partners.⁶ Throughout discussions of EPT, the legal status of the practice remains uncertain, but in 2008, the American Bar Association (ABA) issued a recommendation urging states, territories and tribes to support the removal of legal barriers to the appropriate use of EPT, in accordance with CDC recommendations.⁷

According to the CDC, current legal frameworks allow the practice of EPT in thirty-five states, potentially allow the practice of EPT in nine states, and prohibit EPT in six states.⁸ Implementation issues such as uncertain legal status, adverse effects of drug use, potential effects of drug use, privacy, providers' and health agencies' attitudes and beliefs, and administrative barriers may account for the hesitancy in some states.⁹ Michigan is one of six states that currently prohibits EPT, but there is a bill pending in Michigan's Senate Committee on Health Policy that, if passed, would legally allow Michigan healthcare providers to practice EPT.¹⁰ In light of the legal and ethical ramifications of EPT, Michigan should not authorize medical practitioners to practice EPT, as various legal uncertainties outweigh the potential benefits in decreasing STDs.¹¹ This article will discuss general provisions of Michigan's pending bill in Part II and will assess the legal en-

5. *Expedited Partner Therapy in the Management of Sexually Transmitted Diseases*, U.S. DEPT. OF HEALTH & HUMAN SERVS. 4 (2006) [hereinafter *Expedited Partner Therapy 2006*], available at <http://www.cdc.gov/std/treatment/eptfinalreport2006.pdf>.

6. *Legal Status*, *supra* note 4.

7. *Id.*; HEALTH L. SEC. AM. BAR. ASS'N, REPORT TO THE HOUSE OF DELEGATES 1 (2008), available at http://www.americanbar.org/content/dam/aba/migrated/health/04_government_sub/media/116A_EPT_Final.authcheckdam.pdf.

8. *Legal Status*, *supra* note 4.

9. HEALTH L. SEC. AM. BAR. ASS'N, *supra* note 7, at 8.

10. *Legal Status*, *supra* note 4; H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

11. See Burstein, et al., *Expedited Partner Therapy for Adolescents Diagnosed with Chlamydia or Gonorrhea: A Position Paper of the Society for Adolescent Medicine*, 45 J. of Adolescent Health 303, 305 (2009) (Although EPT is an effective and acceptable technique to decrease gonorrhea or chlamydia reinfection rates, its use in routine clinical practice is limited by complex barriers).

vironment and reasons why the bill should not be passed in Part III, highlighting the absence of physician-patient relationships, lack of potential civil recovery for non-patients, potential abuse problems, and the need for education surrounding EPT's legality.

II. MICHIGAN'S PENDING BILL

Michigan's pending bill, House Bill 4736, would amend Michigan's Public Health Code by amending various sections and adding various sections relating to EPT.¹² The proposed bill would authorize EPT in order to protect and promote Michigan residents' public health by allowing health professionals to distribute or prescribe therapy to partners, even if the partner's identity is unknown.¹³ The bill would require health professionals to distribute an information pamphlet and to convey to the patient that partner notification is important in order for that non-patient partner to obtain medical care and a complete evaluation.¹⁴ However, the bill makes all health professionals who provide EPT not liable for damages in a civil action or subject to administrative action for personal injury, death, or other consequences arising from or related in any way to the provision of EPT.¹⁵ By passing House Bill 4736, Michigan would allow hazardous legal and ethical ramifications to surface, including the absence of physician-patient relationships, lack of potential civil recovery for non-patients, and potential abuse problems, which diminish the potential benefits that EPT may have in decreasing the prevalence of STDs.¹⁶

12. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

13. *Id.*

14. *Id.*

15. *Id.*

16. See *Expedited Partner Therapy 2006*, *supra* note 5, at 6.

III. LEGAL ETHICAL RAMIFICATIONS

A. Absence of Physician-Patient Relationships

The physician-patient relationship remains a foundation of care in which a patient's data is collected, diagnoses are made, and healing and support are provided.¹⁷ The physician-patient relationship can guide decision-making in healthcare plans, and the relationship allows for patient education and proper implementation of treatment plans.¹⁸ Sustaining physician-patient relationships allows for trust between physicians and patients, permitting physicians to retain professional standards to nurture and support their patients' health.¹⁹ However, health professionals who practice EPT do not maintain doctor-patient relationships with their patients' sex partners if they prescribe medicine to a non-patient.²⁰ In these cases, no clinical assessment of the patient's sex partner is required.²¹ This lack of clinical assessment diminishes the value of physician-patient relationships, and EPT's potential legal and ethical ramifications outweigh the benefits that it may have in limiting the number of STD infections.²²

Despite the endorsement of EPT by the ABA and CDC, there are valid reasons why some states still have not expressly authorized EPT.²³ Before passing the pending bill, Michigan should consider the potential slippery slope effect in allowing this new type of distant doctor-patient relationship. Medical practitioners experience ethical tension because providing any prescription without a prior evaluation or physician-patient relationship is im-

17. Susan D. Goold & Mack Lipkin, Jr., *The Doctor-Patient Relationship*, 14 J. GEN. INTERN. MED. S26, S26 (1999).

18. *Id.*

19. *Id.*

20. James G. Hodge, Jr. et al., *Expedited Partner Therapies for Sexually Transmitted Diseases: Legal and Policy Approaches*, 5 J. HEALTH & BIOMEDICAL L. 1, 2-3 (2008) [hereinafter *Legal and Policy Approaches*].

21. *Id.*

22. *See id.* at 3 ("After evaluating multiple studies demonstrating the efficacy of EPT as a public health measure in specific settings, CDC recommended national use of EPT. . . for certain populations with chlamydia and gonorrhea.").

23. *Legal Status*, *supra* note 4; HEALTH L. SEC. AM. BAR. ASS'N, *supra* note 7, at 2-3.

permissible²⁴, yet EPT in limited circumstances is permissible.²⁵ The incredibly valuable aspects of the physician-patient relationship will not survive when states authorize medical practitioners to prescribe some medication to non-patients.²⁶ If Michigan legalizes EPT, it seems conceivable that in the future other medications may be available through a similar process.²⁷

Patients' trust in their healthcare providers is fundamental to effective clinical encounters.²⁸ If Michigan were to legalize medical practitioners to practice EPT, current doctor-patient relationships would be affected when patients are diagnosed with STDs, as the patient would either be forced to tell the doctor the confidential name(s) of the person(s) to whom he or she could have spread the STD, or the unnamed individual(s) would be labeled "Expedited Partner Therapy" on the prescription.²⁹ If the patient were forced to expose confidential information of a non-patient, the vital characteristic of trust in the physician-patient relationship would be violated.³⁰ Further, even if the prescription was labeled "Expedited Partner Therapy,"

24. Brian M. Aboff et al., *Residents' Prescription Writing for Nonpatients*, 288(3) J. AM. MED. ASS'N 381, 384 (2002) ("Federal law in the area of prescription writing is limited to controlled substances. These laws requires that the prescriber have a bona fide patient-physician relationship with any person for whom he or she prescribes controlled substances.").

25. James G. Hodge, Jr. et al., *Expedited Partner Therapy for Sexually Transmitted Diseases: Assessing the Legal Environment*, 98 AM. J. PUB. HEALTH 238, 238 (2008) [hereinafter *Assessing the Legal Environment*].

26. See Goold & Lipkin, Jr., *supra* note 17 ("[The relationship] is the major influence on practitioner and patient satisfaction. . . Increasing data suggest that patients activated in the medical encounter to ask questions and to participate in their care do better biologically, in quality of life, and have higher satisfaction.").

27. *Before the Senate Comm. on Health & Education*, 1999 Leg., 75th Sess. 20 (Nv. 1999) ("Not every STD has proven to be effective with [EPT], and we would not want to open that slippery slope to those who are not proven for efficacy through [EPT].").

28. See Joanne E. Croker et al., *Factors affect patients' trust and confidence in GPs: evidence from the English national GP patient survey*, BMJ OPEN 2 (2013), <http://bmjopen.bmj.com/content/3/5/e002762.full.pdf+html> ("Numerous benefits may accrue from a trusting, confident doctor-patient relationship. These include the open communication of information between the doctor and the patient, with subsequent encouragement of the patient's enablement and improved adherence to medical advice. . . and the improvement of health outcomes and better patient perceptions of healthcare.").

29. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

30. See Goold & Lipkin, Jr., *supra* note 17, at S27 (trust is an essential and moral feature of the doctor-patient relationship).

allowing the patient to keep confidential information private, the absence of a proper physician-patient relationship still weighs against the practice. As EPT is only one method of decreasing the prevalence of STDs³¹, it should not be practiced at the expense of existing physician-patient relationships.

Michigan's proposed bill, as well as other states' already adopted bills, suggest that providing an information pamphlet about STD testing to the patient to give to the non-patient would be sufficient to substitute for a physician-patient relationship.³² Information pamphlets contain warnings about administering EPT to pregnant partners, information about STDs, their treatment and prevention, statements advising a person with questions about the information to contact his or her physician, pharmacist, or local health department, and more.³³ However, this information is simply not enough to make up for the absence of doctor-patient relationships, especially in light of the fact that the information pamphlets clearly indicate the need for the non-patient to direct questions to their own physician.³⁴ It seems that if states were not concerned with the non-patient's well-being, this element would not be included in any information pamphlet. Its mere presence appears to reveal that the absence of physician-patient relationships could create more problems than the benefits EPT may ultimately provide.

31. *Expedited Partner Therapy for Chlamydia trachomatis Infection, Neisseria gonorrhoeae Infection and Trichomoniasis: Guidance for Health Care Professionals in Wisconsin*, WIS. DEP'T. OF HEALTH SERVS. 3 (2013), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.dhs.wisconsin.gov%2Fpublications%2FP0%2FP00253.pdf&ei=dCU3U5-aGuGC2QXcqIH0Bg&usg=AFQjCNFhEWNz32b-bETZCX9Ps5wZ_DDwoQ&sig2=6uVrADg6JIDVVfn-GMQwtw&bvm=bv.63808443,d.cWc [hereinafter WIS. DEP'T. OF HEALTH SERVS.] ("While standard care for treating STDs includes testing, clinical evaluation and counseling by a clinician, EPT is an alternative when a partner is unable or unlikely to seek care.").

32. *Id.* at 4 ("A treatment information sheet must accompany each medicine or prescription. . ."); H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

33. WIS. DEP'T. OF HEALTH SERVS., *supra* note 31, at 4.

34. *Id.*

B. Lack of Potential Civil Recovery for Non-Patients

If passed, Michigan's bill would effectively eliminate all civil liability for damages for personal injury, death, or other consequences arising from or related in any way to a health professional providing EPT.³⁵ A basic tenet of healthcare services is to help ensure that individuals do not gain access to medications they do not need or that could be dangerous to their health.³⁶ It seems that EPT goes directly against this fundamental tenet. Still, some argue that providing EPT is an exception to the basic tenet similar to the existing exceptions that allow physicians to routinely give prescription medications to children or elderly patients through parents or caregivers and to people with mental disabilities through court-appointed guardians.³⁷ However, this argument is flawed. Caregivers, court-appointed guardians, and parents giving their dependents medicine is not the same as a patient infected with a STD giving medication to all of his or her sexual partners because the aforementioned are legally consenting to the dependents' medical treatments.³⁸ Conversely, non-patients are not consenting to medical treatment, as they're only receiving extra medication from the patient.³⁹ Consequently, if a non-patient takes the medication and problems arise, a non-patient partner has no ability to recover from the health practitioner through a civil lawsuit, as the health practitioner would be relieved of all liability.⁴⁰

Inherent in all medications, the risks of allergic reactions and other adverse drug effects for individuals are present when a person takes medication to treat an STD.⁴¹ Without direct medical supervision, this risk increas-

35. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

36. *Assessing the Legal Environment*, *supra* note 25, at 238-39.

37. *Id.* at 239.

38. REBECCA GUDEMAN, NAT'L CTR. FOR YOUTH L., CONSENT TO MEDICAL TREATMENT FOR FOSTER CHILDREN: CALIFORNIA LAW 1 (December 2008).

39. *Legal and Policy Approaches*, *supra* note 20, at 3. Health care practitioners provide patients with sufficient medications either directly or via prescription for the patients and their partners. *Id.*

40. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

41. *Expedited Partner Therapy 2006*, *supra* note 5, at 6.

es, including medical problems such as: transient gastrointestinal intolerance, drug intolerance, fetal and pregnancy-related morbidity, allergic reactions, and disulfiram-like⁴² reactions in association with alcohol ingestion.⁴³ If Michigan's pending bill passes through the Senate and becomes law, a non-patient who suffers any of the negative side effects of EPT listed above will be left without any availability for recovery against the health practitioner.⁴⁴ This lack of recovery is a large legal ramification because any negatively affected non-patients cannot seek justice, which outweighs potential benefits that may come from EPT in decreasing the prevalence of STDs.

C. Potential Abuse Problems

Potential abuse problems also create legal and ethical concerns that weigh against Michigan's proposed legislation.⁴⁵ Some physicians are concerned that with EPT the medication will not be delivered to their patients' sex partners.⁴⁶ Physicians would not know whether or not their patients will be willing or even able to contact one or more of their past partners for treatment.⁴⁷ By dispensing an extra dose of the medication, Michigan physicians would be escaping liability for medical mishaps that occur to essentially anyone.⁴⁸ For example, a patient could take his or her extra dose of medicine and give it to one of his or her friends who only believe they have a STD. This action would not only be a missed opportunity to counsel part-

42. See *Antabuse (disulfiram)*, NETDOCTOR, <http://www.netdoctor.co.uk/alcohol-abuse/medicines/antabuse.html> (last updated Nov. 18, 2013) ("causing flushing, a racing heartbeat. . . a drop in blood pressure that causes dizziness. . . throbbing headache, shortness of breath, palpitations, nausea and vomiting").

43. *Expedited Partner Therapy 2006*, *supra* note 5, at 20.

44. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

45. HEALTH L. SEC. AM. BAR. ASS'N, *supra* note 7, at 7.

46. *Id.*

47. See *Partner Services Frequently Asked Questions for Patients Diagnosed with HIV/STD*, NEW YORK STATE DEPT. OF HEALTH, http://www.health.ny.gov/diseases/communicable/std/partner_services/faqs_for_patients.htm (last updated January 2011) (New York's Partner Services Specialists acknowledge that there are reasons why patients may not want to notify their partner(s) themselves).

48. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

ners, which physicians currently worry about⁴⁹, but it would also be a missed opportunity to counsel the potentially great number of individuals that could have access to their patient's extra dose of medication.

Further, the issue of funding creates a potential of abuse for patients, physicians and their practice, insurance companies, pharmacies, and health departments.⁵⁰ Funding medication given to an unknown individual who may or may not have contracted a STD from a patient is an abuse of resources allocated to the state, and therefore Michigan should not allow the proposed bill to pass in the Senate.⁵¹ In fact, some argue that funding is the greatest single impediment to EPT use because access to the medication requires insurance companies to routinely pay for it or for public health agencies to provide the medication through a separate program.⁵² States' public health agencies should not spend their resources on funding EPT when that money could be spent elsewhere.⁵³ The importance of the funding obstacle will vary in a wide variety of settings, but comprehensive programs by public health departments, health maintenance organizations, or other agencies will incur additional costs.⁵⁴ Admittedly, expenses of EPT may be modest in relation to the total costs incurred in diagnosis and management of patients with treatable STDs⁵⁵; however, even small incremental costs of EPT

49. HEALTH L. SEC, AM. BAR. ASS'N, *supra* note 7, at 7.

50. *Expedited Partner Therapy 2006*, *supra* note 5, at 21.

51. See Albert R. Jonsen & Kelly A. Edwards, *Ethics in Medicine: Resource Allocation*, UNIV. OF WASH. (1998), <https://depts.washington.edu/bioethx/topics/resall.html> ("Often scarcity of resources, such as equipment, beds, drugs, time or excessive numbers of persons in need make it difficult, if not impossible, to provide 'the full measure of service and devotion.'").

52. See, e.g., Matthew R. Golden & Claudia S. Estcourt, *Barriers to the implementation of expedited partner therapy*, 87 SEXUALLY TRANSMITTED INFECTIONS ii37, ii37 (2011) (A Washington state program treats approximately 12,000 partners per year at a cost of approximately \$105,000).

53. *Id.*

54. See *Expedited Partner Therapy 2006*, *supra* note 5, at 21. Expenses will be incurred in counseling index patients, purchasing drugs, development of educational literature, packaging drugs and counseling aids, administrative expenses incurred by arrangements with pharmacies, personnel time when medications are delivered to patients by public health workers, among others. *Id.*

55. *Expedited Partner Therapy 2006*, *supra* note 5, at 21.

may cause difficulties for underfunded public health departments.⁵⁶

D. Lack of Education Surrounding EPT's Legality

Finally, even if Michigan were to pass the proposed legislation, studies in states that legally allow EPT show that healthcare providers still perceive the process as illegal, thus limiting the potential benefits of EPT.⁵⁷ In those surveys, medical practitioners expressed uncertainty about the legality of EPT and further expounded that even if it were legal, the physicians had not been informed of the procedures or policies.⁵⁸ Even in EPT-supported legal environments, issues such as awareness, education, reimbursement, or funding may inhibit EPT use.⁵⁹ If Michigan were to pass the proposed bill, it is unlikely that many potential benefits from EPT would come to fruition⁶⁰, especially because states where EPT is legal lack education surrounding the process.⁶¹

IV. CONCLUSION

In conclusion, Michigan's proposed bill, House Bill 4736, legalizing the practice of EPT in the state, would create more legal and ethical ramifications than the potential benefits that EPT may have in decreasing the prevalence of STDs.⁶² As mentioned in the above analysis, EPT diminishes the value of physician-patient relationships, which allow for patient education and proper implementation of any treatment plans.⁶³ Further, the process

56. *Id.*

57. *Id.* at 20.

58. *Id.* at 21.

59. Ryan Cramer et al., *The Legal Aspects of Expedited Partner Therapy Practice: Do State Laws and Policies Really Matter?*, 40 SEXUALLY TRANSMITTED DISEASES 657, 662 (2013); See Hodge et al., *Assessing the Legal Environment*, *supra* note 25, at 239 ("Still, health care practitioners may be concerned that they will be subject to sanctions (e.g., censure, fines, suspension, or license revocation) by state licensing boards or civil claims for malpractice for providing prescriptions to nonpatients.").

60. *Expedited Partner Therapy 2006*, *supra* note 5, at 22.

61. *Id.* at 21.

62. See Burstein, et al., *supra* note 11, at 305.

63. See Goold & Lipkin, Jr., *supra* note 17, at S26 (one of the functions of a medical

leaves any non-patients negatively affected by receiving EPT without the ability for civil recovery against healthcare practitioners, as they are completely relieved of any liability.⁶⁴

If Michigan's proposed bill is passed, potential abuse problems will arise because of the opportunity for patients to give the medication to any of their friends or family, not only to their potentially affected partner. Additionally, funding medication to unknown individuals is an abuse of Michigan's resources.⁶⁵ Finally, the lack of education surrounding EPT's legality, process, and procedures undoubtedly limits any potential benefits of EPT.⁶⁶ Therefore, Michigan's proposed bill, House Bill 4736 should not be passed by the Senate.

interview is to carry out patient education and implementation of treatment plans).

64. H.B. 4736, 97 Leg., 1st Reg. Sess. (Mich. 2013).

65. See Jonsen & Edwards, *supra* note 51.

66. *Expedited Partner Therapy 2006*, *supra* note 5, at 21; Cramer et al., *supra* note 58, at 662 ("Among providers, awareness of EPT and reimbursement issues may inhibit EPT use even in supportive legal environments.").