

**SUBSTITUTE FOR
SENATE BILL NO. 270**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7303a, 16221, and 16226 (MCL 333.7303a,
333.16221, and 333.16226), as amended by 2016 PA 379, and by adding
section 16204e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7303a. (1) A prescriber who holds a controlled substances
2 license may administer or dispense a controlled substance listed in
3 schedules 2 to 5 without a separate controlled substances license
4 for those activities.

5 (2) EXCEPT AS OTHERWISE PROVIDED IN RULES PROMULGATED UNDER
6 SECTION 16204E, BEGINNING MARCH 31, 2018, A LICENSED PRESCRIBER
7 SHALL NOT PRESCRIBE A CONTROLLED SUBSTANCE LISTED IN SCHEDULES 2 TO
8 5 UNLESS THE PRESCRIBER IS IN A BONA FIDE PRESCRIBER-PATIENT

1 RELATIONSHIP WITH THE PATIENT FOR WHOM THE CONTROLLED SUBSTANCE IS
2 BEING PRESCRIBED. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
3 IF A LICENSED PRESCRIBER PRESCRIBES A CONTROLLED SUBSTANCE UNDER
4 THIS SUBSECTION, THE PRESCRIBER SHALL PROVIDE FOLLOW-UP CARE TO THE
5 PATIENT TO MONITOR THE EFFICACY OF THE USE OF THE CONTROLLED
6 SUBSTANCE AS A TREATMENT OF THE PATIENT'S MEDICAL CONDITION. IF THE
7 LICENSED PRESCRIBER IS UNABLE TO PROVIDE FOLLOW-UP CARE, HE OR SHE
8 SHALL REFER THE PATIENT TO THE PATIENT'S PRIMARY CARE PROVIDER FOR
9 FOLLOW-UP CARE OR, IF THE PATIENT DOES NOT HAVE A PRIMARY CARE
10 PROVIDER, HE OR SHE SHALL REFER THE PATIENT TO ANOTHER LICENSED
11 PRESCRIBER WHO IS GEOGRAPHICALLY ACCESSIBLE TO THE PATIENT FOR
12 FOLLOW-UP CARE.

13 (3) ~~(2)~~—Before prescribing or dispensing a controlled
14 substance to a patient, a licensed prescriber shall ask the patient
15 about other controlled substances the patient may be using. The
16 prescriber shall record the patient's response in the patient's
17 medical or clinical record.

18 (4) ~~(3)~~—A licensed prescriber who dispenses controlled
19 substances shall maintain all of the following records separately
20 from other prescription records:

21 (a) All invoices and other acquisition records for each
22 controlled substance acquired by the prescriber for not less than 5
23 years after the date the prescriber acquires the controlled
24 substance.

25 (b) A log of all controlled substances dispensed by the
26 prescriber for not less than 5 years after the date the controlled
27 substance is dispensed.

(c) Records of all other dispositions of controlled substances under the licensee's control for not less than 5 years after the date of the disposition.

(5) ~~(4)~~—The requirement under section 7303 for a license is waived in the following circumstances:

(a) When a controlled substance listed in schedules 2 to 5 is administered on the order of a licensed prescriber by an individual who is licensed under article 15 as a practical nurse or a registered professional nurse.

(b) When methadone or a methadone congener is dispensed on the order of a licensed prescriber in a methadone treatment program licensed under article 6 or when a controlled substance listed in schedules 2 to 5 is dispensed on the order of a licensed prescriber in a hospice rendering emergency care services in a patient's home as described in section 17746 by a registered professional nurse licensed under article 15.

(6) AS USED IN THIS SECTION:

(A) "BONA FIDE PRESCRIBER-PATIENT RELATIONSHIP" MEANS A TREATMENT OR COUNSELING RELATIONSHIP BETWEEN A PRESCRIBER AND A PATIENT IN WHICH BOTH OF THE FOLLOWING ARE PRESENT:

(i) THE PRESCRIBER HAS REVIEWED THE PATIENT'S RELEVANT MEDICAL OR CLINICAL RECORDS AND COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING A RELEVANT MEDICAL EVALUATION OF THE PATIENT CONDUCTED IN PERSON OR VIA TELEHEALTH.

(ii) THE PRESCRIBER HAS CREATED AND MAINTAINED RECORDS OF THE PATIENT'S CONDITION IN ACCORDANCE WITH MEDICALLY ACCEPTED

1 STANDARDS.

2 (B) "TELEHEALTH" MEANS THAT TERM AS DEFINED IN SECTION 16283.

3 SEC. 16204E. NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF
4 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT IN
5 CONSULTATION WITH THE MICHIGAN BOARD OF MEDICINE, THE MICHIGAN
6 BOARD OF OSTEOPATHIC MEDICINE AND SURGERY, THE MICHIGAN BOARD OF
7 DENTISTRY, THE MICHIGAN BOARD OF PODIATRIC MEDICINE AND SURGERY,
8 THE MICHIGAN BOARD OF OPTOMETRY, THE MICHIGAN TASK FORCE ON
9 PHYSICIAN'S ASSISTANTS, AND THE MICHIGAN BOARD OF NURSING MAY
10 PROMULGATE RULES DESCRIBING THE CIRCUMSTANCES UNDER WHICH A BONA
11 FIDE PRESCRIBER-PATIENT RELATIONSHIP IS NOT REQUIRED FOR PURPOSES
12 OF PRESCRIBING A SCHEDULE 2 TO 5 CONTROLLED SUBSTANCE UNDER SECTION
13 7303A(2). THE RULES MAY INCLUDE AN ALTERNATIVE REQUIREMENT FOR
14 PRESCRIBING A SCHEDULE 2 TO 5 CONTROLLED SUBSTANCE WHEN A BONA FIDE
15 PRESCRIBER-PATIENT RELATIONSHIP IS NOT REQUIRED BY THE RULES
16 PROMULGATED UNDER THIS SECTION.

17 Sec. 16221. The department shall investigate any allegation
18 that 1 or more of the grounds for disciplinary subcommittee action
19 under this section exist, and may investigate activities related to
20 the practice of a health profession by a licensee, a registrant, or
21 an applicant for licensure or registration. The department may hold
22 hearings, administer oaths, and order the taking of relevant
23 testimony. After its investigation, the department shall provide a
24 copy of the administrative complaint to the appropriate
25 disciplinary subcommittee. The disciplinary subcommittee shall
26 proceed under section 16226 if it finds that 1 or more of the
27 following grounds exist:

1 (a) Except as otherwise specifically provided in this section,
2 a violation of general duty, consisting of negligence or failure to
3 exercise due care, including negligent delegation to or supervision
4 of employees or other individuals, whether or not injury results,
5 or any conduct, practice, or condition that impairs, or may impair,
6 the ability to safely and skillfully engage in the practice of the
7 health profession.

8 (b) Personal disqualifications, consisting of 1 or more of the
9 following:

10 (i) Incompetence.

11 (ii) Subject to sections 16165 to 16170a, substance use
12 disorder as defined in section 100d of the mental health code, 1974
13 PA 258, MCL 330.1100d.

14 (iii) Mental or physical inability reasonably related to and
15 adversely affecting the licensee's or registrant's ability to
16 practice in a safe and competent manner.

17 (iv) Declaration of mental incompetence by a court of
18 competent jurisdiction.

19 (v) Conviction of a misdemeanor punishable by imprisonment for
20 a maximum term of 2 years; conviction of a misdemeanor involving
21 the illegal delivery, possession, or use of a controlled substance;
22 or conviction of any felony other than a felony listed or described
23 in another subparagraph of this subdivision. A certified copy of
24 the court record is conclusive evidence of the conviction.

25 (vi) Lack of good moral character.

26 (vii) Conviction of a criminal offense under section 520e or
27 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and

1 750.520g. A certified copy of the court record is conclusive
2 evidence of the conviction.

3 (viii) Conviction of a violation of section 492a of the
4 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of
5 the court record is conclusive evidence of the conviction.

6 (ix) Conviction of a misdemeanor or felony involving fraud in
7 obtaining or attempting to obtain fees related to the practice of a
8 health profession. A certified copy of the court record is
9 conclusive evidence of the conviction.

10 (x) Final adverse administrative action by a licensure,
11 registration, disciplinary, or certification board involving the
12 holder of, or an applicant for, a license or registration regulated
13 by another state or a territory of the United States, by the United
14 States military, by the federal government, or by another country.
15 A certified copy of the record of the board is conclusive evidence
16 of the final action.

17 (xi) Conviction of a misdemeanor that is reasonably related to
18 or that adversely affects the licensee's or registrant's ability to
19 practice in a safe and competent manner. A certified copy of the
20 court record is conclusive evidence of the conviction.

21 (xii) Conviction of a violation of section 430 of the Michigan
22 penal code, 1931 PA 328, MCL 750.430. A certified copy of the court
23 record is conclusive evidence of the conviction.

24 (xiii) Conviction of a criminal offense under section 83, 84,
25 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
26 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,
27 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the

1 court record is conclusive evidence of the conviction.

2 (c) Prohibited acts, consisting of 1 or more of the following:

3 (i) Fraud or deceit in obtaining or renewing a license or
4 registration.

5 (ii) Permitting a license or registration to be used by an
6 unauthorized person.

7 (iii) Practice outside the scope of a license.

8 (iv) Obtaining, possessing, or attempting to obtain or possess
9 a controlled substance as defined in section 7104 or a drug as
10 defined in section 7105 without lawful authority; or selling,
11 prescribing, giving away, or administering drugs for other than
12 lawful diagnostic or therapeutic purposes.

13 (d) Except as otherwise specifically provided in this section,
14 unethical business practices, consisting of 1 or more of the
15 following:

16 (i) False or misleading advertising.

17 (ii) Dividing fees for referral of patients or accepting
18 kickbacks on medical or surgical services, appliances, or
19 medications purchased by or in behalf of patients.

20 (iii) Fraud or deceit in obtaining or attempting to obtain
21 third party reimbursement.

22 (e) Except as otherwise specifically provided in this section,
23 unprofessional conduct, consisting of 1 or more of the following:

24 (i) Misrepresentation to a consumer or patient or in obtaining
25 or attempting to obtain third party reimbursement in the course of
26 professional practice.

27 (ii) Betrayal of a professional confidence.

1 (iii) Promotion for personal gain of an unnecessary drug,
2 device, treatment, procedure, or service.

3 (iv) Either of the following:

4 (A) A requirement by a licensee other than a physician or a
5 registrant that an individual purchase or secure a drug, device,
6 treatment, procedure, or service from another person, place,
7 facility, or business in which the licensee or registrant has a
8 financial interest.

9 (B) A referral by a physician for a designated health service
10 that violates 42 USC 1395nn or a regulation promulgated under that
11 section. For purposes of this subdivision, 42 USC 1395nn and the
12 regulations promulgated under that section as they exist on June 3,
13 2002 are incorporated by reference. A disciplinary subcommittee
14 shall apply 42 USC 1395nn and the regulations promulgated under
15 that section regardless of the source of payment for the designated
16 health service referred and rendered. If 42 USC 1395nn or a
17 regulation promulgated under that section is revised after June 3,
18 2002, the department shall officially take notice of the revision.
19 Within 30 days after taking notice of the revision, the department
20 shall decide whether or not the revision pertains to referral by
21 physicians for designated health services and continues to protect
22 the public from inappropriate referrals by physicians. If the
23 department decides that the revision does both of those things, the
24 department may promulgate rules to incorporate the revision by
25 reference. If the department does promulgate rules to incorporate
26 the revision by reference, the department shall not make any
27 changes to the revision. As used in this sub-subparagraph,

1 "designated health service" means that term as defined in 42 USC
2 1395nn and the regulations promulgated under that section and
3 "physician" means that term as defined in sections 17001 and 17501.

4 (v) For a physician who makes referrals under 42 USC 1395nn or
5 a regulation promulgated under that section, refusing to accept a
6 reasonable proportion of patients eligible for Medicaid and
7 refusing to accept payment from Medicaid or Medicare as payment in
8 full for a treatment, procedure, or service for which the physician
9 refers the individual and in which the physician has a financial
10 interest. A physician who owns all or part of a facility in which
11 he or she provides surgical services is not subject to this
12 subparagraph if a referred surgical procedure he or she performs in
13 the facility is not reimbursed at a minimum of the appropriate
14 Medicaid or Medicare outpatient fee schedule, including the
15 combined technical and professional components.

16 (vi) Any conduct by a health professional with a patient while
17 he or she is acting within the health profession for which he or
18 she is licensed or registered, including conduct initiated by a
19 patient or to which the patient consents, that is sexual or may
20 reasonably be interpreted as sexual, including, but not limited to,
21 sexual intercourse, kissing in a sexual manner, or touching of a
22 body part for any purpose other than appropriate examination,
23 treatment, or comfort.

24 (vii) Offering to provide practice-related services, such as
25 drugs, in exchange for sexual favors.

26 (f) Failure to notify under section 16222(3) or (4).

27 (g) Failure to report a change of name or mailing address as

1 required in section 16192.

2 (h) A violation, or aiding or abetting in a violation, of this
3 article or of a rule promulgated under this article.

4 (i) Failure to comply with a subpoena issued pursuant to this
5 part, failure to respond to a complaint issued under this article,
6 article 7, or article 8, failure to appear at a compliance
7 conference or an administrative hearing, or failure to report under
8 section 16222(1) or 16223.

9 (j) Failure to pay an installment of an assessment levied
10 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
11 500.8302, within 60 days after notice by the appropriate board.

12 (k) A violation of section 17013 or 17513.

13 (l) Failure to meet 1 or more of the requirements for
14 licensure or registration under section 16174.

15 (m) A violation of section 17015, 17015a, 17017, 17515, or
16 17517.

17 (n) A violation of section 17016 or 17516.

18 (o) Failure to comply with section 9206(3).

19 (p) A violation of section 5654 or 5655.

20 (q) A violation of section 16274.

21 (r) A violation of section 17020 or 17520.

22 (s) A violation of the medical records access act, 2004 PA 47,
23 MCL 333.26261 to 333.26271.

24 (t) A violation of section 17764(2).

25 (u) Failure to comply with the terms of a practice agreement
26 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
27 18047(2)(a) or (b).

(V) A VIOLATION OF SECTION 7303A(2).

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Sanctions

Subdivision (a), (b) (i), Probation, limitation, denial,
 (b) (ii), (b) (iii), (b) (iv), suspension, revocation,
 (b) (v), (b) (vi), (b) (vii), permanent revocation,
 (b) (ix), (b) (x), (b) (xi), restitution, or fine.
 or (b) (xii)

Subdivision (b) (viii) Revocation, permanent revocation,
 or denial.

Subdivision (b) (xiii) Permanent revocation
 for a violation described in
 subsection (5); otherwise,
 probation, limitation, denial,
 suspension, revocation,
 restitution, or fine.

Subdivision (c) (i) Denial, revocation, suspension,
 probation, limitation, or fine.

Subdivision (c) (ii) Denial, suspension, revocation,
 restitution, or fine.

1		
2	Subdivision (c) (iii)	Probation, denial, suspension,
3		revocation, restitution, or fine.
4		
5	Subdivision (c) (iv)	Fine, probation, denial,
6	or (d) (iii)	suspension, revocation, permanent
7		revocation, or restitution.
8		
9	Subdivision (d) (i)	Reprimand, fine, probation,
10	or (d) (ii)	denial, or restitution.
11		
12	Subdivision (e) (i) ,	Reprimand, fine, probation,
13	(e) (iii) , (e) (iv) , (e) (v) ,	limitation, suspension,
14	(h) , or (s)	revocation, permanent revocation,
15		denial, or restitution.
16		
17	Subdivision (e) (ii)	Reprimand, probation, suspension,
18	or (i)	revocation, permanent
19		revocation, restitution,
20		denial, or fine.
21		
22	Subdivision (e) (vi)	Probation, suspension, revocation,
23	or (e) (vii)	limitation, denial,
24		restitution, or fine.
25		
26	Subdivision (f)	Reprimand, denial, limitation,
27		probation, or fine.

1		
2	Subdivision (g)	Reprimand or fine.
3		
4	Subdivision (j)	Suspension or fine.
5		
6	Subdivision (k), (p),	Reprimand, probation, suspension,
7	or (r)	revocation, permanent revocation,
8		or fine.
9		
10	Subdivision (l)	Reprimand, denial, or
11		limitation.
12		
13	Subdivision (m) or (o)	Denial, revocation, restitution,
14		probation, suspension,
15		limitation, reprimand, or fine.
16		
17	Subdivision (n)	Revocation or denial.
18		
19	Subdivision (q)	Revocation.
20		
21	Subdivision (t)	Revocation, permanent revocation,
22		fine, or restitution.
23		
24	Subdivision (u)	Denial, revocation, probation,
25		suspension, limitation, reprimand,
26		or fine.
27		

1 **SUBDIVISION (V)**

2 **PROBATION, LIMITATION, DENIAL,**
3 **FINE, SUSPENSION, REVOCATION, OR**
 PERMANENT REVOCATION.

4 (2) Determination of sanctions for violations under this
5 section shall be made by a disciplinary subcommittee. If, during
6 judicial review, the court of appeals determines that a final
7 decision or order of a disciplinary subcommittee prejudices
8 substantial rights of the petitioner for 1 or more of the grounds
9 listed in section 106 of the administrative procedures act of 1969,
10 1969 PA 306, MCL 24.306, and holds that the final decision or order
11 is unlawful and is to be set aside, the court shall state on the
12 record the reasons for the holding and may remand the case to the
13 disciplinary subcommittee for further consideration.

14 (3) A disciplinary subcommittee may impose a fine in an amount
15 that does not exceed \$250,000.00 for a violation of section
16 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
17 at least \$25,000.00 if the violation of section 16221(a) or (b)
18 results in the death of 1 or more patients.

19 (4) A disciplinary subcommittee may require a licensee or
20 registrant or an applicant for licensure or registration who has
21 violated this article, article 7, or article 8 or a rule
22 promulgated under this article, article 7, or article 8 to
23 satisfactorily complete an educational program, a training program,
24 or a treatment program, a mental, physical, or professional
25 competence examination, or a combination of those programs and
26 examinations.

27 (5) A disciplinary subcommittee shall impose the sanction of

1 permanent revocation for a violation of section 16221(b) (xiii) if
2 the violation occurred while the licensee or registrant was acting
3 within the health profession for which he or she was licensed or
4 registered.

5 (6) Except as otherwise provided in subsection (5), a
6 disciplinary subcommittee shall not impose the sanction of
7 permanent revocation under this section without a finding that the
8 licensee or registrant engaged in a pattern of intentional acts of
9 fraud or deceit resulting in personal financial gain to the
10 licensee or registrant and harm to the health of patients under the
11 licensee's or registrant's care.

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