

HOUSE BILL No. 5062

August 1, 1991, Introduced by Reps. Jaye and Walberg and referred to the Committee on Public Health.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 5114b and 16269.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221 and 16226 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 15 of the Public Acts
3 of 1989, being sections 333.16221 and 333.16226 of the Michigan
4 Compiled Laws, are amended and sections 5114b and 16269 are added
5 to read as follows:

6 SEC. 5114B. (1) ABSENT AN EMERGENCY, A PERSON WHO SEEKS TO
7 UNDERGO AN INVASIVE MEDICAL PROCEDURE BENEATH THE SKIN OR SURGERY

1 INSIDE THE MOUTH SHALL SUBMIT TO THOSE TESTS DESCRIBED IN
2 SECTION 16269(2)(A) BEFORE UNDERGOING THAT PROCEDURE OR SURGERY.

3 (2) IF A PERSON IS CAPABLE OF COMMUNICATING AND HAS OR HAS
4 TESTED POSITIVE FOR HIV, AN ANTIBODY TO HIV, OR THE HEPATITIS B
5 VIRUS, HE OR SHE SHALL INFORM A HEALTH CARE PROFESSIONAL OF THAT
6 INFECTION AT OR BEFORE THE TIME HE OR SHE SEEKS THE SERVICES OF
7 THAT HEALTH CARE PROFESSIONAL.

8 (3) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL
9 FINE OF NOT LESS THAN \$10,000.00.

10 (4) AS USED IN THIS SECTION:

11 (A) "HEALTH CARE PROFESSIONAL" MEANS A PERSON LICENSED UNDER
12 ARTICLE 15 OF THIS ACT.

13 (B) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

14 Sec. 16221. The department may investigate activities
15 related to the practice of a health profession by a licensee, a
16 registrant, or an applicant for licensure or registration. The
17 department may hold hearings, administer oaths, and order rele-
18 vant testimony to be taken and shall report its findings to the
19 appropriate board or appropriate task force. ~~The~~ A board shall
20 proceed under section 16226 if the board finds that any of the
21 following grounds exist:

22 (a) A violation of general duty, consisting of negligence or
23 failure to exercise due care, including negligent delegation to
24 or supervision of employees or other individuals, whether or not
25 injury results, or any conduct, practice, or condition ~~which~~
26 THAT impairs, or may impair, the ability to safely and skillfully
27 practice the health profession.

1 (b) Personal disqualifications, consisting of any of the
2 following:

3 (i) Incompetence.

4 (ii) Substance abuse as defined in section 6107.

5 (iii) Mental or physical inability reasonably related to and
6 adversely affecting the licensee's ability to practice in a safe
7 and competent manner.

8 (iv) Declaration of mental incompetence by a court of compe-
9 tent jurisdiction.

10 (v) Conviction of a misdemeanor or felony reasonably related
11 to and adversely affecting the licensee's ability to practice in
12 a safe and competent manner. A certified copy of the court
13 record ~~shall be~~ IS conclusive evidence of the conviction.

14 (vi) Lack of good moral character.

15 (vii) Conviction of a criminal offense under sections ~~520a~~
16 ~~to 520t~~ 520B TO 520G of the Michigan penal code, Act No. 328 of
17 the Public Acts of 1931, being sections ~~750.520a to 750.520t~~
18 750.520B TO 750.520G of the Michigan Compiled Laws. A certified
19 copy of the court record ~~shall be~~ IS conclusive evidence of the
20 conviction.

21 (viii) Conviction of a violation of section 492a of the
22 Michigan penal code, Act No. 328 of the Public Acts of 1931,
23 being section 750.492a of the Michigan Compiled Laws. A certi-
24 fied copy of the court record ~~shall be~~ IS conclusive evidence
25 of the conviction.

26 (ix) Conviction of a misdemeanor or felony involving fraud
27 in obtaining or attempting to obtain fees related to the practice

1 of a health profession. A certified copy of the court record
2 ~~shall be~~ IS conclusive evidence of the conviction.

3 (c) Prohibited acts, consisting of any of the following:

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

5 (ii) Permitting the license to be used by an unauthorized
6 person.

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

8 (iv) Obtaining, possessing, or attempting to obtain or pos-
9 sess a controlled substance as defined in section 7104 or a drug
10 as 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) Unethical business practices, consisting of any of the
14 following:

15 (i) False or misleading advertising.

16 (ii) Dividing fees for referral of patients or accepting
17 kickbacks on medical or surgical services, appliances, or medica-
18 tions purchased by or ~~in~~ ON behalf of patients.

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

21 (e) Unprofessional conduct, consisting of any of the
22 following:

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

26 (ii) Betrayal of a professional confidence.

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

3 (iv) Directing or requiring an individual to purchase or
4 secure a drug, device, treatment, procedure, or service from
5 another person, place, facility, or business in which the
6 licensee has a financial interest.

7 (f) Failure to report a change of name or address within 30
8 days after the change occurs.

9 (g) A violation, or aiding or abetting in a violation, of
10 this article or of rules promulgated under this article.

11 (h) Failure to comply with a subpoena issued pursuant to
12 this part.

13 (i) Failure to pay an installment of an assessment levied
14 pursuant to section 2504 of the insurance code of 1956, Act
15 No. 218 of the Public Acts of 1956, as amended, being section
16 500.2504 of the Michigan Compiled Laws, within 60 days after
17 notice by the appropriate board.

18 (j) A violation of section 17013 or 17513.

19 (K) A VIOLATION OF SECTION 16269.

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

24 Violations of Section 16221

Sanctions

25 Subdivision (a),

Probation, limitation, denial,

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

1	or (h)	suspension, restitution, or
2		fine.
3	Subdivision (e)(iii)	Reprimand, fine, probation,
4	or (e)(iv)	suspension, revocation, limita-
5		tion, or restitution.
6	Subdivision (f)	Reprimand or fine.
7	Subdivision (g)	Reprimand, probation, denial,
8		suspension, revocation, limita-
9		tion, restitution, or fine.
10	Subdivision (i)	Suspension or fine.
11	Subdivision (j)	Reprimand or fine.
12	SUBDIVISION (K)	REVOCATION OR FINE.

13 (2) Determination of sanctions for violations under THIS
14 section ~~+6226~~ shall be made by a board. If, during judicial
15 review, a court holds that a sanction is unlawful under section
16 106 of the administrative procedures act of 1969, Act No. 306 of
17 the Public Acts of 1969, being section 24.306 of the Michigan
18 Compiled Laws, the court shall state on the record the reasons
19 for the holding and may remand the case to the board for further
20 consideration.

21 (3) A board created under part 170 or 175 may impose a fine
22 of up to, but not exceeding, \$250,000.00 for a violation of
23 section 16221(a) or (b).

24 (4) A BOARD MAY IMPOSE A FINE OF NOT LESS THAN \$10,000.00
25 FOR A VIOLATION OF SECTION 16269.

26 SEC. 16269. (1) AS USED IN THIS SECTION, "LICENSEE" MEANS A
27 PERSON LICENSED UNDER THIS ARTICLE.

1 (2) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
2 SECTION, A LICENSEE WHO MAY COME INTO CONTACT WITH THE BODY
3 FLUIDS OF ANOTHER PERSON DURING PERFORMANCE OF AN ACTIVITY GOV-
4 ERNED BY THIS ACT SHALL DO EACH OF THE FOLLOWING:

5 (A) AT 6-MONTH INTERVALS, SUBMIT TO A HUMAN IMMUNODEFICIENCY
6 VIRUS TEST AND A HEPATITIS B VIRUS TEST CONSIDERED RELIABLE BY
7 THE FEDERAL CENTERS FOR DISEASE CONTROL AND APPROVED BY THE
8 DEPARTMENT OF PUBLIC HEALTH.

9 (B) IF THE RESULT OF A TEST IDENTIFIED IN SUBDIVISION (A) IS
10 POSITIVE, IMMEDIATELY PROVIDE THE DEPARTMENT OF PUBLIC HEALTH
11 WITH NOTICE OF THAT TEST RESULT, AND A LIST OF PERSONS UPON WHOM
12 THE LICENSEE HAS PERFORMED A PROCEDURE DURING THE PRECEDING 24
13 MONTHS THAT IS GOVERNED BY THIS ACT AND THAT INVOLVES THE POSSI-
14 BLE EXPOSURE OF THAT PERSON TO THE LICENSEE'S BODY FLUIDS.

15 (C) IF THE RESULT OF A TEST IDENTIFIED IN SUBDIVISION (A) IS
16 POSITIVE, IMMEDIATELY REFRAIN FROM PERFORMING A PROCEDURE GOV-
17 ERNED BY THIS ACT THAT REQUIRES DIRECT PHYSICAL CONTACT WITH A
18 PATIENT UNTIL THE DEPARTMENT OF PUBLIC HEALTH APPROVES THE
19 LICENSEE'S PERFORMANCE OF THAT PROCEDURE.

20 (D) BEFORE PERFORMING A PROCEDURE APPROVED BY THE DEPARTMENT
21 OF PUBLIC HEALTH PURSUANT TO SUBDIVISION (C), PROVIDE WRITTEN
22 NOTICE OF THE LICENSEE'S TEST RESULTS TO THE PATIENT UPON WHOM
23 THE PROCEDURE IS TO BE PERFORMED.

24 (E) ABSENT AN EMERGENCY, NOT PERFORM AN INVASIVE PROCEDURE
25 BENEATH THE SKIN OR SURGERY INSIDE THE MOUTH OF A PERSON UNLESS
26 THAT PERSON HAS UNDERGONE EACH TEST DESCRIBED IN SUBDIVISION (A),
27 AND THE LICENSEE HAS RECEIVED THE RESULTS OF THAT TEST.

1 (2) WITHIN 10 DAYS OF RECEIPT OF A LIST PROVIDED PURSUANT TO
2 SUBSECTION (2)(B), THE DEPARTMENT OF PUBLIC HEALTH SHALL PROVIDE
3 BY ORDINARY MAIL TO EACH PERSON IDENTIFIED IN THAT LIST A NOTICE
4 CONTAINING THE FOLLOWING:

5 (A) A STATEMENT SPECIFYING THAT PERSON'S POSSIBLE EXPOSURE
6 TO THE IDENTIFIED VIRUS.

7 (B) THE AVAILABILITY OF A TEST, AT NO COST TO THE PERSON, TO
8 DETERMINE WHETHER THAT PERSON HAS BEEN INFECTED WITH THE VIRUS TO
9 WHICH HE OR SHE HAS POSSIBLY BEEN EXPOSED.

10 (C) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON,
11 AGENCY, OR DEPARTMENT THAT CAN PROVIDE FURTHER INFORMATION AND
12 SCHEDULE A TEST OR TESTS.

13 (3) UPON REQUEST, THE DEPARTMENT OF PUBLIC HEALTH SHALL PRO-
14 VIDE TO A PERSON IDENTIFIED IN A LIST CREATED PURSUANT TO SUBSEC-
15 TION (2)(B) THE APPLICABLE TEST DESCRIBED IN SUBSECTION (2)(A).
16 THE TEST SHALL BE WITHOUT COST TO THE PERSON BEING TESTED.

17 Section 2. This amendatory act shall not take effect unless
18 Senate Bill No. _____ or House Bill No. 5061 (request
19 no. 03720'91 a) of the 86th Legislature is enacted into law.