

HOUSE BILL No. 5529

February 19, 1992, Introduced by Rep. Bennane and referred to the Committee on Public Health.

A bill to amend sections 16177, 16221, and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," sections 16221 and 16226 as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16177, 333.16221, and 333.16226 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16177, 16221, and 16226 of Act No. 368
2 of the Public Acts of 1978, sections 16221 and 16226 as amended
3 by Act No. 15 of the Public Acts of 1989, being sections
4 333.16177, 333.16221, and 333.16226 of the Michigan Compiled
5 Laws, are amended to read as follows:

6 Sec. 16177. (1) An individual applying for licensure or
7 registration under this article shall ~~do so~~ PROVIDE THE
8 DEPARTMENT WITH A STATEMENT VERIFYING OR IDENTIFYING EACH OF THE

1 FOLLOWING on a form provided by the department, — AND SHALL
2 ATTACH TO THAT FORM A COPY OF ANY DOCUMENT REQUIRED UNDER THIS
3 SECTION:

4 (A) WHETHER HE OR SHE PARTICIPATES IN A MEDICAID OR MEDICARE
5 PROGRAM.

6 (B) WHETHER HE OR SHE PROVIDES SERVICES PAID FOR BY A HEALTH
7 CARE CORPORATION REGULATED UNDER THE NONPROFIT HEALTH CARE CORPO-
8 RATION REFORM ACT, ACT NO. 350 OF THE PUBLIC ACTS OF 1980, BEING
9 SECTIONS 550.1101 TO 550.1704 OF THE MICHIGAN COMPILED LAWS.

10 (C) WHETHER HE OR SHE ACCEPTS ANY OF THE FOLLOWING:

11 (i) NEW PATIENTS.

12 (ii) MEDICARE RECIPIENTS.

13 (iii) MEDICAID RECIPIENTS.

14 (D) THE ECONOMIC INTEREST OR BUSINESS RELATIONSHIP THAT HE
15 OR SHE HAS, OR HIS OR HER SPOUSE HAS, IN OR WITH ANY OF THE
16 FOLLOWING:

17 (i) A HEALTH FACILITY OR AGENCY, INCLUDING A CLINICAL
18 LABORATORY.

19 (ii) A MANAGED CARE PROVIDER.

20 (iii) A MEDICAL SUPPLIER.

21 (iv) ANOTHER INDIVIDUAL LICENSED OR REGISTERED UNDER THIS
22 ARTICLE.

23 (E) THE INSURANCE CARRIER, IF ANY, THAT PROVIDES HIM OR HER
24 WITH PROFESSIONAL MALPRACTICE LIABILITY INSURANCE COVERAGE, AND A
25 STATEMENT VERIFYING EACH OF THE FOLLOWING:

1 (i) WHETHER HE OR SHE HAS BEEN DENIED PROFESSIONAL
2 MALPRACTICE INSURANCE COVERAGE, AND THE REASON GIVEN FOR THAT
3 DENIAL.

4 (ii) WHETHER A SPECIAL ASSESSMENT OF PROFESSIONAL MALPRAC-
5 TICE INSURANCE PREMIUMS HAS BEEN MADE AGAINST HIM OR HER ON THE
6 BASIS OF HIS OR HER PROFESSIONAL PERFORMANCE.

7 (F) WHETHER HE OR SHE IS UNINSURED OR SELF-INSURED, IF HE OR
8 SHE DOES NOT MAINTAIN PROFESSIONAL MALPRACTICE LIABILITY INSUR-
9 ANCE COVERAGE WITH AN INSURANCE CARRIER.

10 (G) HIS OR HER BOARD OR CERTIFICATION STATUS.

11 (H) HIS OR HER HEALTH PROFESSION EDUCATIONAL HISTORY,
12 INCLUDING A TRANSCRIPT OF HIS OR HER ACADEMIC EVALUATIONS.

13 (I) WHETHER A PROFESSIONAL MALPRACTICE CLAIM HAS BEEN FILED
14 AGAINST HIM OR HER, AND EACH OF THE FOLLOWING IF A CLAIM HAS BEEN
15 FILED:-

16 (i) THE NAMES OF THE PARTIES AND A COPY OF EACH PLEADING OR
17 CLAIM.

18 (ii) THE STATUS OF EACH CLAIM.

19 (iii) THE RESOLUTION OF EACH CLAIM.

20 (J) WHETHER A COMPLAINT AGAINST HIM OR HER HAS BEEN FILED OR
21 AN INVESTIGATION OF HIM OR HER HAS BEEN UNDERTAKEN BY ANY OF THE
22 FOLLOWING FOR AN ALLEGED VIOLATION OF THIS ACT OR RULE PROMUL-
23 GATED UNDER THIS ACT:

24 (i) THE DEPARTMENT, AGENCY, OR BOARD THAT ISSUED HIS OR HER
25 LICENSE, OR WITH WHOM HE OR SHE IS REGISTERED.

26 (ii) THE DEPARTMENT, AGENCY, OR BOARD THAT CERTIFIED HIM OR
27 HER.

1 (iii) A HEALTH FACILITY OR AGENCY THAT GRANTED HIM OR HER
2 PRIVILEGES TO PERFORM AN ACTIVITY THAT REQUIRES LICENSURE OR CER-
3 TIFICATION UNDER THIS ACT.

4 (iv) A MEDICAID OR MEDICARE ADMINISTRATOR.

5 (v) A HEALTH INSURER.

6 (vi) THE ATTORNEY GENERAL OR OTHER LAW ENFORCEMENT OFFICE OR
7 DEPARTMENT.

8 (vii) THE INSPECTOR GENERAL OF THE UNITED STATES DEPARTMENT
9 OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL.

10 (K) WHETHER DISCIPLINARY ACTION, INCLUDING ANY OF THE FOL-
11 LOWING, HAS BEEN INITIATED AGAINST HIM OR HER FOR AN ACT OR OMIS-
12 SION SUBJECT TO REGULATION UNDER THIS ACT:

13 (i) SUSPENSION OR REVOCATION OF A LICENSE.

14 (ii) SUSPENSION OR REVOCATION OF A REGISTRATION OR
15 CERTIFICATION.

16 (iii) CRIMINAL PROSECUTION.

17 (l) A COPY OF THE COMPLAINT OR COMPLAINTS DESCRIBED IN SUB-
18 DIVISION (J), AND A STATEMENT VERIFYING THE STATUS OF EACH
19 COMPLAINT.

20 (M) A COPY OF THE RECORD OF ANY DISCIPLINARY ACTION
21 DESCRIBED IN SUBDIVISION (K).

22 (2) If the facts ~~set forth in the application~~ DISCLOSED ON
23 THE FORM DESCRIBED IN SUBSECTION (1) meet the requirements of the
24 board and this article for licensure or registration, the board
25 may grant a license or registration to the applicant. A board
26 may require the applicant to take an examination to determine if
27 the applicant meets the qualifications for licensure or

1 registration. The examination shall include subjects determined
2 by the board to be essential to the safe and competent practice
3 of the health profession, the appropriate use of a title, or
4 both. Passing scores or the procedure used to determine passing
5 scores shall be established before an examination is
6 administered.

7 (3) THE DEPARTMENT SHALL MAINTAIN A RECORD OF UNSOLICITED
8 COMPLAINTS RECEIVED BY THE DEPARTMENT UNDER SECTION 16231 AGAINST
9 EACH PERSON LICENSED OR REGISTERED UNDER THIS ARTICLE.

10 (4) WITHIN 60 DAYS AFTER BECOMING INFORMED OF A CHANGE IN
11 THE FACTS DISCLOSED ON THE FORM DESCRIBED IN SUBSECTION (1), AN
12 INDIVIDUAL LICENSED OR REGISTERED UNDER THIS ARTICLE SHALL PRO-
13 VIDE THE DEPARTMENT WITH WRITTEN NOTICE OF THAT CHANGE.

14 (5) THE DEPARTMENT SHALL PROVIDE THE HEALTH PROFESSIONAL
15 CLEARINGHOUSE CREATED UNDER THE HEALTH PROFESSIONAL CLEARINGHOUSE
16 ACT WITH THE INFORMATION DISCLOSED OR OBTAINED UNDER THIS SECTION
17 WITHIN 30 DAYS OF THE DEPARTMENT'S RECEIPT OF THAT INFORMATION.

18 (6) AS USED IN THIS SECTION:

19 (A) "MEDICAID" MEANS BENEFITS UNDER TITLE XIX OF THE SOCIAL
20 SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g
21 AND 1396i TO 1396u.

22 (B) "MEDICARE" MEANS BENEFITS UNDER TITLE XVIII OF THE
23 SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO
24 1395b, 1395b-2, 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO
25 1395w-2, 1395w-4 TO 1395dd, 1395ff TO 1395yy, AND 1395bbb TO
26 1395ccc.

1 Sec. 16221. The department may investigate activities
2 related to the practice of a health profession by a licensee, a
3 registrant, or an applicant for licensure or registration. The
4 department may hold hearings, administer oaths, and order rele-
5 vant testimony to be taken and shall report its findings to the
6 appropriate board or appropriate task force. The board shall
7 proceed under section 16226 if the board finds that any of the
8 following grounds exist:

9 (a) A violation of general duty, consisting of negligence or
10 failure to exercise due care, including negligent delegation to
11 or supervision of employees or other individuals, whether or not
12 injury results, or any conduct, practice, or condition which
13 impairs, or may impair, the ability to safely and skillfully
14 practice the health profession.

15 (b) Personal disqualifications, consisting of any of the
16 following:

17 (i) Incompetence.

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

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

22 (iv) Declaration of mental incompetence by a court of compe-
23 tent jurisdiction.

24 (v) Conviction of a misdemeanor or felony reasonably related
25 to and adversely affecting the licensee's ability to practice in
26 a safe and competent manner. A certified copy of the court
27 record shall be conclusive evidence of the conviction.

1 (vi) Lack of good moral character.

2 (vii) Conviction of a criminal offense under sections 520a
3 to 520d of the Michigan penal code, Act No. 328 of the Public
4 Acts of 1931, being sections ~~750.520a to 750.520d~~ 750.520B TO
5 750.520G of the Michigan Compiled Laws. A certified copy of the
6 court record ~~shall be~~ IS conclusive evidence of the
7 conviction.

8 (viii) Conviction of a violation of section 492a of the
9 Michigan penal code, Act No. 328 of the Public Acts of 1931,
10 being section 750.492a of the Michigan Compiled Laws. A certi-
11 fied copy of the court record ~~shall be~~ IS conclusive evidence
12 of the conviction.

13 (ix) Conviction of a misdemeanor or felony involving fraud
14 in obtaining or attempting to obtain fees related to the practice
15 of a health profession. A certified copy of the court record
16 ~~shall be~~ IS conclusive evidence of the conviction.

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

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

19 (ii) Permitting the license to be used by an unauthorized
20 person.

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

22 (iv) Obtaining, possessing, or attempting to obtain or pos-
23 sess a controlled substance as defined in section 7104 or a drug
24 as defined in section 7105 without lawful authority; or selling,
25 prescribing, giving away, or administering drugs for other than
26 lawful diagnostic or therapeutic purposes.

1 (d) Unethical business practices, consisting of any of the
2 following:

3 (i) False or misleading advertising.

4 (ii) Dividing fees for referral of patients or accepting
5 kickbacks on medical or surgical services, appliances, or medica-
6 tions purchased by or in behalf of patients.

7 (iii) Fraud or deceit in obtaining or attempting to obtain
8 third party reimbursement.

9 (e) Unprofessional conduct, consisting of any of the
10 following:

11 (i) Misrepresentation to a consumer or patient or in obtain-
12 ing or attempting to obtain third party reimbursement in the
13 course of professional practice.

14 (ii) Betrayal of a professional confidence.

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

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

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

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

25 (h) Failure to comply with a subpoena issued pursuant to
26 this part.

1 (i) Failure to pay an installment of an assessment levied
 2 pursuant to section 2504 of the insurance code of 1956, Act
 3 No. 218 of the Public Acts of 1956, as amended, being section
 4 500.2504 of the Michigan Compiled Laws, within 60 days after
 5 notice by the appropriate board.

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

7 (K) A VIOLATION OF SECTION 16177.

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

12 Violations of Section 16221

Sanctions

13 Subdivision (a),

Probation, limitation, denial,

14 (b)(ii),

suspension, revocation,

15 (b)(iv),

restitution, or fine.

16 (b)(vi), or

17 (b)(vii)

18 Subdivision (b)(viii)

Revocation.

19 Subdivision (b)(i),

Limitation, suspension,

20 (b)(iii),

revocation, denial,

21 (b)(v), or (b)(ix)

probation, restitution, or

22

fine.

23 Subdivision (c)(i)

Denial, revocation, suspension,

24

probation, limitation, or

25

fine.

1 Subdivision (c)(ii)	Denial, suspension, revocation,
2	restitution, or fine.
3 Subdivision (c)(iii)	Probation, denial, suspension,
4	revocation, restitution, or
5	fine.
6 Subdivision (c)(iv)	Fine, probation, denial,
7 or (d)(iii)	suspension, revocation,
8	or restitution.
9 Subdivision (d)(i)	Reprimand, fine, probation,
10 or (d)(ii)	or restitution.
11 Subdivision (e)(i)	Reprimand, fine, probation,
12	limitation, suspension, or
13	restitution.
14 Subdivision (e)(ii)	Reprimand, probation,
15 or (h)	suspension, restitution, or
16	fine.
17 Subdivision (e)(iii)	Reprimand, fine, probation,
18 or (e)(iv)	suspension, revocation, limita-
19	tion, or restitution.
20 Subdivision (f)	Reprimand or fine.
21 Subdivision (g)	Reprimand, probation, denial,
22	suspension, revocation, limita-
23	tion, restitution, or fine.
24 Subdivision (i)	Suspension or fine.
25 Subdivision (j)	Reprimand or fine.

1 SUBDIVISION (K) REPRIMAND, PROBATION, DENIAL,
2 SUSPENSION, REVOCATION,
3 LIMITATION, OR FINE.

4 (2) Determination of sanctions for violations under section
5 16226 shall be made by a board. If, during judicial review, a
6 court holds that a sanction is unlawful under section 106 of the
7 administrative procedures act of 1969, Act No. 306 of the Public
8 Acts of 1969, being section 24.306 of the Michigan Compiled Laws,
9 the court shall state on the record the reasons for the holding
10 and may remand the case to the board for further consideration.

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

14 Section 2. This amendatory act shall not take effect unless
15 Senate Bill No. ____ or House Bill No. 5530 (request
16 no. 04196'91a) of the 86th Legislature is enacted into law.