

SENATE BILL NO. 595

June 10, 1997, Introduced by Senators STILLE, SCHWARZ, SHUGARS, GAST, YOUNG, DUNASKISS and NORTH and referred to the Committee on Education.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226), as amended by 1996 PA 594.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 disciplinary subcommittee. The disciplinary subcom-
7 mittee shall proceed under section 16226 if it finds that 1 or
8 more of the following grounds exist:

9 (a) A violation of general duty, consisting of negligence or
10 failure to exercise due care, including negligent delegation to

1 or supervision of employees or other individuals, whether or not
2 injury results, or any conduct, practice, or condition which
3 impairs, or may impair, the ability to safely and skillfully
4 practice the health profession.

5 (b) Personal disqualifications, consisting of 1 or more of
6 the following:

7 (i) Incompetence.

8 (ii) Subject to sections 16165 to 16170a, substance abuse as
9 defined in section 6107.

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

13 (iv) Declaration of mental incompetence by a court of compe-
14 tent jurisdiction.

15 (v) Conviction of a misdemeanor punishable by imprisonment
16 for a maximum term of 2 years; a misdemeanor involving the ille-
17 gal delivery, possession, or use of a controlled substance; or a
18 felony. A certified copy of the court record is conclusive evi-
19 dence of the conviction.

20 (vi) Lack of good moral character.

21 (vii) Conviction of a criminal offense under sections 520a
22 to 520l of the Michigan penal code, ~~Act No. 328 of the Public~~
23 ~~Acts of 1931, being sections 750.520a to 750.520l of the Michigan~~
24 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520A TO 750.520L. A certi-
25 fied copy of the court record is conclusive evidence of the
26 conviction.

1 (viii) Conviction of a violation of section 492a of the
2 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
3 ~~being section 750.492a of the Michigan Compiled Laws~~ 1931 PA
4 328, MCL 750.492A. A certified copy of the court record is con-
5 clusive evidence of the conviction.

6 (ix) Conviction of a misdemeanor or felony involving fraud
7 in obtaining or attempting to obtain fees related to the practice
8 of a 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, reg-
11 istration, disciplinary, or certification board involving the
12 holder of, or an applicant for, a license or registration regu-
13 lated by another state or a territory of the United States. A
14 certified copy of the record of the board is conclusive evidence
15 of the final action.

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

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

22 (i) Fraud or deceit in obtaining or renewing a license or
23 registration.

24 (ii) Permitting the license or registration to be used by an
25 unauthorized person.

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

1 (iv) Obtaining, possessing, or attempting to obtain or
2 possess a controlled substance as defined in section 7104 or a
3 drug as defined in section 7105 without lawful authority; or
4 selling, prescribing, giving away, or administering drugs for
5 other than lawful diagnostic or therapeutic purposes.

6 (d) Unethical business practices, consisting of 1 or more of
7 the following:

8 (i) False or misleading advertising.

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

12 (iii) Fraud or deceit in obtaining or attempting to obtain
13 third party reimbursement.

14 (e) Unprofessional conduct, consisting of 1 or more of the
15 following:

16 (i) Misrepresentation to a consumer or patient or in obtain-
17 ing or attempting to obtain third party reimbursement in the
18 course of professional practice.

19 (ii) Betrayal of a professional confidence.

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

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

26 (f) Failure to report a change of name or mailing address
27 within 30 days after the change occurs.

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

3 (h) Failure to comply with a subpoena issued pursuant to
4 this part, failure to respond to a complaint issued under this
5 article or article 7, failure to appear at a compliance confer-
6 ence or an administrative hearing, or failure to report under
7 section 16222 or 16223.

8 (i) Failure to pay an installment of an assessment levied
9 pursuant to section 2504 of the insurance code of 1956, ~~Act~~
10 ~~No. 218 of the Public Acts of 1956, being section 500.2504 of the~~
11 ~~Michigan Compiled Laws~~ 1956 PA 218, MCL 500.2504, within 60 days
12 after notice by the appropriate board.

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

14 (k) Failure to meet 1 or more of the requirements for licen-
15 sure or registration under section 16174.

16 (l) A violation of section 17015 or 17515.

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

18 (N) FAILURE TO COMPLY WITH SECTION 9206(3).

19 (O) ~~(n)~~ A violation of section 5654 or 5655.

20 (P) DEFAULTING ON OR OTHERWISE FAILING TO PAY AN EDUCATIONAL
21 LOAN TAKEN OUT BY THE LICENSEE, REGISTRANT, OR APPLICANT THAT IS
22 GUARANTEED BY THE STATE OR FEDERAL GOVERNMENT.

23 Sec. 16226. (1) After finding the existence of 1 or more of
24 the grounds for disciplinary subcommittee action listed in sec-
25 tion 16221, a disciplinary subcommittee shall impose 1 or more of
26 the following sanctions for each violation:

1		
2	<u>Violations of Section 16221</u>	<u>Sanctions</u>
3	Subdivision (a), (b)(ii),	Probation, limitation, denial,
4	(b)(iv), (b)(vi), or	suspension, revocation,
5	(b)(vii)	restitution, community service,
6		or fine.
7	Subdivision (b)(viii)	Revocation or denial.
8	Subdivision (b)(i),	Limitation, suspension,
9	(b)(iii), (b)(v),	revocation, denial,
10	(b)(ix),	probation, restitution,
11	(b)(x), or (b)(xi)	community service, or fine.
12	Subdivision (c)(i)	Denial, revocation, suspension,
13		probation, limitation, commu-
14		nity service, or fine.
15	Subdivision (c)(ii)	Denial, suspension, revocation,
16		restitution, community service,
17		or fine.
18	Subdivision (c)(iii)	Probation, denial, suspension,
19		revocation, restitution, commu-
20		nity service, or fine.
21	Subdivision (c)(iv)	Fine, probation, denial,
22	or (d)(iii)	suspension, revocation, commu-
23		nity service,
24		or restitution.
25	Subdivision (d)(i)	Reprimand, fine, probation,
26	or (d)(ii)	community service, denial,

1		or restitution.
2	Subdivision (e)(i)	Reprimand, fine, probation,
3		limitation, suspension, commu-
4		nity service, denial, or
5		restitution.
6	Subdivision (e)(ii)	Reprimand, probation,
7	or (h)	suspension, restitution, commu-
8		nity service, denial, or fine.
9	Subdivision (e)(iii)	Reprimand, fine, probation,
10	or (e)(iv)	suspension, revocation, limita-
11		tion, community service,
12		denial, or restitution.
13	Subdivision (f)	Reprimand or fine.
14	Subdivision (g)	Reprimand, probation, denial,
15		suspension, revocation, limita-
16		tion, restitution, community
17		service, or fine.
18	Subdivision (i)	Suspension or fine.
19	Subdivision (j) or (n)	
20	(O)	Reprimand or fine.
21	Subdivision (k)	Reprimand, denial, or
22		limitation.
23	Subdivision (l) OR (N)	Denial, revocation, restitution,
24		probation, suspension, limita-
25		tion, reprimand, or fine.
26	Subdivision (m)	Revocation or denial.

1 SUBDIVISION (P)

DENIAL.

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

13 (3) A disciplinary subcommittee may impose a fine of up to,
14 but not exceeding, \$250,000.00 for a violation of
15 section 16221(a) or (b).

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