

HOUSE BILL No. 4847

May 30, 2001, Introduced by Reps. Shulman, Raczkowski, Toy, Pappageorge, Patterson, George, LaSata, Vander Veen, Middaugh, Schauer, Koetje, Hart, Caul, Richner, DeWeese and Lemmons and referred to the Committee on Insurance and Financial Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, 16263, 17001, 17011, 17501, and 17511 (MCL 333.16221, 333.16226, 333.16263, 333.17001, 333.17011, 333.17501, and 333.17511), sections 16221 and 16226 as amended by 2000 PA 29, section 16263 as amended by 2000 PA 11, section 17001 as amended by 1990 PA 248, section 17011 as amended by 1993 PA 79, and section 17501 as amended by 1990 PA 247, and by adding section 16105b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16105B. (1) "HEALTH PLAN" MEANS AN ENTITY THAT CON-
2 TRACTS OR OFFERS TO CONTRACT TO PROVIDE, DELIVER, ARRANGE FOR,
3 PAY FOR, OR REIMBURSE ANY OF THE COSTS OF HEALTH CARE SERVICES,
4 INCLUDING A SICKNESS AND ACCIDENT INSURANCE COMPANY, A HEALTH
5 MAINTENANCE ORGANIZATION, A NONPROFIT HEALTH CARE CORPORATION, OR

1 ANY OTHER ENTITY PROVIDING A PLAN OF HEALTH INSURANCE, HEALTH
2 BENEFITS, OR HEALTH SERVICES.

3 (2) "UTILIZATION REVIEW" MEANS PROSPECTIVE, CONCURRENT, OR
4 RETROSPECTIVE REVIEW AND ANALYSIS OF DATA RELATED TO UTILIZATION
5 OF HEALTH CARE RESOURCES IN TERMS OF COST, EFFECTIVENESS, EFFI-
6 CIENCY, CONTROL, AND QUALITY.

7 Sec. 16221. The department may investigate activities
8 related to the practice of a health profession by a licensee, a
9 registrant, or an applicant for licensure or registration. The
10 department may hold hearings, administer oaths, and order rele-
11 vant testimony to be taken and shall report its findings to the
12 appropriate disciplinary subcommittee. The disciplinary subcom-
13 mittee shall proceed under section 16226 if it finds that 1 or
14 more of the following grounds exist:

15 (a) A violation of general duty, consisting of negligence or
16 failure to exercise due care, including negligent delegation to
17 or supervision of employees or other individuals, whether or not
18 injury results, or any conduct, practice, or condition ~~which~~
19 THAT impairs, or may impair, the ability to safely and skillfully
20 practice the health profession.

21 (b) Personal disqualifications, consisting of 1 or more of
22 the following:

23 (i) Incompetence.

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

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

4 (iv) Declaration of mental incompetence by a court of compe-
5 tent jurisdiction.

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

11 (vi) Lack of good moral character.

12 (vii) Conviction of a criminal offense under sections 520a
13 to ~~520I~~ 520M of the Michigan penal code, 1931 PA 328,
14 MCL 750.520a to ~~750.520I~~ 750.520M. A certified copy of the
15 court record is conclusive evidence of the conviction.

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

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

23 (x) Final adverse administrative action by a licensure, reg-
24 istration, disciplinary, or certification board involving the
25 holder of, or an applicant for, a license or registration regu-
26 lated by another state or a territory of the United States, by
27 the United States military, by the federal government, or by

1 another country. A certified copy of the record of the board is
2 conclusive evidence of the final action.

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

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

9 (i) Fraud or deceit in obtaining or renewing a license or
10 registration.

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

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

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

19 (d) Unethical business practices, consisting of 1 or more of
20 the following:

21 (i) False or misleading advertising.

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

25 (iii) Fraud or deceit in obtaining or attempting to obtain
26 third party reimbursement.

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

3 (i) Misrepresentation to a consumer or patient or in obtain-
4 ing or attempting to obtain third party reimbursement in the
5 course of professional practice.

6 (ii) Betrayal of a professional confidence.

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

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

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

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

17 (h) Failure to comply with a subpoena issued pursuant to
18 this part, failure to respond to a complaint issued under this
19 article or article 7, failure to appear at a compliance confer-
20 ence or an administrative hearing, or failure to report under
21 section 16222 or 16223.

22 (i) Failure to pay an installment of an assessment levied
23 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
24 to 500.8302, within 60 days after notice by the appropriate
25 board.

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

1 (k) Failure to meet 1 or more of the requirements for
2 licensure or registration under section 16174.

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

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

5 (n) Failure to comply with section 9206(3).

6 (o) A violation of section 5654 or 5655.

7 (p) A violation of section 16274.

8 (q) A violation of section 17020 or 17520.

9 (R) THAT A LICENSEE, WHEN ACTING AS A MEDICAL DIRECTOR OR IN
10 THE COURSE OF UTILIZATION REVIEW ACTIVITIES, HAS DONE 1 OR MORE
11 OF THE FOLLOWING FOR THE PURPOSE OF POSITIVELY INFLUENCING THE
12 FINANCIAL WELL-BEING OF THE LICENSEE OR THE HEALTH PLAN:

13 (i) FAILED TO REFER.

14 (ii) FAILED TO OFFER APPROPRIATE PROCEDURES OR STUDIES.

15 (iii) FAILED TO PROTEST INAPPROPRIATE MANAGED CARE DENIALS.

16 (iv) FAILED TO PROVIDE A MEDICALLY NECESSARY AND APPROPRIATE
17 SERVICE.

18 (v) FAILED TO REFER TO AN APPROPRIATE PROVIDER.

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

23 <u>Violations of Section 16221</u>	<u>Sanctions</u>
24 Subdivision (a), (b)(ii),	Probation, limitation, denial,
25 (b)(iv), (b)(vi), or	suspension, revocation,

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- 1 (b)(vii) restitution, community service,
2 or fine.
- 3 Subdivision (b)(viii) Revocation or denial.
- 4 Subdivision (b)(i), Limitation, suspension,
5 (b)(iii), (b)(v), revocation, denial,
6 (b)(ix), b(x), probation, restitution,
7 or (b)(xi) community service, or fine.
- 8 Subdivision (c)(i) Denial, revocation, suspension,
9 probation, limitation, community
10 service, or fine.
- 11 Subdivision (c)(ii) Denial, suspension, revocation,
12 restitution, community service,
13 or fine.
- 14 Subdivision (c)(iii) Probation, denial, suspension,
15 revocation, restitution, commu-
16 nity service, or fine.
- 17 Subdivision (c)(iv) Fine, probation, denial,
18 or restitution.
- 19 Subdivision (d)(i) Reprimand, fine, probation,

- 1 or (d)(ii) community service, denial,
2 or restitution.
- 3 Subdivision (e)(i) Reprimand, fine, probation, limi-
4 tation, suspension, community
5 service, denial, or 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, denial,
12 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), (o), Reprimand or fine.

1 or (q)

2 Subdivision (k) Reprimand, denial, or
3 limitation.

4 Subdivision (l) or (n) Denial, revocation, restitution,
5 probation, suspension, limita-
6 tion, reprimand, or fine.

7 Subdivision (m) Revocation or denial.

8 Subdivision (p) Revocation.

9 SUBDIVISION (R) FINE, PROBATION, DENIAL, SUSPEN-
10 SION, REVOCATION, COMMUNITY SERV-
11 ICE, OR RESTITUTION.

12 (2) Determination of sanctions for violations under this
13 section shall be made by a disciplinary subcommittee. If, during
14 judicial review, the court of appeals determines that a final
15 decision or order of a disciplinary subcommittee prejudices sub-
16 stantial rights of the petitioner for 1 or more of the grounds
17 listed in section 106 of the administrative procedures act of
18 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
19 or order is unlawful and is to be set aside, the court shall
20 state on the record the reasons for the holding and may remand
21 the case to the disciplinary subcommittee for further
22 consideration.

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

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

11 Sec. 16263. (1) Except as provided in subsection (2), the
12 following words, titles, or letters or a combination thereof,
13 with or without qualifying words or phrases, are restricted in
14 use only to those persons authorized under this article to use
15 the terms and in a way prescribed in this article:

16 (a) "Chiropractic", "doctor of chiropractic",
17 "chiropractor", "d.c.", and "chiropractic physician".

18 (b) "Dentist", "doctor of dental surgery", "oral and maxil-
19 lofacial surgeon", "orthodontist", "prosthodontist",
20 "periodontist", "endodontist", "oral pathologist", "pediatric
21 dentist", "dental hygienist", "registered dental hygienist",
22 "dental assistant", "registered dental assistant", "R.D.A.",
23 "d.d.s.", "d.m.d.", and "r.d.h.".

24 (c) "Doctor of medicine" and "m.d.".

25 (d) "Physician's assistant" and "p.a.".

26 (e) "Registered professional nurse", "registered nurse",
27 "r.n.", "licensed practical nurse", "l.p.n.", "nurse midwife",

1 "nurse anesthetist", "nurse practitioner", "trained attendant",
2 and "t.a."

3 (f) "Doctor of optometry", "optometrist", and "o.d."

4 (g) "Osteopath", "osteopathy", "osteopathic practitioner",
5 "doctor of osteopathy", "diplomate in osteopathy", and "d.o."

6 (h) "Pharmacy", "pharmacist", "apothecary", "drugstore",
7 "druggist", "medicine store", "prescriptions", and "r.ph."

8 (i) "Physical therapy", "physical therapist",
9 "physiotherapist", "registered physical therapist", "licensed
10 physical therapist", "physical therapy technician", "p.t.",
11 "r.p.t.", "l.p.t.", and "p.t.t."

12 (j) "Chiropodist", "chiropody", "chiropodical", "podiatry",
13 "podiatrist", "podiatric", "doctor of podiatric medicine", "foot
14 specialist", "podiatric physician and surgeon", and "d.p.m."

15 (k) "Consulting psychologist", "psychologist",
16 "psychological assistant", "psychological examiner", "licensed
17 psychologist", and "limited licensed psychologist"

18 (l) "Licensed professional counselor", "licensed counselor",
19 "professional counselor", and "l.p.c."

20 (m) "Sanitarian", "registered sanitarian", and "r.s."

21 (n) "Social worker", "certified social worker", "social work
22 technician", "s.w.", "c.s.w.", and "s.w.t."

23 (o) "Veterinary", "veterinarian", "veterinary doctor",
24 "veterinary surgeon", "doctor of veterinary medicine", "v.m.d.",
25 "d.v.m.", "animal technician", or "animal technologist"

26 (p) "Occupational therapist", "occupational therapist
27 registered", "certified occupational therapist", "o.t.",

1 "o.t.r.", "c.o.t.", "certified occupational therapy assistant",
 2 "occupational therapy assistant", or "c.o.t.a.".

3 (q) "Marriage advisor" or "marriage consultant"; "family
 4 counselor", "family advisor", "family therapist", or "family
 5 consultant"; "family guidance counselor", "family guidance
 6 advisor", or "family guidance consultant"; "marriage guidance
 7 counselor", "marriage guidance advisor", or "marriage guidance
 8 consultant"; "family relations counselor"; "marriage relations
 9 counselor", "marriage relations advisor", or "marriage relations
 10 consultant"; "marital counselor" or "marital therapist"; "limited
 11 licensed marriage and family therapist" or "limited licensed mar-
 12 riage counselor"; "licensed marriage and family therapist" or
 13 "licensed marriage counselor"; and "l.m.f.t.".

14 (R) "MEDICAL DIRECTOR".

15 (2) Notwithstanding section 16261, a person who was spe-
 16 cially trained at an institution of higher education in this
 17 state to assist a physician in the field of orthopedics and upon
 18 completion of training, received a 2-year associate of science
 19 degree as an orthopedic physician's assistant before January 1,
 20 1977, may use the title "orthopedic physician's assistant"
 21 whether or not the person is licensed under this article.

22 Sec. 17001. (1) As used in this part:

23 (a) "Academic institution" means either of the following:

24 (i) A medical school approved by the board.

25 (ii) A hospital licensed under article 17 that meets all of
 26 the following requirements:

1 (A) Was the sole sponsor or a co-sponsor, if each other
2 co-sponsor is either a medical school approved by the board or a
3 hospital owned by the federal government and directly operated by
4 the United States department of veterans' affairs, of not less
5 than 4 postgraduate education residency programs approved by the
6 board under section 17031(1) for not less than the 3 years imme-
7 diately preceding the date of an application for a limited
8 license under section 16182(2)(c) or an application for a full
9 license under section 17031(2), provided that at least 1 of the
10 residency programs is in the specialty area of medical practice,
11 or in a specialty area that includes the subspecialty of medical
12 practice, in which the applicant for a limited license proposes
13 to practice or in which the applicant for a full license has
14 practiced for the hospital.

15 (B) Has spent not less than \$2,000,000.00 for medical educa-
16 tion during each of the 3 years immediately preceding the date of
17 an application for a limited license under section 16182(2)(c) or
18 an application for a full license under section 17031(2). As
19 used in this subparagraph, "medical education" means the educa-
20 tion of physicians and candidates for degrees or licenses to
21 become physicians, including, but not limited to, physician
22 staff, residents, interns, and medical students.

23 (b) "Medical care services" means those services within the
24 scope of practice of physicians licensed by the board, except
25 those services that the board determines shall not be delegated
26 by a physician without endangering the health and safety of
27 patients as provided for in section 17048(3).

1 (c) "Physician" means an individual licensed under this
2 article to engage in the practice of medicine.

3 (D) "PRACTICE AS A MEDICAL DIRECTOR" MEANS RESPONSIBILITY
4 FOR THE MEDICAL ASPECTS OF THE OPERATION OF A HEALTH PLAN,
5 INCLUDING REVIEW OF MEDICAL CARE PROVIDED OR TO BE PROVIDED, MED-
6 ICAL PROFESSIONAL ASPECTS OF PROVIDER CONTRACTS, AND OTHER AREAS
7 OF MEDICAL PROFESSIONAL RESPONSIBILITY AS MAY BE DESIGNATED BY
8 THE HEALTH PLAN.

9 (E) ~~(d)~~ "Practice of medicine" means the diagnosis, treat-
10 ment, prevention, cure, or relieving of a human disease, ailment,
11 defect, complaint, or other physical or mental condition, by
12 attendance, advice, device, diagnostic test, or other means,
13 RENDERING DETERMINATION OF MEDICAL NECESSITY OR APPROPRIATENESS
14 OF PROPOSED TREATMENT, or offering, undertaking, attempting to
15 do, or holding oneself out as able to do, any of these acts.
16 PRACTICE OF MEDICINE INCLUDES ACTING AS A MEDICAL DIRECTOR AND
17 ENGAGING IN UTILIZATION REVIEW ACTIVITIES.

18 (F) ~~(e)~~ "Practice as a physician's assistant" means the
19 practice of medicine or osteopathic medicine and surgery per-
20 formed under the supervision of a physician or physicians
21 licensed under this part or part 175.

22 (G) ~~(f)~~ "Supervision" means that term as defined in sec-
23 tion 16109, except that it also includes the existence of a pre-
24 determined plan for emergency situations, including, but not
25 limited to, the designation of a physician to supervise a
26 physician's assistant in the absence of the primary supervising
27 physician.

1 (H) ~~(g)~~ "Task force" means the joint task force created in
2 sections 17025 and 17525.

3 (2) In addition to the definitions in this part, article 1
4 contains definitions and principles of construction applicable to
5 all articles in this code and part 161 contains definitions
6 applicable to this part.

7 Sec. 17011. (1) An individual shall not engage in the prac-
8 tice of medicine or practice as a physician's assistant unless
9 licensed or otherwise authorized by this article. AN INDIVIDUAL
10 SHALL NOT ENGAGE IN PRACTICE AS A MEDICAL DIRECTOR UNLESS
11 LICENSED AS A PHYSICIAN UNDER THIS ARTICLE. An individual shall
12 not engage in teaching or research that requires the practice of
13 medicine unless the individual is licensed or otherwise autho-
14 rized by this article.

15 (2) Notwithstanding section 16145 or rules promulgated pur-
16 suant to that section, the board may grant a license to an indi-
17 vidual who meets the requirements of section 16186 or 17031(2)
18 after reviewing the applicant's record of practice, experience,
19 and credentials and determining that the applicant is competent
20 to practice medicine.

21 (3) For individuals applying for licensure under
22 section 16186, the board shall not impose requirements on gradu-
23 ates of medical schools located outside the United States or
24 Canada that exceed the requirements imposed on graduates of medi-
25 cal schools located in the United States or Canada.

26 Sec. 17501. (1) As used in this part:

1 (a) "Medical care services" means those services within the
2 scope of practice of physicians licensed and approved by the
3 board, except those services that the board determines shall not
4 be delegated by a physician without endangering the health and
5 safety of patients as provided for in section 17548(3).

6 (b) "Physician" means an individual licensed under this
7 article to engage in the practice of osteopathic medicine and
8 surgery.

9 (C) "PRACTICE AS A MEDICAL DIRECTOR" MEANS RESPONSIBILITY
10 FOR THE MEDICAL ASPECTS OF THE OPERATION OF A HEALTH PLAN,
11 INCLUDING REVIEW OF MEDICAL CARE PROVIDED OR TO BE PROVIDED, MED-
12 ICAL PROFESSIONAL ASPECTS OF PROVIDER CONTRACTS, AND OTHER AREAS
13 OF MEDICAL PROFESSIONAL RESPONSIBILITY AS MAY BE DESIGNATED BY
14 THE HEALTH PLAN.

15 (D) ~~(c)~~ "Practice of osteopathic medicine and surgery"
16 means a separate, complete, and independent school of medicine
17 and surgery utilizing full methods of diagnosis and treatment in
18 physical and mental health and disease, including the prescrip-
19 tion and administration of drugs and biologicals, operative sur-
20 gery, obstetrics, radiological and other electromagnetic emis-
21 sions, and placing special emphasis on the interrelationship of
22 the musculoskeletal system to other body systems AND RENDERING
23 DETERMINATION OF MEDICAL NECESSITY OR APPROPRIATENESS OF PROPOSED
24 TREATMENT.

25 (E) ~~(d)~~ "Practice as a physician's assistant" means the
26 practice of osteopathic medicine performed under the supervision
27 of a physician licensed under this part or part 170.

1 (F) ~~(e)~~ "Supervision" has the meaning ascribed to it in
2 section 16109 except that it includes the existence of a prede-
3 termined plan for emergency situations, including, but not
4 limited to, the designation of a physician to supervise a
5 physician's assistant in the absence of the primary supervising
6 physician.

7 (G) ~~(f)~~ "Task force" means the joint task force created in
8 sections 17025 and 17525.

9 (2) In addition to the definitions in this part, article 1
10 contains general definitions and principles of construction
11 applicable to all articles in the code and part 161 contains def-
12 initions applicable to this part.

13 Sec. 17511. A person shall not engage in the practice of
14 osteopathic medicine and surgery or practice as a physician's
15 assistant unless licensed or otherwise authorized by this
16 article. AN INDIVIDUAL SHALL NOT ENGAGE IN PRACTICE AS A MEDICAL
17 DIRECTOR UNLESS LICENSED AS A PHYSICIAN OF OSTEOPATHIC MEDICINE
18 AND SURGERY UNDER THIS ARTICLE.