

# HOUSE BILL No. 5350

October 29, 2001, Introduced by Rep. DeWeese and referred to the Committee on Health Policy.

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 2000 PA 29, and by adding section  
16204e.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 16204E. A HEALTH PROFESSIONAL WHO OBSERVES A PATIENT  
2 WHO APPEARS INSUFFICIENTLY OR EXCESSIVELY MEDICATED WITH A CON-  
3 TROLLED SUBSTANCE, WHO IS BEING MEDICATED WITH AN INAPPROPRIATE  
4 CONTROLLED SUBSTANCE, OR WHO IS EXHIBITING BEHAVIOR INDICATING  
5 ADDICTION TO A CONTROLLED SUBSTANCE SHALL REPORT THAT FACT TO THE  
6 DEPARTMENT. THE DEPARTMENT SHALL FORWARD A REPORT MADE UNDER  
7 THIS SECTION TO THE APPROPRIATE DISCIPLINARY SUBCOMMITTEE FOR  
8 INVESTIGATION.

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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  
11 or supervision of employees or other individuals, whether or not  
12 injury results, or any conduct, practice, or condition ~~which~~  
13 THAT impairs, or may impair, the ability to safely and skillfully  
14 practice the health profession.

15           (b) Personal disqualifications, consisting of 1 or more of  
16 the following:

17           (i) Incompetence.

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

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

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

25           (v) Conviction of a misdemeanor punishable by imprisonment  
26 for a maximum term of 2 years; a misdemeanor involving the  
27 illegal delivery, possession, or use of a controlled substance;

1 or a felony. A certified copy of the court record is conclusive  
2 evidence of the conviction.

3 (vi) Lack of good moral character.

4 (vii) Conviction of a criminal offense under sections 520a  
5 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to  
6 750.520l. A certified copy of the court record is conclusive  
7 evidence of the conviction.

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

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

15 (x) Final adverse administrative action by a licensure, reg-  
16 istration, disciplinary, or certification board involving the  
17 holder of, or an applicant for, a license or registration regu-  
18 lated by another state or a territory of the United States, by  
19 the United States military, by the federal government, or by  
20 another country. A certified copy of the record of the board is  
21 conclusive evidence of the final action.

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

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

1           (i) Fraud or deceit in obtaining or renewing a license or  
2 registration.

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

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

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

11          (d) Unethical business practices, consisting of 1 or more of  
12 the following:

13           (i) False or misleading advertising.

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

17           (iii) Fraud or deceit in obtaining or attempting to obtain  
18 third party reimbursement.

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

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

24           (ii) Betrayal of a professional confidence.

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

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

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

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

9 (h) Failure to comply with a subpoena issued ~~pursuant to~~  
10 UNDER this part, failure to respond to a complaint issued under  
11 this article or article 7, failure to appear at a compliance con-  
12 ference or an administrative hearing, or failure to report under  
13 section 16222 or 16223.

14 (i) Failure to pay an installment of an assessment levied  
15 ~~pursuant to~~ UNDER the insurance code of 1956, 1956 PA 218, MCL  
16 500.100 to 500.8302, within 60 days after notice by the appropri-  
17 ate board.

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

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

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

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

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

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

25 (p) A violation of section 16274.

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

1 (R) A VIOLATION OF SECTION 16204E.

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

6

7 Violations of Section 16221

Sanctions

8 Subdivision (a), (b)(ii), Probation, limitation, denial,  
9 (b)(iv), (b)(vi), or suspension, revocation,  
10 (b)(vii) restitution, community service,  
11 or fine.

12 Subdivision (b)(viii) Revocation or denial.

13 Subdivision (b)(i), Limitation, suspension,  
14 (b)(iii), (b)(v), revocation, denial,  
15 (b)(ix), probation, restitution,  
16 (b)(x), or (b)(xi) community service, or fine.

17 Subdivision (c)(i) Denial, revocation, suspension,  
18 probation, limitation, community  
19 service, or fine.

- 1 Subdivision (c)(ii) Denial, suspension, revocation,  
2 restitution, community service,  
3 or fine.
- 4 Subdivision (c)(iii) Probation, denial, suspension,  
5 revocation, restitution, commu-  
6 nity service, or fine.
- 7 Subdivision (c)(iv) or  
8 d(iii) Fine, probation, denial,  
9 suspension, revocation, community  
10 service, or restitution.
- 11 Subdivision (d)(i) Reprimand, fine, probation,  
12 or (d)(ii) community service, denial,  
13 or restitution.
- 14 Subdivision (e)(i) Reprimand, fine, probation,  
15 limitation, suspension, community  
16 service, denial, or restitution.
- 17 Subdivision (e)(ii) Reprimand, probation,  
18 or (h) suspension, restitution, commu-  
19 nity service, denial, or fine.
- 20 Subdivision (e)(iii) Reprimand, fine, probation,

- 1 or (e)(iv) suspension, revocation,  
2 limitation, community service,  
3 denial, or restitution.
- 4 Subdivision (f) Reprimand or fine.
- 5 Subdivision (g) Reprimand, probation, denial,  
6 suspension, revocation, limita-  
7 tion, restitution, community  
8 service, or fine.
- 9 Subdivision (i) Suspension or fine.
- 10 Subdivision (j), (o),  
11 ~~or~~ (q), OR (R) Reprimand or fine.
- 12 Subdivision (k) Reprimand, denial, or  
13 limitation.
- 14 Subdivision (l) or (n) Denial, revocation, restitution,  
15 probation, suspension, limita-  
16 tion, reprimand, or fine.
- 17 Subdivision (m) Revocation or denial.
- 18 Subdivision (p) Revocation.

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

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

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

22           (5) A DISCIPLINARY SUBCOMMITTEE THAT DETERMINES THAT A  
23 PHYSICIAN'S CARE OF A PATIENT HAS RESULTED IN THE PATIENT BEING  
24 INSUFFICIENTLY OR EXCESSIVELY MEDICATED WITH A CONTROLLED SUB-  
25 STANCE, BEING MEDICATED WITH AN INAPPROPRIATE CONTROLLED SUB-  
26 STANCE, OR BECOMING ADDICTED TO A CONTROLLED SUBSTANCE SHALL

- 1 REQUIRE THE PHYSICIAN TO TAKE CONTINUING EDUCATION CREDITS IN
- 2 PAIN AND SYMPTOM MANAGEMENT.