

HOUSE BILL No. 5379

November 1, 2001, Introduced by Reps. Hardman, Jacobs, Reeves, Waters, Lipsey, Rich Brown, Woronchak, Neumann, Vander Veen, Murphy and Phillips 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
18613.

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:

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1 (a) A violation of general duty, consisting of negligence or
2 failure to exercise due care, including negligent delegation to
3 or supervision of employees or other individuals, whether or not
4 injury results, or any conduct, practice, or condition which
5 impairs, or may impair, the ability to safely and skillfully
6 practice the health profession.

7 (b) Personal disqualifications, consisting of 1 or more of
8 the following:

9 (i) Incompetence.

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

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

15 (iv) Declaration of mental incompetence by a court of compe-
16 tent jurisdiction.

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

22 (vi) Lack of good moral character.

23 (vii) Conviction of a criminal offense under sections 520a
24 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to
25 750.520l. A certified copy of the court record is conclusive
26 evidence of the conviction.

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

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

8 (x) Final adverse administrative action by a licensure, reg-
9 istration, disciplinary, or certification board involving the
10 holder of, or an applicant for, a license or registration regu-
11 lated by another state or a territory of the United States, by
12 the United States military, by the federal government, or by
13 another country. A certified copy of the record of the board is
14 conclusive evidence of the final action.

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

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

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

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

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

26 (iv) Obtaining, possessing, or attempting to obtain or
27 possess a controlled substance as defined in section 7104 or a

1 drug as defined in section 7105 without lawful authority; or
2 selling, prescribing, giving away, or administering drugs for
3 other than lawful diagnostic or therapeutic purposes.

4 (d) Unethical business practices, consisting of 1 or more of
5 the following:

6 (i) False or misleading advertising.

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

10 (iii) Fraud or deceit in obtaining or attempting to obtain
11 third party reimbursement.

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

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

17 (ii) Betrayal of a professional confidence.

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

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

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

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

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

6 (i) Failure to pay an installment of an assessment levied
 7 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
 8 to 500.8302, within 60 days after notice by the appropriate
 9 board.

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

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

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

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

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

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

17 (p) A violation of section 16274.

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

19 (R) A VIOLATION OF PART 186.

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

24

25 Violations of Section 16221

Sanctions

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

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

- 1 Subdivision (j), (o), or
 2 (q) Reprimand or fine.
- 3 Subdivision (k) Reprimand, denial, or
 4 limitation.
- 5 Subdivision (l), ~~or~~
 6 (n), OR (R) Denial, revocation, restitution,
 7 probation, suspension, limita-
 8 tion, reprimand, or fine.
- 9 Subdivision (m) Revocation or denial.
- 10 Subdivision (p) Revocation.
- 11 (2) Determination of sanctions for violations under this
 12 section shall be made by a disciplinary subcommittee. If, during
 13 judicial review, the court of appeals determines that a final
 14 decision or order of a disciplinary subcommittee prejudices sub-
 15 stantial rights of the petitioner for 1 or more of the grounds
 16 listed in section 106 of the administrative procedures act of
 17 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
 18 or order is unlawful and is to be set aside, the court shall
 19 state on the record the reasons for the holding and may remand
 20 the case to the disciplinary subcommittee for further
 21 consideration.
- 22 (3) A disciplinary subcommittee may impose ~~a~~ AN
 23 ADMINISTRATIVE fine of ~~up to, but not exceeding,~~ NOT MORE THAN

1 \$250,000.00 for a violation of section 16221(a) or (b). A
2 DISCIPLINARY SUBCOMMITTEE MAY IMPOSE AN ADMINISTRATIVE FINE OF
3 NOT MORE THAN \$10,000.00 FOR A VIOLATION OF PART 186.

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. 18613. A CONTACT LENS PROVIDER SHALL DO ALL OF THE
12 FOLLOWING:

13 (A) FILL ALL CONTACT LENS PRESCRIPTIONS ACCURATELY AND
14 ACCORDING TO THE SPECIFIC ORDERS OF THE WRITTEN PRESCRIPTION.

15 (B) MAINTAIN RECORDS FOR CONTACT LENSES SHIPPED, MAILED, OR
16 OTHERWISE DELIVERED OR PROVIDED TO STATE RESIDENTS FOR 5 YEARS
17 AND MAKE THEM AVAILABLE UPON REQUEST TO THE DEPARTMENT.

18 (C) PROVIDE A TELEPHONE NUMBER FOR RESPONDING TO QUESTIONS
19 AND COMPLAINTS. THE TELEPHONE NUMBER SHALL BE INCLUDED WITH EACH
20 SUPPLY OF CONTACT LENSES.

21 (D) PROVIDE WITH EACH SUPPLY OF CONTACT LENSES A WRITTEN
22 NOTICE WHICH SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

23 "WARNING: IF YOU EXPERIENCE ANY UNEXPLAINED EYE DISCOM-
24 FORT, WATERING, VISION CHANGES, OR REDNESS, REMOVE YOUR
25 CONTACT LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRAC-
26 TITIONER BEFORE WEARING YOUR CONTACT LENSES AGAIN."

1 (E) DISCLOSE IN ANY PRICE ADVERTISEMENT ANY REQUIRED
 2 MEMBERSHIP FEES, ENROLLMENT FEES, AND, IF APPLICABLE, SHIPPING
 3 FEES.

4 Enacting section 1. This amendatory act does not take
 5 effect unless all of the following bills of the 91st Legislature
 6 are enacted into law:

7 (a) Senate Bill No. _____ or House Bill No. 5377 (request
 8 no. 04263'01).

9 (b) Senate Bill No. _____ or House Bill No. 5378 (request
 10 no. 04264'01).

11 (c) Senate Bill No. _____ or House Bill No. 5376 (request
 12 no. 04265'01).