

**SUBSTITUTE FOR
HOUSE BILL NO. 5175**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221, 16226, 17763, and 17764 (MCL
333.16221, 333.16226, 333.17763, and 333.17764), sections 16221
and 16226 as amended by 2003 PA 234 and section 17763 as amended
by 1997 PA 153.

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
5 relevant testimony to be taken and shall report its findings to
6 the appropriate disciplinary subcommittee. The disciplinary
7 subcommittee shall proceed under section 16226 if it finds that 1
8 or more of the following grounds exist:

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 that
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
16 competent jurisdiction.

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

22 (vi) Lack of good moral character.

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

27 (viii) Conviction of a violation of section 492a of the

1 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy
2 of the court record is conclusive evidence of the conviction.

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

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

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

18 (xii) Conviction of a violation of section 430 of the
19 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
20 of the court record is conclusive evidence of the conviction.

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

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

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

27 (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
11 medications 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
17 obtaining or attempting to obtain third party reimbursement in
18 the 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) Either of the following:

23 (A) A requirement by a licensee other than a physician that
24 an individual purchase or secure a drug, device, treatment,
25 procedure, or service from another person, place, facility, or
26 business in which the licensee has a financial interest.

27 (B) A referral by a physician for a designated health service

1 that violates section 1877 of part D of title XVIII of the social
2 security act, 42 ~~U.S.C.~~ **USC** 1395nn, or a regulation promulgated
3 under that section. Section 1877 of part D of title XVIII of the
4 social security act, 42 ~~U.S.C.~~ **USC** 1395nn, and the regulations
5 promulgated under that section, as they exist on June 3, 2002,
6 are incorporated by reference for purposes of this subparagraph.
7 A disciplinary subcommittee shall apply section 1877 of part D of
8 title XVIII of the social security act, 42 ~~U.S.C.~~ **USC** 1395nn,
9 and the regulations promulgated under that section regardless of
10 the source of payment for the designated health service referred
11 and rendered. If section 1877 of part D of title XVIII of the
12 social security act, 42 ~~U.S.C.~~ **USC** 1395nn, or a regulation
13 promulgated under that section is revised after June 3, 2002, the
14 department shall officially take notice of the revision. Within
15 30 days after taking notice of the revision, the department shall
16 decide whether or not the revision pertains to referral by
17 physicians for designated health services and continues to
18 protect the public from inappropriate referrals by physicians.
19 If the department decides that the revision does both of those
20 things, the department may promulgate rules to incorporate the
21 revision by reference. If the department does promulgate rules
22 to incorporate the revision by reference, the department shall
23 not make any changes to the revision. As used in this
24 subparagraph, "designated health service" means that term as
25 defined in section 1877 of part D of title XVIII of the social
26 security act, 42 ~~U.S.C.~~ **USC** 1395nn, and the regulations
27 promulgated under that section and "physician" means that term as

1 defined in sections 17001 and 17501.

2 (v) For a physician who makes referrals pursuant to section
3 1877 of part D of title XVIII of the social security act, 42
4 ~~U.S.C.~~ **USC** 1395nn, or a regulation promulgated under that
5 section, refusing to accept a reasonable proportion of patients
6 eligible for medicaid and refusing to accept payment from
7 medicaid or medicare as payment in full for a treatment,
8 procedure, or service for which the physician refers the
9 individual and in which the physician has a financial interest.
10 A physician who owns all or part of a facility in which he or she
11 provides surgical services is not subject to this subparagraph if
12 a referred surgical procedure he or she performs in the facility
13 is not reimbursed at a minimum of the appropriate medicaid or
14 medicare outpatient fee schedule, including the combined
15 technical and professional components.

16 (f) Beginning June 3, 2003, the department of consumer and
17 industry services shall prepare the first of 3 annual reports on
18 the effect of this amendatory act on access to care for the
19 uninsured and medicaid patients. The department shall report on
20 the number of referrals by licensees of uninsured and medicaid
21 patients to purchase or secure a drug, device, treatment,
22 procedure, or service from another person, place, facility, or
23 business in which the licensee has a financial interest.

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

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

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

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

11 (l) Failure to meet 1 or more of the requirements for
 12 licensure or registration under section 16174.

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

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

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

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

17 (q) A violation of section 16274.

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

19 **(s) A violation of section 17764(2).**

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

24 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), (b)(x),	probation, restitution,
9	(b)(xi), or (b)(xii)	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,
18		community service, or fine.
19	Subdivision (c)(iv) or	
20	(d)(iii)	Fine, probation, denial,
21		suspension, revocation, community
22		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 (i) suspension, restitution,
9 community service, denial, or
10 fine.
- 11 Subdivision (e)(iii), Reprimand, fine, probation,
12 (e)(iv), or (e)(v) suspension, revocation,
13 limitation, community service,
14 denial, or restitution.
- 15 Subdivision (g) Reprimand or fine.
- 16 Subdivision (h) Reprimand, probation, denial,
17 suspension, revocation,
18 limitation, restitution,
19 community service, or fine.
- 20 Subdivision (j) Suspension or fine.

1 Subdivision (k), (p), Reprimand or fine.
2 or (r)

3 Subdivision (l) Reprimand, denial, or
4 limitation.

5 Subdivision (m) or (o) Denial, revocation, restitution,
6 probation, suspension,
7 limitation, reprimand, or fine.

8 Subdivision (n) Revocation or denial.

9 Subdivision (q) Revocation.

10 **Subdivision (s) Revocation, fine, and**
11 **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
16 substantial 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.

23 (3) A disciplinary subcommittee may impose a fine of up to,

1 but not exceeding, \$250,000.00 for a violation of
2 section 16221(a) or (b).

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

10 Sec. 17763. In addition to the grounds set forth in part
11 161, the disciplinary subcommittee may fine, reprimand, or place
12 a pharmacist licensee on probation, or deny, limit, suspend, or
13 revoke the license of a pharmacist or order restitution or
14 community service for a violation or abetting in a violation of
15 this part or rules promulgated under this part, or for 1 or more
16 of the following grounds:

17 (a) Employing the mail to sell, distribute, or deliver a drug
18 that requires a prescription when the prescription for the drug
19 is received by mail.

20 ~~(b) Adulterating, misbranding, or substituting a drug or~~
21 ~~device knowing or intending that the drug or device shall be~~
22 ~~used.~~

23 ~~(b) —(c)—~~ Permitting the dispensing of prescriptions by an
24 individual who is not a pharmacist, pharmacist intern, or
25 dispensing prescriber.

26 ~~(c) —(d)—~~ Permitting the dispensing of prescriptions by a
27 pharmacist intern, except in the presence and under the personal

1 charge of a pharmacist.

2 (d) ~~—(e)—~~ Selling at auction drugs in bulk or in open
3 packages unless the sale has been approved in accordance with
4 rules of the board.

5 (e) ~~—(f)—~~ Promoting a prescription drug to the public in any
6 manner.

7 (f) ~~—(g)—~~ In addition to the prohibition contained in
8 section 7405(1)(e), dispensing a prescription for a controlled
9 substance as defined in section 7104 that is written and signed
10 or transmitted by a physician prescriber in a state other than
11 Michigan, unless the prescription is issued by a physician
12 prescriber residing adjacent to the land border between this
13 state and an adjoining state who is authorized under the laws of
14 that state to practice medicine or osteopathic medicine and
15 surgery and to prescribe controlled substances and whose practice
16 may extend into this state, but who does not maintain an office
17 or designate a place to meet patients or receive calls in this
18 state.

19 Sec. 17764. (1) A person ~~is guilty of a misdemeanor who:~~

20 ~~—(a) Adulterates, misbrands, or substitutes a drug or device~~
21 ~~knowing or intending that it shall be used.~~

22 ~~—(b) Sells, offers for sale, possesses for sale, causes to be~~
23 ~~sold, or manufactures for sale an adulterated or misbranded~~
24 ~~drug.~~

25 ~~—(c) Sells, offers~~ **shall not sell, offer** for sale,
26 ~~possesses~~ **possess** for sale, or ~~manufactures~~ **manufacture** for
27 sale a drug or device bearing or accompanied by a label that is

1 misleading as to the contents, uses, or purposes of the drug or
2 device. **A person who violates this subsection is guilty of a**
3 **misdemeanor.** In determining whether a label is misleading,
4 consideration shall be given to the representations made or
5 suggested by the statement, word, design, device, sound, or any
6 combination thereof, and the extent to which the label fails to
7 reveal facts material in view of the representations made or
8 material as to consequences ~~which~~ **that** may result from use of
9 the drug or device to which the label relates under conditions of
10 use prescribed in the label or under customary or usual
11 conditions of use.

12 (2) A person shall not knowingly or recklessly do either of
13 the following with the intent to defraud:

14 (a) Adulterate, misbrand, remove, or substitute a drug or
15 device knowing or intending that the drug or device shall be
16 used.

17 (b) Sell, offer for sale, possess for sale, cause to be sold,
18 or manufacture for sale an adulterated or misbranded drug.

19 (3) A person who violates subsection (2) is guilty of a
20 felony punishable by imprisonment for not more than 4 years or a
21 fine of not more than \$5,000.00, or both.

22 (4) A person who violates subsection (2) resulting in
23 personal injury is guilty of a felony punishable by imprisonment
24 for not more than 10 years or a fine of not more than \$10,000.00,
25 or both.

26 (5) A person who violates subsection (2) resulting in serious
27 impairment of a body function is guilty of a felony punishable by

1 imprisonment for not more than 25 years or a fine of not more
2 than \$25,000.00, or both. As used in this subsection, "serious
3 impairment of a body function" means that term as defined in
4 section 58c of the Michigan vehicle code, 1949 PA 300, MCL
5 257.58c.

6 (6) A person who violates subsection (2) resulting in death
7 is guilty of a felony punishable by imprisonment for life or any
8 term of years or a fine of not more than \$40,000.00, or both.

9 Enacting section 1. This amendatory act takes effect 90
10 days after it is enacted.