

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4755**

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 2003 PA 234, and by adding section
20170.

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:

9 (a) A violation of general duty, consisting of negligence or

1 failure to exercise due care, including negligent delegation to
2 or supervision of employees or other individuals, whether or not
3 injury results, or any conduct, practice, or condition that
4 impairs, or may impair, the ability to safely and skillfully
5 practice the health profession.

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

8 (i) Incompetence.

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

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

14 (iv) Declaration of mental incompetence by a court of
15 competent jurisdiction.

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

21 (vi) Lack of good moral character.

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

26 (viii) Conviction of a violation of section 492a of the
27 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy

1 of the court record is conclusive evidence of the conviction.

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

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

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

17 (x ii) Conviction of a violation of section 430 of the
18 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
19 of the court 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.

27 (iv) Obtaining, possessing, or attempting to obtain or

1 possess a controlled substance as defined in section 7104 or a
2 drug as defined in section 7105 without lawful authority; or
3 selling, prescribing, giving away, or administering drugs for
4 other than lawful diagnostic or therapeutic purposes.

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

7 (i) False or misleading advertising.

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

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

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

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

18 (ii) Betrayal of a professional confidence.

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

21 (iv) Either of the following:

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

26 (B) A referral by a physician for a designated health service
27 that violates section 1877 of part D of title XVIII of the social

1 security act, 42 ~~U.S.C.~~ **USC** 1395nn, or a regulation promulgated
2 under that section. Section 1877 of part D of title XVIII of the
3 social security act, 42 ~~U.S.C.~~ **USC** 1395nn, and the regulations
4 promulgated under that section, as they exist on June 3, 2002,
5 are incorporated by reference for purposes of this subparagraph.
6 A disciplinary subcommittee shall apply section 1877 of part D of
7 title XVIII of the social security act, 42 ~~U.S.C.~~ **USC** 1395nn,
8 and the regulations promulgated under that section regardless of
9 the source of payment for the designated health service referred
10 and rendered. If section 1877 of part D of title XVIII of the
11 social security act, 42 ~~U.S.C.~~ **USC** 1395nn, or a regulation
12 promulgated under that section is revised after June 3, 2002, the
13 department shall officially take notice of the revision. Within
14 30 days after taking notice of the revision, the department shall
15 decide whether or not the revision pertains to referral by
16 physicians for designated health services and continues to
17 protect the public from inappropriate referrals by physicians.
18 If the department decides that the revision does both of those
19 things, the department may promulgate rules to incorporate the
20 revision by reference. If the department does promulgate rules
21 to incorporate the revision by reference, the department shall
22 not make any changes to the revision. As used in this
23 subparagraph, "designated health service" means that term as
24 defined in section 1877 of part D of title XVIII of the social
25 security act, 42 ~~U.S.C.~~ **USC** 1395nn, and the regulations
26 promulgated under that section and "physician" means that term as
27 defined in sections 17001 and 17501.

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

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

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

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

27 (i) Failure to comply with a subpoena issued pursuant to this

1 part, failure to respond to a complaint issued under this article
 2 or article 7, failure to appear at a compliance conference or an
 3 administrative hearing, or failure to report under section 16222
 4 or 16223.

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

9 (k) A violation of section 17013 or 17513.

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

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

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

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

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

16 (q) A violation of section 16274.

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

18 **(s) A violation of the medical records access act.**

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

23 Violations of Section 16221

Sanctions

24 Subdivision (a), (b) (ii), Probation, limitation, denial,

1 (b) (iv) , (b) (vi) , or suspension, revocation,
 2 (b) (vii) restitution, community service,
 3 or fine.

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

5 Subdivision (b) (i) , Limitation, suspension,
 6 (b) (iii) , (b) (v) , revocation, denial,
 7 (b) (ix) , (b) (x) , probation, restitution,
 8 (b) (xi) , or (b) (xii) community service, or fine.

9 Subdivision (c) (i) Denial, revocation, suspension,
 10 probation, limitation, community
 11 service, or fine.

12 Subdivision (c) (ii) Denial, suspension, revocation,
 13 restitution, community service,
 14 or fine.

15 Subdivision (c) (iii) Probation, denial, suspension,
 16 revocation, restitution,
 17 community service, or fine.

18 Subdivision (c) (iv) or
 19 (d) (iii) Fine, probation, denial,
 20 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 (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) **or (s)** Reprimand, probation, denial,
17 suspension, revocation,
18 limitation, restitution,
19 community service, or fine.
- 20 Subdivision (j) Suspension or fine.
- 21 Subdivision (k) , (p) , Reprimand or fine.

1 or (r)

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

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

7 Subdivision (n) Revocation or denial.

8 Subdivision (q) Revocation.

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

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

23 (4) A disciplinary subcommittee may require a licensee or
24 registrant or an applicant for licensure or registration who has

1 violated this article or article 7 or a rule promulgated under
2 this article or article 7 to satisfactorily complete an
3 educational program, a training program, or a treatment program,
4 a mental, physical, or professional competence examination, or a
5 combination of those programs and examinations.

6 **Sec. 20170. A health facility or agency shall comply with**
7 **the medical records access act.**

8 Enacting section 1. This amendatory act does not take
9 effect unless House Bill No. 4706 of the 92nd Legislature is
10 enacted into law.