

**SENATE 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 2004 PA 48 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 USC 1395nn, or a regulation promulgated under  
3 that section. Section 1877 of part D of title XVIII of the  
4 social security act, 42 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 USC 1395nn, and the  
9 regulations promulgated under that section regardless of the  
10 source of payment for the designated health service referred and  
11 rendered. If section 1877 of part D of title XVIII of the social  
12 security act, 42 USC 1395nn, or a regulation promulgated under  
13 that section is revised after June 3, 2002, the department shall  
14 officially take notice of the revision. Within 30 days after  
15 taking notice of the revision, the department shall decide  
16 whether or not the revision pertains to referral by physicians  
17 for designated health services and continues to protect the  
18 public from inappropriate referrals by physicians. If the  
19 department decides that the revision does both of those things,  
20 the department may promulgate rules to incorporate the revision  
21 by reference. If the department does promulgate rules to  
22 incorporate the revision by reference, the department shall not  
23 make any changes to the revision. As used in this subparagraph,  
24 "designated health service" means that term as defined in section  
25 1877 of part D of title XVIII of the social security act, 42 USC  
26 1395nn, and the regulations promulgated under that section and  
27 "physician" means that term as defined in sections 17001 and

1 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 USC  
4 1395nn, or a regulation promulgated under that section, refusing  
5 to accept a reasonable proportion of patients eligible for  
6 medicaid and refusing to accept payment from medicaid or medicare  
7 as payment in full for a treatment, procedure, or service for  
8 which the physician refers the individual and in which the  
9 physician has a financial interest. A physician who owns all or  
10 part of a facility in which he or she provides surgical services  
11 is not subject to this subparagraph if a referred surgical  
12 procedure he or she performs in the facility is not reimbursed at  
13 a minimum of the appropriate medicaid or medicare outpatient fee  
14 schedule, including the combined technical and professional  
15 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 the medical records access act.

20 **(t) A violation of section 17764(2).**

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

25 Violations of Section 16221

Sanctions

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

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

1 (3) A disciplinary subcommittee may impose a fine of up to,  
2 but not exceeding, \$250,000.00 for a violation of section  
3 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  
8 educational program, a training program, or a treatment program,  
9 a mental, physical, or professional competence examination, or a  
10 combination of those programs and examinations.

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

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

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

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

27 (c) ~~(d)~~ Permitting the dispensing of prescriptions by a

1 pharmacist intern, except in the presence and under the personal  
2 charge of a pharmacist.

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

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

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

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

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

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

26 ~~—— (c) Sells, offers~~ **shall not sell, offer** for sale,  
27 ~~possesses~~ **possess** for sale, or ~~manufactures~~ **manufacture** for

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

13 (2) **A person shall not knowingly or recklessly do either of**  
14 **the following:**

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

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

20 (3) **Except as otherwise provided in this section, a person**  
21 **who violates subsection (2) is guilty of a felony punishable by**  
22 **imprisonment for not more than 2 years or a fine of not more than**  
23 **\$1,000.00, or both.**

24 (4) **A person who violates subsection (2), which violation**  
25 **results in personal injury, is guilty of a felony punishable by**  
26 **imprisonment for not more than 4 years or a fine of not more than**  
27 **\$4,000.00, or both.**

House Bill No. 5175 as amended June 29, 2004

1 (5) A person who violates subsection (2), which violation  
2 results in serious impairment of a body function, is guilty of a  
3 felony punishable by imprisonment for not more than 5 years or a  
4 fine of not more than \$5,000.00, or both. As used in this  
5 subsection, "serious impairment of a body function" means that  
6 term as defined in section 58c of the Michigan vehicle code, 1949  
7 PA 300, MCL 257.58c.

8 (6) A person who violates subsection (2), which violation  
9 results in death, is guilty of a felony punishable by  
10 imprisonment for not more than 15 years or a fine of not more  
11 than \$20,000.00, or both.

12 (7) A person who violates subsection (2) with the intent to  
13 kill or <<to cause serious impairment of>> a body function of 2 or more  
14 individuals, which violation results in death, is guilty of a  
15 felony punishable by imprisonment for life without the  
16 possibility of parole or life without the possibility of parole  
17 and a fine of not more than \$40,000.00. <<It is not a defense to a charge  
under this subsection that the person did not intend to kill a specific  
individual, or did not intend to cause serious impairment of a body  
function of 2 or more specific individuals.>>

18 (8) This section does not prohibit an individual from being  
19 charged with, convicted of, or punished for any other violation  
20 of law that is committed by that individual while violating this  
21 section.

22 Enacting section 1. This amendatory act takes effect 90  
23 days after it is enacted.