

HOUSE BILL No. 5175

October 15, 2003, Introduced by Reps. Nofs, Rocca, Ruth Johnson, Ward, Julian, Meyer, Stewart, Hager, Hart, Richardville, DeRossett, Newell, Milosch, Shackleton, LaJoy, Walker, Bisbee, Casperson, Gaffney, Moolenaar, Caul, Amos, Robertson, Kooiman and Tabor and referred to the Committee on Criminal Justice.

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), section 16221 as amended by 2002 PA 402, section 16226 as amended by 2002 PA 643, 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:

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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 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 ~~520a~~
24 ~~to 520f~~ **520b to 520g** of the Michigan penal code, 1931 PA 328,
25 MCL ~~750.520a to 750.520f~~ **750.520b to 750.520g**. A certified
26 copy of the court record is conclusive evidence of the
27 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 in
5 obtaining or attempting to obtain fees related to the practice of
6 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,
9 registration, disciplinary, or certification board involving the
10 holder of, or an applicant for, a license or registration
11 regulated by another state or a territory of the United States,
12 by 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
9 medications 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
15 obtaining or attempting to obtain third party reimbursement in
16 the 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) Either of the following:

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

25 (B) A referral by a physician for a designated health service
26 that violates section 1877 of part D of title XVIII of the social
27 security act, 42 U.S.C. 1395nn, or a regulation promulgated under

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

1 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. 1395nn, or a regulation promulgated under that section,
5 refusing to accept a reasonable proportion of patients eligible
6 for medicaid and refusing to accept payment from medicaid or
7 medicare as payment in full for a treatment, procedure, or
8 service for which the physician refers the individual and in
9 which the physician has a financial interest. A physician who
10 owns all or part of a facility in which he or she provides
11 surgical services is not subject to this subparagraph if a
12 referred surgical procedure he or she performs in the facility is
13 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 ~~1 year after the effective date of this act~~
17 **June 3, 2003**, the department of consumer and industry services
18 shall prepare the first of 3 annual reports on the effect of this
19 amendatory act on access to care for the uninsured and medicaid
20 patients. The department shall report on the number of referrals
21 by licensees of uninsured and medicaid patients to purchase or
22 secure a drug, device, treatment, procedure, or service from
23 another person, place, facility, or business in which the
24 licensee has a financial interest.

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

27 (h) A violation, or aiding or abetting in a violation, of

1 this article or of a rule promulgated under this article.

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

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

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

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

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

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

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

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

18 (q) A violation of section 16274.

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

20 **(s) 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

26 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	or (b)(xi)	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) Reprimand, probation, denial,
17 suspension, revocation,
18 limitation, restitution,
19 community service, or fine.
- 20 Subdivision (j) Suspension or fine.

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

- 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.

1 (3) A disciplinary subcommittee may impose a fine of up to,
2 but not exceeding, \$250,000.00 for a violation of
3 section 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
9 section 7405(1)(e), dispensing a prescription for a controlled
10 substance as defined in section 7104 that is written and signed
11 or 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 with the intent to defraud:

15 (a) Adulterate, misbrand, or substitute a drug or device
16 knowing or intending that the drug or device shall be 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 625(5) of the Michigan vehicle code, 1949 PA 300, MCL
5 257.625.

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.