

HOUSE BILL No. 4195

February 5, 2009, Introduced by Rep. Slavens 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 2004 PA 214.

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~~ **SECTION 520E** of the Michigan penal code, 1931 PA 328, MCL
25 ~~750.520b to 750.520g~~ **750.520E**. A certified copy of the court
26 record is conclusive 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 (xiii) CONVICTION OF A CRIMINAL OFFENSE UNDER SECTION 520B,
22 520C, 520D, 520F, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA
23 328, MCL 750.520B, 750.520C, 750.520D, 750.520F, AND 750.520G. A
24 CERTIFIED COPY OF THE COURT RECORD IS CONCLUSIVE EVIDENCE OF THE
25 CONVICTION.

26 (c) Prohibited acts, consisting of 1 or more of the
27 following:

1 (i) Fraud or deceit in obtaining or renewing a license or
2 registration.

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

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

6 (iv) Obtaining, possessing, or attempting to obtain or
7 possess a controlled substance as defined in section 7104 or a
8 drug as defined in section 7105 without lawful authority; or
9 selling, prescribing, giving away, or administering drugs for
10 other than lawful diagnostic or therapeutic purposes.

11 (d) Unethical business practices, consisting of 1 or more of
12 the following:

13 (i) False or misleading advertising.

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

17 (iii) Fraud or deceit in obtaining or attempting to obtain
18 third party reimbursement.

19 (e) Unprofessional conduct, consisting of 1 or more of the
20 following:

21 (i) Misrepresentation to a consumer or patient or in
22 obtaining or attempting to obtain third party reimbursement in
23 the course of professional practice.

24 (ii) Betrayal of a professional confidence.

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

27 (iv) Either of the following:

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

5 (B) A referral by a physician for a designated health
6 service that violates ~~section 1877 of part D of title XVIII of~~
7 ~~the social security act,~~ 42 USC 1395nn ~~,~~ or a regulation
8 promulgated under that section. ~~Section 1877 of part D of title~~
9 ~~XVIII of the social security act,~~ **FOR PURPOSES OF THIS**

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

1 incorporate the revision by reference, the department shall not
2 make any changes to the revision. As used in this subparagraph,
3 "designated health service" means that term as defined in ~~section~~
4 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC
5 1395nn ~~,~~ and the regulations promulgated under that section and
6 "physician" means that term as defined in sections 17001 and
7 17501.

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

22 ~~—— (f) Beginning June 3, 2003, the department of consumer and~~
23 ~~industry services shall prepare the first of 3 annual reports on~~
24 ~~the effect of this amendatory act on access to care for the~~
25 ~~uninsured and medicaid patients. The department shall report on~~
26 ~~the number of referrals by licensees of uninsured and medicaid~~
27 ~~patients to purchase or secure a drug, device, treatment,~~

~~procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.~~

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

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

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

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

(J) ~~(k)~~ A violation of section 17013 or 17513.

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

(L) ~~(m)~~ A violation of section 17015 or 17515.

(M) ~~(n)~~ A violation of section 17016 or 17516.

(N) ~~(o)~~ Failure to comply with section 9206(3).

(O) ~~(p)~~ A violation of section 5654 or 5655.

(P) ~~(q)~~ A violation of section 16274.

(Q) ~~(r)~~ A violation of section 17020 or 17520.

(R) ~~(s)~~ A violation of the medical records access act, 2004 PA 47, MCL 333.26261 TO 333.26271.

(S) ~~(t)~~ A violation of section 17764(2).

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

<u>Violations of Section 16221</u>	<u>Sanctions</u>
Subdivision (a), (b) (ii), (b) (iv), (b) (vi), or (b) (vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (b) (viii) OR (B) (xiii)	Revocation or denial.
Subdivision (b) (i), (b) (iii), (b) (v), (b) (ix), (b) (x), (b) (xi), or (b) (xii)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
Subdivision (c) (i)	Denial, revocation, suspension, probation, limitation, community service, or fine.
Subdivision (c) (ii)	Denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c) (iii)	Probation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c) (iv) or (d) (iii)	Fine, probation, denial, suspension, revocation, community service, or restitution.
Subdivision (d) (i) or (d) (ii)	Reprimand, fine, probation, community service, denial,

1		or restitution.
2	Subdivision (e) (i)	Reprimand, fine, probation,
3		limitation, suspension, community
4		service, denial, or restitution.
5	Subdivision (e) (ii)	Reprimand, probation,
6	or (i) (H)	suspension, restitution,
7		community service, denial, or
8		fine.
9	Subdivision (e) (iii),	Reprimand, fine, probation,
10	(e) (iv), or (e) (v)	suspension, revocation,
11		limitation, community service,
12		denial, or restitution.
13	Subdivision (g) (F)	Reprimand or fine.
14	Subdivision (h) (G) or	Reprimand, probation, denial,
15	(s) (R)	suspension, revocation,
16		limitation, restitution,
17		community service, or fine.
18	Subdivision (j) (I)	Suspension or fine.
19	Subdivision (k) (J),	Reprimand or fine.
	(p) (O), or (r) (Q)	
20	Subdivision (l) (K)	Reprimand, denial, or
21		limitation.
22	Subdivision (m) (L) or	Denial, revocation, restitution,
23	(e) (N)	probation, suspension,
24		limitation, reprimand, or fine.
25	Subdivision (n) (M)	Revocation or denial.
26	Subdivision (q) (P)	Revocation.
27	Subdivision (t) (S)	Revocation, fine, and
28		restitution.
29	(2) Determination of sanctions for violations under this	
30	section shall be made by a disciplinary subcommittee. If, during	

1 judicial review, the court of appeals determines that a final
2 decision or order of a disciplinary subcommittee prejudices
3 substantial rights of the petitioner for 1 or more of the grounds
4 listed in section 106 of the administrative procedures act of
5 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
6 or order is unlawful and is to be set aside, the court shall
7 state on the record the reasons for the holding and may remand
8 the case to the disciplinary subcommittee for further
9 consideration.

10 (3) A disciplinary subcommittee may impose a fine of up to,
11 but not exceeding, \$250,000.00 for a violation of section
12 16221(a) or (b).

13 (4) A disciplinary subcommittee may require a licensee or
14 registrant or an applicant for licensure or registration who has
15 violated this article or article 7 or a rule promulgated under
16 this article or article 7 to satisfactorily complete an
17 educational program, a training program, or a treatment program,
18 a mental, physical, or professional competence examination, or a
19 combination of those programs and examinations.