

HOUSE BILL No. 5731

June 12, 2012, Introduced by Reps. LaFontaine, Gilbert, Daley, Kurtz, Jenkins, Rendon, Yonker, Hooker, Pscholka, Heise, Muxlow, Goike, McBroom and Shaughnessy 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), section 16221 as amended by 2011 PA 222 and section 16226 as amended by 2011 PA 224, and by adding sections 17015b and 17515b.

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 **THE**
5 **TAKING OF** relevant testimony ~~to be taken~~ and shall report its
6 findings to the appropriate disciplinary subcommittee. The
7 disciplinary subcommittee shall proceed under section 16226 if it
8 finds that 1 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 section 520e or
24 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
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 (xiii) Conviction of a criminal offense under section 520b,
22 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL
23 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of
24 the court record is conclusive evidence of the conviction.

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

27 (i) Fraud or deceit in obtaining or renewing a license or

1 registration.

2 (ii) Permitting ~~the~~^A license or registration to be used by
3 an unauthorized person.

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

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

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

12 (i) False or misleading advertising.

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

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

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

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

23 (ii) Betrayal of a professional confidence.

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

26 (iv) Either of the following:

27 (A) A requirement by a licensee other than a physician that

1 an individual purchase or secure a drug, device, treatment,
2 procedure, or service from another person, place, facility, or
3 business in which the licensee has a financial interest.

4 (B) A referral by a physician for a designated health
5 service that violates 42 USC 1395nn or a regulation promulgated
6 under that section. For purposes of this ~~subparagraph,~~
7 **SUBDIVISION**, 42 USC 1395nn and the regulations promulgated under
8 that section as they exist on June 3, 2002 are incorporated by
9 reference. A disciplinary subcommittee shall apply 42 USC 1395nn
10 and the regulations promulgated under that section regardless of
11 the source of payment for the designated health service referred
12 and rendered. If 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 **SUB-SUBPARAGRAPH**, "designated health service" means that term as
25 defined in 42 USC 1395nn and the regulations promulgated under
26 that section and "physician" means that term as defined in
27 sections 17001 and 17501.

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

14 (f) Beginning June 3, 2003, the department of consumer and
15 industry services shall prepare the first of 3 annual reports on
16 the effect of 2002 PA 402 on access to care for the uninsured and
17 medicaid patients. The department shall report on the number of
18 referrals by licensees of uninsured and medicaid patients to
19 purchase or secure a drug, device, treatment, procedure, or
20 service from another person, place, facility, or business in
21 which the licensee has a financial interest.

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

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

26 (i) Failure to comply with a subpoena issued pursuant to
27 this part, failure to respond to a complaint issued under this

1 article or article 7, failure to appear at a compliance
 2 conference or an administrative hearing, or failure to report
 3 under section 16222 or 16223.

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

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

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

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

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

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

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

15 (q) A violation of section 16274.

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

17 (s) A violation of the medical records access act, 2004 PA
 18 47, MCL 333.26261 to 333.26271.

19 (t) A violation of section 17764(2).

20 **(U) A VIOLATION OF SECTION 17015B OR 17515B.**

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:

<u>Violations of Section 16221</u>	<u>Sanctions</u>
Subdivision (a), (b) (ii),	Probation, limitation, denial,
(b) (iv), (b) (vi), or	suspension, revocation,

1	(b) <i>(vii)</i>	restitution, community service,
2		or fine.
3		
4	Subdivision (b) <i>(viii)</i>	Revocation or denial.
5		
6	Subdivision (b) <i>(i)</i> ,	Limitation, suspension,
7	(b) <i>(iii)</i> , (b) <i>(v)</i> ,	revocation, denial,
8	(b) <i>(ix)</i> , (b) <i>(x)</i> ,	probation, restitution,
9	(b) <i>(xi)</i> , or (b) <i>(xii)</i>	community service, or fine.
10		
11	Subdivision (b) <i>(xiii)</i>	Probation, limitation, denial,
12		suspension, revocation,
13		restitution, community service,
14		fine, or, subject to subsection
15		(5), permanent revocation.
16		
17		
18	Subdivision (c) <i>(i)</i>	Denial, revocation, suspension,
19		probation, limitation, community
20		service, or fine.
21		
22	Subdivision (c) <i>(ii)</i>	Denial, suspension, revocation,
23		restitution, community service,
24		or fine.
25		
26	Subdivision (c) <i>(iii)</i>	Probation, denial, suspension,
27		revocation, restitution,
28		community service, or fine.
29		
30	Subdivision (c) <i>(iv)</i>	Fine, probation, denial,
31	or (d) <i>(iii)</i>	suspension, revocation, community

1 service, or restitution.
2
3 Subdivision (d) (i) Reprimand, fine, probation,
4 or (d) (ii) community service, denial,
5 or restitution.
6
7 Subdivision (e) (i) Reprimand, fine, probation,
8 limitation, suspension, community
9 service, denial, or restitution.
10
11 Subdivision (e) (ii) Reprimand, probation,
12 or ~~(i)~~ (I) suspension, restitution,
13 community service, denial, or
14 fine.
15
16 Subdivision (e) (iii), Reprimand, fine, probation,
17 (e) (iv), or (e) (v) suspension, revocation,
18 limitation, community service,
19 denial, or restitution.
20
21 Subdivision (g) Reprimand or fine.
22
23 Subdivision (h) or (s) Reprimand, probation, denial,
24 suspension, revocation,
25 limitation, restitution,
26 community service, or fine.
27
28 Subdivision (j) Suspension or fine.
29
30 Subdivision (k), (p), Reprimand or fine.
31 or (r)

1		
2	Subdivision (l)	Reprimand, denial, or
3		limitation.
4		
5	Subdivision (m) or (o)	Denial, revocation, restitution,
6		probation, suspension,
7		limitation, reprimand, or fine.
8		
9	Subdivision (n)	Revocation or denial.
10		
11	Subdivision (q)	Revocation.
12		
13	Subdivision (t) OR (U)	Revocation, fine, and
14		restitution.

15 (2) Determination of sanctions for violations under this
16 section shall be made by a disciplinary subcommittee. If, during
17 judicial review, the court of appeals determines that a final
18 decision or order of a disciplinary subcommittee prejudices
19 substantial rights of the petitioner for 1 or more of the grounds
20 listed in section 106 of the administrative procedures act of
21 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
22 or order is unlawful and is to be set aside, the court shall
23 state on the record the reasons for the holding and may remand
24 the case to the disciplinary subcommittee for further
25 consideration.

26 (3) A disciplinary subcommittee may impose a fine of up to,
27 but not exceeding, \$250,000.00 for a violation of section
28 16221(a) or (b).

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

8 (5) A disciplinary subcommittee shall not impose the
9 sanction of permanent revocation for a violation of section
10 16221(b) (xiii) unless the violation occurred while the licensee or
11 registrant was acting within the health profession for which he
12 or she was licensed or registered.

13 **SEC. 17015B. (1) A PHYSICIAN SHALL NOT INTENTIONALLY PERFORM**
14 **AN ABORTION WITH KNOWLEDGE THAT THE PREGNANT WOMAN IS SEEKING THE**
15 **ABORTION BECAUSE OF THE SEX OF THE FETUS OR THAT THE PREGNANT**
16 **WOMAN IS BEING COERCED TO SEEK AN ABORTION IN VIOLATION OF**
17 **SECTION 213A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**
18 **750.213A.**

19 (2) THIS SECTION DOES NOT CREATE A RIGHT TO AN ABORTION.
20 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PERSON
21 SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

22 (3) AS USED IN THIS SECTION:

23 (A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015.

24 (B) "FETUS" MEANS THAT TERM AS DEFINED IN SECTION 17015.

25 **SEC. 17515B. (1) A PHYSICIAN SHALL NOT INTENTIONALLY PERFORM**
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3 750.213A.

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6 SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

7 (3) AS USED IN THIS SECTION:

8 (A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015.

9 (B) "FETUS" MEANS THAT TERM AS DEFINED IN SECTION 17015.

10 Enacting section 1. This amendatory act does not take effect
11 unless House Bill No. 5713 of the 96th Legislature is enacted
12 into law.