

SENATE BILL No. 876

December 8, 2011, Introduced by Senators COLBECK, CASWELL, GREEN, CASPERSON, MOOLENAAR, KAHN, PAPPAGEORGE and JANSEN and referred to the Committee on Insurance.

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, and by adding sections
17017 and 17517.

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

1 finds that 1 or more of the following grounds exist:

2 (a) A violation of general duty, consisting of negligence or
3 failure to exercise due care, including negligent delegation to
4 or supervision of employees or other individuals, whether or not
5 injury results, or any conduct, practice, or condition that
6 impairs, or may impair, the ability to safely and skillfully
7 practice the health profession.

8 (b) Personal disqualifications, consisting of 1 or more of
9 the following:

10 (i) Incompetence.

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

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

16 (iv) Declaration of mental incompetence by a court of
17 competent jurisdiction.

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

23 (vi) Lack of good moral character.

24 (vii) Conviction of a criminal offense under sections 520b to
25 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to
26 750.520g. A certified copy of the court record is conclusive
27 evidence of the 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 (xii) Conviction of a violation of section 430 of the
20 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
21 of the court record is conclusive evidence of the conviction.

22 (c) Prohibited acts, consisting of 1 or more of the
23 following:

24 (i) Fraud or deceit in obtaining or renewing a license or
25 registration.

26 (ii) Permitting ~~the~~ a license or registration to be used by
27 an unauthorized person.

(iii) Practice outside the scope of a license.

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

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

(i) False or misleading advertising.

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

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

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

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

(ii) Betrayal of a professional confidence.

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

(iv) Either of the following:

(A) A requirement by a licensee other than a physician that an individual 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.

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

1 "physician" means that term as defined in sections 17001 and
2 17501.

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

17 ~~—— (f) Beginning June 3, 2003, the department of consumer and~~
18 ~~industry services shall prepare the first of 3 annual reports on~~
19 ~~the effect of this amendatory act on access to care for the~~
20 ~~uninsured and medicaid patients. The department shall report on~~
21 ~~the number of referrals by licensees of uninsured and medicaid~~
22 ~~patients to 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 (F) ~~(g)~~ Failure to report a change of name or mailing
26 address within 30 days after the change occurs.

27 (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 ~~UNDER~~ 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) A VIOLATION OF SECTION 17017 OR 17517.

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

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

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

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

1 Subdivision ~~(m)~~—(l) or (o) Denial, revocation, restitution,
 2 probation, suspension,
 3 limitation, reprimand, or fine.
 4

5 Subdivision ~~(n)~~—(M) Revocation or denial.
 6

7 **SUBDIVISION (N) LIMITATION DESCRIBED IN SECTION**
 8 **17017 OR 17517, AS APPLICABLE.**
 9

10 Subdivision (q) Revocation.
 11

12 Subdivision (t) Revocation, fine, and
 13 restitution.

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

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

28 (4) A disciplinary subcommittee may require a licensee or

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

7 SEC. 17017. (1) A PHYSICIAN WHO MEETS ALL OF THE FOLLOWING
8 SHALL MAINTAIN PROFESSIONAL LIABILITY COVERAGE OF NOT LESS THAN
9 \$1,000,000.00, OR PROVIDE EQUIVALENT SECURITY AS DETERMINED BY
10 THE DEPARTMENT, FOR THE PURPOSE OF COMPENSATING A WOMAN SUFFERING
11 FROM ABORTION COMPLICATIONS CAUSED BY THE GROSS NEGLIGENCE OR
12 MALPRACTICE OF THE PHYSICIAN:

13 (A) HE OR SHE PERFORMS 5 OR MORE ABORTIONS PER MONTH.

14 (B) MEETS ANY OF THE FOLLOWING:

15 (i) HE OR SHE WAS THE SUBJECT OF 2 OR MORE CIVIL LAWSUITS IN
16 THE PRECEDING 7 YEARS RELATED TO HARM CAUSED BY ABORTIONS
17 PERFORMED BY HIM OR HER.

18 (ii) THE DISCIPLINARY SUBCOMMITTEE HAS IMPOSED 1 OR MORE
19 SANCTIONS AGAINST HIS OR HER LICENSE UNDER THIS ARTICLE FOR
20 UNPROFESSIONAL, UNETHICAL, OR NEGLIGENT CONDUCT IN THE PRECEDING
21 7 YEARS.

22 (iii) HE OR SHE OPERATES, OR HAS SUPERVISORY AUTHORITY OVER,
23 AN OFFICE OR FACILITY WHERE ABORTIONS ARE PERFORMED AND THAT
24 OFFICE OR FACILITY WAS FOUND DURING A FOLLOW-UP INSPECTION TO BE
25 NONCOMPLIANT WITH HEALTH AND SAFETY REQUIREMENTS AFTER PREVIOUS
26 INSPECTIONS HAD FORMALLY IDENTIFIED THE COMPLIANCE FAILURES AND
27 NEEDED CORRECTIVE ACTIONS.

1 (2) SUBJECT TO SECTIONS 16221 AND 16226, IF THE DISCIPLINARY
2 SUBCOMMITTEE FINDS THAT A PHYSICIAN IS IN VIOLATION OF SUBSECTION
3 (1), THE DISCIPLINARY SUBCOMMITTEE SHALL IMMEDIATELY LIMIT THE
4 PHYSICIAN'S LICENSE TO PROHIBIT THE PHYSICIAN FROM PERFORMING
5 ABORTIONS UNTIL HE OR SHE MEETS SUBSECTION (1).

6 (3) AS USED IN THIS SECTION, "ABORTION" MEANS THAT TERM AS
7 DEFINED IN SECTION 17015.

8 SEC. 17517. (1) A PHYSICIAN WHO MEETS ALL OF THE FOLLOWING
9 SHALL MAINTAIN PROFESSIONAL LIABILITY COVERAGE OF NOT LESS THAN
10 \$1,000,000.00, OR PROVIDE EQUIVALENT SECURITY AS DETERMINED BY
11 THE DEPARTMENT, FOR THE PURPOSE OF COMPENSATING A WOMAN SUFFERING
12 FROM ABORTION COMPLICATIONS CAUSED BY THE GROSS NEGLIGENCE OR
13 MALPRACTICE OF THE PHYSICIAN:

14 (A) HE OR SHE PERFORMS 5 OR MORE ABORTIONS PER MONTH.

15 (B) MEETS ANY OF THE FOLLOWING:

16 (i) HE OR SHE WAS THE SUBJECT OF 2 OR MORE CIVIL LAWSUITS IN
17 THE PRECEDING 7 YEARS RELATED TO HARM CAUSED BY ABORTIONS
18 PERFORMED BY HIM OR HER.

19 (ii) THE DISCIPLINARY SUBCOMMITTEE HAS IMPOSED 1 OR MORE
20 SANCTIONS AGAINST HIS OR HER LICENSE UNDER THIS ARTICLE FOR
21 UNPROFESSIONAL, UNETHICAL, OR NEGLIGENT CONDUCT IN THE PRECEDING
22 7 YEARS.

23 (iii) HE OR SHE OPERATES, OR HAS SUPERVISORY AUTHORITY OVER,
24 AN OFFICE OR FACILITY WHERE ABORTIONS ARE PERFORMED AND THAT
25 OFFICE OR FACILITY WAS FOUND DURING A FOLLOW-UP INSPECTION TO BE
26 NONCOMPLIANT WITH HEALTH AND SAFETY REQUIREMENTS AFTER PREVIOUS
27 INSPECTIONS HAD FORMALLY IDENTIFIED THE COMPLIANCE FAILURES AND

1 NEEDED CORRECTIVE ACTIONS.

2 (2) SUBJECT TO SECTIONS 16221 AND 16226, IF THE DISCIPLINARY
3 SUBCOMMITTEE FINDS THAT A PHYSICIAN IS IN VIOLATION OF SUBSECTION
4 (1), THE DISCIPLINARY SUBCOMMITTEE SHALL IMMEDIATELY LIMIT THE
5 PHYSICIAN'S LICENSE TO PROHIBIT THE PHYSICIAN FROM PERFORMING
6 ABORTIONS UNTIL HE OR SHE MEETS SUBSECTION (1).

7 (3) AS USED IN THIS SECTION, "ABORTION" MEANS THAT TERM AS
8 DEFINED IN SECTION 17015.