

SUBSTITUTE FOR  
SENATE BILL NO. 577

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 16221, 16222, 16226, and 16227 (MCL  
333.16221, 333.16222, 333.16226, and 333.16227), section 16221 as  
amended by 2012 PA 501, section 16222 as added and section 16227  
as amended by 1993 PA 79, and section 16226 as amended by 2012 PA  
499.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 16221. The department **SHALL INVESTIGATE ANY ALLEGATION**  
2 **THAT 1 OR MORE OF THE GROUNDS FOR DISCIPLINARY SUBCOMMITTEE**  
3 **ACTION UNDER THIS SECTION EXIST, AND** may investigate **OTHER**  
4 activities related to the practice of a health profession by a  
5 licensee, a registrant, or an applicant for licensure or  
6 registration. ~~The~~ **AS PART OF THE INVESTIGATION, THE** department

1 may hold hearings, administer oaths, and order the taking of  
2 relevant testimony. ~~and~~ **AFTER ITS INVESTIGATION, THE DEPARTMENT**  
3 shall report its findings to the appropriate disciplinary  
4 subcommittee. The disciplinary subcommittee shall proceed under  
5 section 16226 if it finds that 1 or more of the following grounds  
6 exist:

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

13 (b) Personal disqualifications, consisting of 1 or more of  
14 the following:

15 (i) Incompetence.

16 (ii) Subject to sections 16165 to 16170a, substance use  
17 disorder as defined in section 100d of the mental health code,  
18 1974 PA 258, MCL 330.1100d.

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

22 (iv) Declaration of mental incompetence by a court of  
23 competent jurisdiction.

24 (v) Conviction of a misdemeanor punishable by imprisonment  
25 for a maximum term of 2 years; **CONVICTION OF** a misdemeanor  
26 involving the illegal delivery, possession, or use of a  
27 controlled substance; or ~~a~~ **CONVICTION OF ANY felony OTHER THAN A**

**FELONY LISTED OR DESCRIBED IN ANOTHER SUBPARAGRAPH OF THIS**

**SUBDIVISION.** A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the

Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

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

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

(ii) Permitting a license or registration to be used by 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

1 following:

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

5 (ii) Betrayal of a professional confidence.

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

8 (iv) Either of the following:

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

13 (B) A referral by a physician for a designated health  
14 service that violates 42 USC 1395nn or a regulation promulgated  
15 under that section. For purposes of this subdivision, 42 USC  
16 1395nn and the regulations promulgated under that section as they  
17 exist on June 3, 2002 are incorporated by reference. A  
18 disciplinary subcommittee shall apply 42 USC 1395nn and the  
19 regulations promulgated under that section regardless of the  
20 source of payment for the designated health service referred and  
21 rendered. If 42 USC 1395nn or a regulation promulgated under that  
22 section is revised after June 3, 2002, the department shall  
23 officially take notice of the revision. Within 30 days after  
24 taking notice of the revision, the department shall decide  
25 whether or not the revision pertains to referral by physicians  
26 for designated health services and continues to protect the  
27 public from inappropriate referrals by physicians. If the

1 department decides that the revision does both of those things,  
2 the department may promulgate rules to incorporate the revision  
3 by reference. If the department does promulgate rules to  
4 incorporate the revision by reference, the department shall not  
5 make any changes to the revision. As used in this sub-  
6 subparagraph, "designated health service" means that term as  
7 defined in 42 USC 1395nn and the regulations promulgated under  
8 that section and "physician" means that term as defined in  
9 sections 17001 and 17501.

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

23 **(vi) ANY CONDUCT BY A HEALTH PROFESSIONAL WITH A PATIENT**  
24 **WHILE HE OR SHE IS ACTING WITHIN THE HEALTH PROFESSION FOR WHICH**  
25 **HE OR SHE IS LICENSED OR REGISTERED, INCLUDING CONDUCT INITIATED**  
26 **BY A PATIENT OR TO WHICH THE PATIENT CONSENTS, THAT IS SEXUAL IN**  
27 **ANY WAY OR MAY REASONABLY BE INTERPRETED AS SEXUAL, INCLUDING,**

1 BUT NOT LIMITED TO, SEXUAL INTERCOURSE, KISSING IN A SEXUAL  
2 MANNER, OR TOUCHING OF A BODY PART FOR ANY PURPOSE OTHER THAN  
3 APPROPRIATE EXAMINATION, TREATMENT, OR COMFORT.

4 (vii) OFFERING TO PROVIDE PRACTICE-RELATED SERVICES, SUCH AS  
5 DRUGS, IN EXCHANGE FOR SEXUAL FAVORS.

6 (f) Beginning June 3, 2003, the department of consumer and  
7 industry services shall prepare the first of 3 annual reports on  
8 the effect of 2002 PA 402 on access to care for the uninsured and  
9 Medicaid patients. The department shall report on the number of  
10 referrals by licensees of uninsured and Medicaid patients to  
11 purchase or secure a drug, device, treatment, procedure, or  
12 service from another person, place, facility, or business in  
13 which the licensee has a financial interest.

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

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

18 (i) Failure to comply with a subpoena issued pursuant to  
19 this part, failure to respond to a complaint issued under this  
20 article or article 7, failure to appear at a compliance  
21 conference or an administrative hearing, or failure to report  
22 under section ~~16222~~-16222(1) or 16223.

23 (j) Failure to pay an installment of an assessment levied  
24 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to  
25 500.8302, within 60 days after notice by the appropriate board.

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

27 (l) Failure to meet 1 or more of the requirements for

1 licensure or registration under section 16174.

2 (m) A violation of section 17015, 17015a, 17017, 17515, or  
3 17517.

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

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

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

7 (q) A violation of section 16274.

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

9 (s) A violation of the medical records access act, 2004 PA  
10 47, MCL 333.26261 to 333.26271.

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

12 **(U) FAILURE TO NOTIFY UNDER SECTION 16222(3) OR (4).**

13 Sec. 16222. (1) A licensee or registrant ~~having~~**WHO HAS**  
14 knowledge that another licensee or registrant has committed a  
15 violation under section 16221 or article 7 or a rule promulgated  
16 under article 7 shall report the conduct and the name of the  
17 subject of the report to the department. Information obtained by  
18 the department under this subsection is confidential and is  
19 subject to sections 16238 and 16244. Failure of a licensee or  
20 registrant to make a report under this subsection does not give  
21 rise to a civil cause of action for damages against the licensee  
22 or registrant, but the licensee or registrant is subject to  
23 administrative action under sections 16221 and 16226. This  
24 subsection does not apply to a licensee or registrant who obtains  
25 the knowledge of a violation while providing professional  
26 services to the licensee or registrant to whom the knowledge  
27 applies, who is serving on a duly constituted ethics or peer



1 review committee of a professional association, or who is serving  
2 on a committee assigned a professional review function in a  
3 health facility or agency.

4 (2) Unless the licensee or registrant making the report  
5 otherwise agrees in writing, the identity of the licensee or  
6 registrant making ~~the~~**A** report **UNDER SUBSECTION (1)** shall remain  
7 confidential unless disciplinary proceedings under this part are  
8 initiated against the subject of the report and the licensee or  
9 registrant making the report is required to testify in the  
10 proceedings.

11 (3) A licensee or registrant shall notify the department of  
12 ~~a~~**ANY** criminal conviction ~~or a~~**WITHIN 30 DAYS AFTER THE DATE OF**  
13 **THE CONVICTION. FAILURE OF A LICENSEE OR REGISTRANT TO NOTIFY THE**  
14 **DEPARTMENT UNDER THIS SUBSECTION MAY RESULT IN ADMINISTRATIVE**  
15 **ACTION UNDER SECTIONS 16221 AND 16226.**

16 (4) **A LICENSEE OR REGISTRANT SHALL NOTIFY THE DEPARTMENT OF**  
17 **ANY** disciplinary licensing or registration action taken by  
18 another state against the licensee or registrant within 30 days  
19 after the date of the ~~conviction or~~ action. This subsection  
20 includes, but is not limited to, a disciplinary action that is  
21 stayed pending appeal. **FAILURE OF A LICENSEE OR REGISTRANT TO**  
22 **NOTIFY THE DEPARTMENT UNDER THIS SUBSECTION MAY RESULT IN**  
23 **ADMINISTRATIVE ACTION UNDER SECTIONS 16221 AND 16226.**

24 Sec. 16226. (1) After finding the existence of 1 or more of  
25 the grounds for disciplinary subcommittee action listed in  
26 section 16221, a disciplinary subcommittee shall impose 1 or more  
27 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, <del>community service</del> , 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, <del>community service</del> , or fine.
Subdivision (b) (xiii)	<del>Probation,</del> <b>PERMANENT REVOCATION FOR A VIOLATION DESCRIBED IN SUBSECTION (5); OTHERWISE, PROBATION,</b> limitation, denial, suspension, revocation, <b>OR</b> restitution <del>, community service, fine, or, subject to subsection (5), permanent revocation.</del> <b>AND A FINE MAY BE ASSESSED.</b>
Subdivision (c) (i)	Denial, revocation, suspension, probation, limitation, <del>community service</del> , or fine.

1	Subdivision (c) (ii)	Denial, suspension, revocation,
2		restitution, community service,
3		or fine.
4		
5	Subdivision (c) (iii)	Probation, denial, suspension,
6		revocation, restitution,
7		<del>community service,</del> or fine.
8		
9	Subdivision (c) (iv)	Fine, probation, denial,
10	or (d) (iii)	suspension, revocation, <del>community</del>
11		<del>service,</del> or restitution.
12		
13	Subdivision (d) (i)	Reprimand, fine, probation,
14	or (d) (ii)	<del>community service,</del> denial,
15		or restitution.
16		
17	Subdivision (e) (i)	Reprimand, fine, probation,
18		limitation, suspension, <del>community</del>
19		<del>service,</del> denial, or restitution.
20		
21	Subdivision (e) (ii)	Reprimand, probation,
22	or (i)	suspension, restitution,
23		<del>community service,</del> denial, or
24		fine.
25		
26	Subdivision (e) (iii),	Reprimand, fine, probation,
27	(e) (iv), or (e) (v)	suspension, revocation,
28		limitation, <del>community service,</del>
29		denial, or restitution.

1		
2	<b>SUBDIVISION (E) (vi) OR</b>	<b>PROBATION, SUSPENSION, REVOCATION,</b>
3	<b>(E) (vii)</b>	<b>LIMITATION, DENIAL, OR RESTITUTION</b>
4		<b>AND A FINE MAY BE ASSESSED.</b>
5		
6	Subdivision (g)	Reprimand or fine.
7		
8	Subdivision (h) or (s)	Reprimand, probation, denial,
9		suspension, revocation,
10		limitation, restitution,
11		<del>community service,</del> or fine.
12		
13	Subdivision (j)	Suspension or fine.
14		
15	Subdivision (k), (p),	Reprimand or fine.
16	or (r)	
17		
18	Subdivision (l)	Reprimand, denial, or
19		limitation.
20		
21	Subdivision (m) or (o)	Denial, revocation, restitution,
22		probation, suspension,
23		limitation, reprimand, or fine.
24		
25	Subdivision (n)	Revocation or denial.
26		
27	Subdivision (q)	Revocation.
28		
29	Subdivision (t)	Revocation, fine, and

1 restitution.

2  
3 **SUBDIVISION (U)**

**REPRIMAND, DENIAL, LIMITATION,  
4 PROBATION, OR FINE.**

5 (2) Determination of sanctions for violations under this  
6 section shall be made by a disciplinary subcommittee. If, during  
7 judicial review, the court of appeals determines that a final  
8 decision or order of a disciplinary subcommittee prejudices  
9 substantial rights of the petitioner for 1 or more of the grounds  
10 listed in section 106 of the administrative procedures act of  
11 1969, 1969 PA 306, MCL 24.306, and holds that the final decision  
12 or order is unlawful and is to be set aside, the court shall  
13 state on the record the reasons for the holding and may remand  
14 the case to the disciplinary subcommittee for further  
15 consideration.

16 (3) A disciplinary subcommittee may impose a fine ~~of up to,~~  
17 ~~but not exceeding,~~ **IN AN AMOUNT THAT DOES NOT EXCEED \$250,000.00**  
18 for a violation of section 16221(a) or (b). **A DISCIPLINARY**  
19 **SUBCOMMITTEE SHALL IMPOSE A FINE OF AT LEAST \$25,000.00 IF THE**  
20 **VIOLATION OF SECTION 16221(A) OR (B) RESULTS IN THE DEATH OF 1 OR**  
21 **MORE PATIENTS.**

22 (4) A disciplinary subcommittee may require a licensee or  
23 registrant or an applicant for licensure or registration who has  
24 violated this article or article 7 or a rule promulgated under  
25 this article or article 7 to satisfactorily complete an  
26 educational program, a training program, or a treatment program,

1 a mental, physical, or professional competence examination, or a  
2 combination of those programs and examinations.

3 (5) A disciplinary subcommittee shall ~~not~~ impose the  
4 sanction of permanent revocation for a violation of section  
5 16221(b) (xiii) ~~unless~~ **IF** the violation occurred while the licensee  
6 or registrant was acting within the health profession for which  
7 he or she was licensed or registered.

8 Sec. 16227. (1) For an offense committed within 2 years  
9 after a previous offense of the same kind, a disciplinary  
10 subcommittee ~~may~~ **SHALL** suspend **THE LICENSE OR REGISTRATION FOR A**  
11 **PERIOD OF AT LEAST 180 DAYS** or revoke the license or  
12 registration.

13 (2) Section 16226 and this section do not limit any other  
14 sanction or additional action a disciplinary subcommittee is  
15 authorized to impose or take.