

# HOUSE BILL No. 4524

April 10, 2013, Introduced by Rep. Haines and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 16221 (MCL 333.16221), as amended by 2012 PA  
501, and by adding section 16221a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 16221. The department may investigate activities related  
2 to the practice of a health profession by a licensee, a registrant,  
3 or an applicant for licensure or registration. The department may  
4 hold hearings, administer oaths, and order the taking of relevant  
5 testimony and shall report its findings to the appropriate  
6 disciplinary subcommittee. The disciplinary subcommittee shall  
7 proceed under section 16226 if it finds that 1 or more of the  
8 following grounds exist:

9       (a) A violation of general duty, consisting of negligence or  
10 failure to exercise due care, including negligent delegation to or

1 supervision of employees or other individuals, whether or not  
2 injury results, or any conduct, practice, or condition that  
3 impairs, or may impair, the ability to safely and skillfully  
4 practice the health profession.

5 (b) Personal disqualifications, consisting of 1 or more of the  
6 following:

7 (i) Incompetence.

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

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

14 (iv) Declaration of mental incompetence by a court of competent  
15 jurisdiction.

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

21 (vi) Lack of good moral character.

22 (vii) Conviction of a criminal offense under section 520e or  
23 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and  
24 750.520g. A certified copy of the court record is conclusive  
25 evidence of the conviction.

26 (viii) Conviction of a violation of section 492a of the Michigan  
27 penal code, 1931 PA 328, MCL 750.492a. A certified copy of the

1 court record is conclusive evidence of the conviction.

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

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

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

17 (xii) Conviction of a violation of section 430 of the Michigan  
18 penal code, 1931 PA 328, MCL 750.430. A certified copy of the court  
19 record is conclusive evidence of the conviction.

20 (xiii) Conviction of a criminal offense under section 520b,  
21 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL  
22 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the  
23 court record is conclusive evidence of the conviction.

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

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

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

1 unauthorized person.

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

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

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

10 (i) ~~False or misleading advertising.~~ **MAKING A FALSE, FRAUDULENT,**  
11 **DECEPTIVE, OR MISLEADING STATEMENT IN THE SOLICITATION OF OR**  
12 **ADVERTISING FOR PATIENTS IN RELATION TO THE PRACTICE OF HIS OR HER**  
13 **PROFESSION.**

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 third  
18 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 obtaining  
22 or attempting to obtain third party reimbursement in the course of  
23 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 an  
2 individual purchase or secure a drug, device, treatment, procedure,  
3 or service from another person, place, facility, or business in  
4 which the licensee has a financial interest.

5 (B) A referral by a physician for a designated health service  
6 that violates 42 USC 1395nn or a regulation promulgated under that  
7 section. For purposes of this subdivision, 42 USC 1395nn and the  
8 regulations promulgated under that section as they exist on June 3,  
9 2002 are incorporated by reference. A disciplinary subcommittee  
10 shall apply 42 USC 1395nn and the regulations promulgated under  
11 that section regardless of the source of payment for the designated  
12 health service referred and rendered. If 42 USC 1395nn or a  
13 regulation promulgated under that section is revised after June 3,  
14 2002, the department shall officially take notice of the revision.  
15 Within 30 days after taking notice of the revision, the department  
16 shall decide whether or not the revision pertains to referral by  
17 physicians for designated health services and continues to protect  
18 the public from inappropriate referrals by physicians. If the  
19 department decides that the revision does both of those things, the  
20 department may promulgate rules to incorporate the revision by  
21 reference. If the department does promulgate rules to incorporate  
22 the revision by reference, the department shall not make any  
23 changes to the revision. As used in this sub-subparagraph,  
24 "designated health service" means that term as defined in 42 USC  
25 1395nn and the regulations promulgated under that section and  
26 "physician" means that term as defined in sections 17001 and 17501.  
27 (v) For a physician who makes referrals pursuant to 42 USC

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

12 ~~(f) Beginning June 3, 2003, the department of consumer and~~  
13 ~~industry services shall prepare the first of 3 annual reports on~~  
14 ~~the effect of 2002 PA 402 on access to care for the uninsured and~~  
15 ~~Medicaid patients. The department shall report on the number of~~  
16 ~~referrals by licensees of uninsured and Medicaid patients to~~  
17 ~~purchase or secure a drug, device, treatment, procedure, or service~~  
18 ~~from another person, place, facility, or business in which the~~  
19 ~~licensee has a financial interest.~~**FAILURE TO COMPLY WITH SECTION**  
20 **16221A.**

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

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

25 (i) Failure to comply with a subpoena issued pursuant to this  
26 part, failure to respond to a complaint issued under this article  
27 or article 7, failure to appear at a compliance conference or an

1 administrative hearing, or failure to report under section 16222 or  
2 16223.

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

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

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

9 (m) A violation of section 17015, 17015a, 17017, 17515, or  
10 17517.

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

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

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

14 (q) A violation of section 16274.

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

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

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

19 **SEC. 16221A. (1) EXCEPT AS PROVIDED IN SUBSECTION (3), AT ALL**  
20 **TIMES WHEN PROVIDING DIRECT PATIENT CARE, A LICENSEE OR REGISTRANT**  
21 **SHALL WEAR AN IDENTIFICATION CARD, BADGE, OR SIMILAR DEVICE THAT**  
22 **INCLUDES ALL OF THE FOLLOWING:**

23 **(A) A RECENT PHOTOGRAPH OF THE LICENSEE OR REGISTRANT.**

24 **(B) THE LICENSEE'S OR REGISTRANT'S NAME.**

25 **(C) THE TYPE OF LICENSE OR REGISTRATION HELD BY THE LICENSEE**  
26 **OR REGISTRANT.**

27 **(D) THE EXPIRATION DATE OF THE LICENSEE'S OR REGISTRANT'S**

1 LICENSE OR REGISTRATION.

2 (2) THE IDENTIFICATION CARD, BADGE, OR SIMILAR DEVICE  
3 DESCRIBED IN SUBSECTION (1) SHALL BE OF SUFFICIENT SIZE AND SHALL  
4 BE WORN IN A CONSPICUOUS PLACE SO AS TO BE VISIBLE TO PATIENTS AND  
5 OTHER INDIVIDUALS.

6 (3) A LICENSEE OR REGISTRANT IS NOT SUBJECT TO SUBSECTION (1)  
7 IF A SAFETY OR HEALTH RISK TO THE LICENSEE OR REGISTRANT OR A  
8 PATIENT WOULD BE CREATED AS A RESULT OF THE LICENSEE OR REGISTRANT  
9 WEARING THE IDENTIFICATION CARD, BADGE, OR SIMILAR DEVICE.

10 (4) A LICENSEE OR REGISTRANT WHO PROVIDES DIRECT PATIENT CARE  
11 SHALL NOT INCLUDE HIS OR HER NAME IN ANY ADVERTISEMENT FOR HEALTH  
12 CARE SERVICES WITHOUT IDENTIFYING THE TYPE OF LICENSE OR  
13 REGISTRATION HE OR SHE HOLDS IN THAT ADVERTISEMENT. AS USED IN THIS  
14 SUBSECTION, "ADVERTISEMENT" MEANS ANY COMMUNICATION OR STATEMENT,  
15 WHETHER PRINTED, ELECTRONIC, OR ORAL, THAT NAMES A LICENSEE OR  
16 REGISTRANT IN CONNECTION WITH HIS OR HER PRACTICE, PROFESSION, OR  
17 INSTITUTION IN WHICH HE OR SHE IS EMPLOYED, VOLUNTEERS, OR  
18 OTHERWISE PROVIDES HEALTH CARE SERVICES. THE TERM INCLUDES  
19 CIRCULARS, SIGNS, NEWSPAPER OR MAGAZINE PUBLICATIONS, BUSINESS  
20 CARDS, LETTERHEAD, PATIENT BROCHURES, OR ANY OTHER SIMILAR ORAL OR  
21 WRITTEN COMMUNICATIONS AND INTERNET DIRECTORIES OR WEBSITES.

22 (5) THIS SECTION DOES NOT APPLY TO A LICENSEE OR REGISTRANT  
23 WHO PRACTICES AT A LOCATION WHERE DIRECT PATIENT CARE IS NOT  
24 PROVIDED.

25 Enacting section 1. This amendatory act takes effect 90  
26 days after the date it is enacted into law.