

SENATE BILL No. 577

October 2, 2013, Introduced by Senators JONES and SCHUITMAKER and referred to the Committee on Reforms, Restructuring and Reinventing.

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

1 licensee, a registrant, or an applicant for licensure or
2 registration. ~~The~~ **AS PART OF THE INVESTIGATION, THE** department
3 may hold hearings, administer oaths, and order the taking of
4 relevant testimony. ~~and~~ **AFTER ITS INVESTIGATION, THE DEPARTMENT**
5 shall report its findings to the appropriate disciplinary
6 subcommittee. The disciplinary subcommittee shall proceed under
7 section 16226 if it finds that 1 or more of the following grounds
8 exist:

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

15 (b) Personal disqualifications, consisting of 1 or more of
16 the following:

17 (i) Incompetence.

18 (ii) Subject to sections 16165 to 16170a, substance use
19 disorder as defined in section 100d of the mental health code,
20 1974 PA 258, MCL 330.1100d.

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

24 (iv) Declaration of mental incompetence by a court of
25 competent jurisdiction.

26 (v) Conviction of a misdemeanor punishable by imprisonment
27 for a maximum term of 2 years; **CONVICTION OF** a misdemeanor

1 involving the illegal delivery, possession, or use of a
2 controlled substance; or ~~a~~**CONVICTION OF ANY felony OTHER THAN A**
3 **FELONY LISTED OR DESCRIBED IN ANOTHER SUBPARAGRAPH OF THIS**
4 **SUBDIVISION.** A certified copy of the court record is conclusive
5 evidence of the conviction.

6 (vi) Lack of good moral character.

7 (vii) Conviction of a criminal offense under section 520e or
8 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
9 750.520g. A certified copy of the court record is conclusive
10 evidence of the conviction.

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

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

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

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

1 record is conclusive evidence of the conviction.

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

5 (xiii) Conviction of a criminal offense under section 520b,
6 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL
7 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of
8 the court record is conclusive evidence of the conviction.

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

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

13 (ii) Permitting a license or registration to be used by an
14 unauthorized person.

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

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

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

23 (i) False or misleading advertising.

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

27 (iii) Fraud or deceit in obtaining or attempting to obtain

1 third party reimbursement.

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

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

7 (ii) Betrayal of a professional confidence.

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

10 (iv) Either of the following:

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

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

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

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

25 **(vi) ANY CONDUCT BY A HEALTH PROFESSIONAL WITH A PATIENT**
26 **WHILE HE OR SHE IS ACTING WITHIN THE HEALTH PROFESSION FOR WHICH**
27 **HE OR SHE IS LICENSED OR REGISTERED, INCLUDING CONDUCT INITIATED**

1 BY A PATIENT OR TO WHICH THE PATIENT CONSENTS, THAT IS SEXUAL IN
2 ANY WAY OR MAY REASONABLY BE INTERPRETED AS SEXUAL, INCLUDING,
3 BUT NOT LIMITED TO, SEXUAL INTERCOURSE, KISSING IN A SEXUAL
4 MANNER, OR TOUCHING OF A BODY PART FOR ANY PURPOSE OTHER THAN
5 APPROPRIATE EXAMINATION, TREATMENT, OR COMFORT.

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

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

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

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

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

25 (j) Failure to pay an installment of an assessment levied
26 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
27 500.8302, within 60 days after notice by the appropriate board.

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

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

4 (m) A violation of section 17015, 17015a, 17017, 17515, or
5 17517.

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

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

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

9 (q) A violation of section 16274.

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

11 (s) A violation of the medical records access act, 2004 PA
12 47, MCL 333.26261 to 333.26271.

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

14 **(U) FAILURE TO NOTIFY UNDER SECTION 16222(3).**

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

services to the licensee or registrant to whom the knowledge applies, who is serving on a duly constituted ethics or peer review committee of a professional association, or who is serving on a committee assigned a professional review function in a health facility or agency.

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

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

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:

Violations of Section 16221

Sanctions

| | |
|--|---|
| 1 Subdivision (a), (b) (ii), 2 (b) (iv), (b) (vi), or 3 (b) (vii) 4 5 6 Subdivision (b) (viii) 7 8 Subdivision (b) (i), 9 (b) (iii), (b) (v), 10 (b) (ix), (b) (x), 11 (b) (xi), or (b) (xii) 12 13 Subdivision (b) (xiii) 14 15 16 17 18 19 20 21 22 23 24 Subdivision (c) (i) 25 26 27 28 Subdivision (c) (ii) 29 | Probation, limitation, denial, suspension, revocation, restitution, community service, or fine. Revocation or denial. Limitation, suspension, revocation, denial, probation, restitution, community service, or fine. Probation, PERMANENT REVOCATION FOR A VIOLATION DESCRIBED IN SUBSECTION (5); OTHERWISE, PROBATION, limitation, denial, suspension, revocation, OR restitution , community service, fine, or, subject to subsection (5), permanent revocation. AND A FINE MAY BE ASSESSED. Denial, revocation, suspension, probation, limitation, community service, or fine. Denial, suspension, revocation, restitution, community service, |
|--|---|

1 or fine.

2

3 Subdivision (c) (iii) Probation, denial, suspension,
4 revocation, restitution,
5 ~~community service~~, or fine.

6

7 Subdivision (c) (iv) Fine, probation, denial,
8 or (d) (iii) suspension, revocation, ~~community~~
9 ~~service~~, or restitution.

10

11 Subdivision (d) (i) Reprimand, fine, probation,
12 or (d) (ii) ~~community service~~, denial,
13 or restitution.

14

15 Subdivision (e) (i) Reprimand, fine, probation,
16 limitation, suspension, ~~community~~
17 ~~service~~, denial, or restitution.

18

19 Subdivision (e) (ii) Reprimand, probation,
20 or (i) suspension, restitution,
21 ~~community service~~, denial, or
22 fine.

23

24 Subdivision (e) (iii), Reprimand, fine, probation,
25 (e) (iv), or (e) (v) suspension, revocation,
26 limitation, ~~community service~~,
27 denial, or restitution.

28

29 **SUBDIVISION (E) (vi) OR PROBATION, SUSPENSION, REVOCATION,**

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

SUBDIVISION (U)

REPRIMAND, DENIAL, LIMITATION,
PROBATION, OR FINE.

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

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

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

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

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

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