

HOUSE BILL No. 5668

May 19, 2016, Introduced by Reps. Callton, Zemke, Moss and Hoadley and referred to the Committee on Regulatory Reform.

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 2014 PA 411 and section 16226 as
amended by 2014 PA 412.

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 action
3 under this section exist, and may investigate activities related to
4 the practice of a health profession by a licensee, a registrant, or
5 an applicant for licensure or registration. The department may hold
6 hearings, administer oaths, and order the taking of relevant
7 testimony. After its investigation, the department shall provide a
8 copy of the administrative complaint to the appropriate
9 disciplinary subcommittee. The disciplinary subcommittee shall

1 proceed under section 16226 if it finds that 1 or more of the
2 following grounds exist:

3 (a) Except as otherwise specifically provided in this section,
4 a violation of general duty, consisting of negligence or failure to
5 exercise due care, including negligent delegation to or supervision
6 of employees or other individuals, whether or not injury results,
7 or any conduct, practice, or condition that impairs, or may impair,
8 the ability to safely and skillfully engage in the practice of the
9 health profession.

10 (b) Personal disqualifications, consisting of 1 or more of the
11 following:

12 (i) Incompetence.

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

16 (iii) Mental or physical inability reasonably related to and
17 adversely affecting the licensee's or registrant's ability to
18 practice in a safe and competent manner.

19 (iv) Declaration of mental incompetence by a court of
20 competent jurisdiction.

21 (v) Conviction of a misdemeanor punishable by imprisonment for
22 a maximum term of 2 years; conviction of a misdemeanor involving
23 the illegal delivery, possession, or use of a controlled substance;
24 or conviction of any felony other than a felony listed or described
25 in another subparagraph of this subdivision. A certified copy of
26 the court record is conclusive evidence of the conviction.

27 (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 or registrant'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 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal

code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321, 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) Except as otherwise specifically provided in this section, 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) Except as otherwise specifically provided in this section, 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

1 professional practice.

2 (ii) Betrayal of a professional confidence.

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

5 (iv) Either of the following:

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

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

1 the revision by reference, the department shall not make any
2 changes to the revision. As used in this sub-subparagraph,
3 "designated health service" means that term as defined in 42 USC
4 1395nn and the regulations promulgated under that section and
5 "physician" means that term as defined in sections 17001 and 17501.

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

18 (vi) Any conduct by a health professional with a patient while
19 he or she is acting within the health profession for which he or
20 she is licensed or registered, including conduct initiated by a
21 patient or to which the patient consents, that is sexual or may
22 reasonably be interpreted as sexual, including, but not limited to,
23 sexual intercourse, kissing in a sexual manner, or touching of a
24 body part for any purpose other than appropriate examination,
25 treatment, or comfort.

26 (vii) Offering to provide practice-related services, such as
27 drugs, in exchange for sexual favors.

1 (f) Failure to notify under section 16222(3) or (4).

2 (g) Failure to report a change of name or mailing address as
3 required in section 16192.

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

6 (i) Failure to comply with a subpoena issued pursuant to this
7 part, failure to respond to a complaint issued under this article,
8 article 7, or article 8, failure to appear at a compliance
9 conference or an administrative hearing, or failure to report under
10 section 16222(1) or 16223.

11 (j) Failure to pay an installment of an assessment levied
12 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
13 500.8302, within 60 days after notice by the appropriate board.

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

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

17 (m) A violation of section 17015, 17015a, 17017, 17515, or
18 17517.

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

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

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

22 (q) A violation of section 16274.

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

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

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

27 **(U) A VIOLATION OF SECTION 901A(1) OF THE MENTAL HEALTH CODE,**

1 1974 PA 258, MCL 330.1901A.

2 Sec. 16226. (1) After finding the existence of 1 or more of
3 the grounds for disciplinary subcommittee action listed in section
4 16221, a disciplinary subcommittee shall impose 1 or more of the
5 following sanctions for each violation:

| 6 <u>Violations of Section 16221</u> | <u>Sanctions</u> |
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| 7 Subdivision (a), (b) (i), | Probation, limitation, denial, |
| 8 (b) (ii), (b) (iii), (b) (iv), | suspension, revocation, |
| 9 (b) (v), (b) (vi), (b) (vii), | permanent revocation, |
| 10 (b) (ix), (b) (x), (b) (xi), | restitution, or fine. |
| 11 or (b) (xii) | |
| 12 | |
| 13 Subdivision (b) (viii) | Revocation, permanent revocation, |
| 14 | or denial. |
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| 21 Subdivision (b) (xiii) | Permanent revocation |
| 22 | for a violation described in |
| 23 | subsection (5); otherwise, |
| 24 | probation, limitation, denial, |
| 25 | suspension, revocation, |
| 26 | restitution, or fine. |
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| 3 | Subdivision (c) (i) | Denial, revocation, suspension, |
| 4 | | probation, limitation, or fine. |
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| 6 | Subdivision (c) (ii) | Denial, suspension, revocation, |
| 7 | | restitution, or fine. |
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| 9 | Subdivision (c) (iii) | Probation, denial, suspension, |
| 10 | | revocation, restitution, or fine. |
| 11 | | |
| 12 | Subdivision (c) (iv) | Fine, probation, denial, |
| 13 | or (d) (iii) | suspension, revocation, permanent |
| 14 | | revocation, or restitution. |
| 15 | | |
| 16 | Subdivision (d) (i) | Reprimand, fine, probation, |
| 17 | or (d) (ii) | denial, or restitution. |
| 18 | | |
| 19 | Subdivision (e) (i) , | Reprimand, fine, probation, |
| 20 | (e) (iii) , (e) (iv) , (e) (v) , | limitation, suspension, |
| 21 | (h) , or (s) | revocation, permanent revocation, |
| 22 | | denial, or restitution. |
| 23 | | |
| 24 | Subdivision (e) (ii) | Reprimand, probation, suspension, |
| 25 | or (i) | revocation, permanent |
| 26 | | revocation, restitution, |
| 27 | | denial, or fine. |

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Subdivision (e) (vi)
or (e) (vii)

Probation, suspension, revocation,
limitation, denial,
restitution, or fine.

Subdivision (f)

Reprimand, denial, limitation,
probation, or fine.

Subdivision (g)

Reprimand or fine.

Subdivision (j)

Suspension or fine.

Subdivision (k), (p),
or (r)

Reprimand, probation, suspension,
revocation, permanent revocation,
or fine.

1 Subdivision (l) Reprimand, denial, or
 2 limitation.
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 4 Subdivision (m), ~~or~~ (o), Denial, revocation, restitution,
 5 OR (U) probation, suspension,
 6 limitation, reprimand, or fine.
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 8 Subdivision (n) Revocation or denial.
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 10 Subdivision (q) Revocation.
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 12 Subdivision (t) Revocation, permanent revocation,
 13 fine, or 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 1969,
 20 1969 PA 306, MCL 24.306, and holds that the final decision or order
 21 is unlawful and is to be set aside, the court shall state on the
 22 record the reasons for the holding and may remand the case to the
 23 disciplinary subcommittee for further consideration.

24 (3) A disciplinary subcommittee may impose a fine in an amount
 25 that does not exceed \$250,000.00 for a violation of section
 26 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
 27 at least \$25,000.00 if the violation of section 16221(a) or (b)

1 results in the death of 1 or more patients.

2 (4) A disciplinary subcommittee may require a licensee or
3 registrant or an applicant for licensure or registration who has
4 violated this article, article 7, or article 8 or a rule
5 promulgated under this article, article 7, or article 8 to
6 satisfactorily complete an educational program, a training program,
7 or a treatment program, a mental, physical, or professional
8 competence examination, or a combination of those programs and
9 examinations.

10 (5) A disciplinary subcommittee shall impose the sanction of
11 permanent revocation for a violation of section 16221(b) (xiii) if
12 the violation occurred while the licensee or registrant was acting
13 within the health profession for which he or she was licensed or
14 registered.

15 (6) Except as otherwise provided in subsection (5), a
16 disciplinary subcommittee shall not impose the sanction of
17 permanent revocation under this section without a finding that the
18 licensee or registrant engaged in a pattern of intentional acts of
19 fraud or deceit resulting in personal financial gain to the
20 licensee or registrant and harm to the health of patients under the
21 licensee's or registrant's care.

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

24 Enacting section 2. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. ____ (request no.
26 01031'15 ***) of the 98th Legislature is enacted into law.