

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 270

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7303a, 16221, and 16226 (MCL 333.7303a,
333.16221, and 333.16226), section 7303a as amended by 2016 PA 379,
section 16221 as amended by 2017 PA 75, and section 16226 as
amended by 2017 PA 81, and by adding section 16204e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7303a. (1) A prescriber who holds a controlled substances
2 license may administer or dispense a controlled substance listed in
3 schedules 2 to 5 without a separate controlled substances license
4 for those activities.

5 (2) **EXCEPT AS OTHERWISE PROVIDED IN RULES PROMULGATED UNDER**
6 **SECTION 16204E, BEGINNING MARCH 31, 2018, A LICENSED PRESCRIBER**
7 **SHALL NOT PRESCRIBE A CONTROLLED SUBSTANCE LISTED IN SCHEDULES 2 TO**

1 5 UNLESS THE PRESCRIBER IS IN A BONA FIDE PRESCRIBER-PATIENT
2 RELATIONSHIP WITH THE PATIENT FOR WHOM THE CONTROLLED SUBSTANCE IS
3 BEING PRESCRIBED. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
4 IF A LICENSED PRESCRIBER PRESCRIBES A CONTROLLED SUBSTANCE UNDER
5 THIS SUBSECTION, THE PRESCRIBER SHALL PROVIDE FOLLOW-UP CARE TO THE
6 PATIENT TO MONITOR THE EFFICACY OF THE USE OF THE CONTROLLED
7 SUBSTANCE AS A TREATMENT OF THE PATIENT'S MEDICAL CONDITION. IF THE
8 LICENSED PRESCRIBER IS UNABLE TO PROVIDE FOLLOW-UP CARE, HE OR SHE
9 SHALL REFER THE PATIENT TO THE PATIENT'S PRIMARY CARE PROVIDER FOR
10 FOLLOW-UP CARE OR, IF THE PATIENT DOES NOT HAVE A PRIMARY CARE
11 PROVIDER, HE OR SHE SHALL REFER THE PATIENT TO ANOTHER LICENSED
12 PRESCRIBER WHO IS GEOGRAPHICALLY ACCESSIBLE TO THE PATIENT FOR
13 FOLLOW-UP CARE.

14 (3) ~~(2)~~—Before prescribing or dispensing a controlled
15 substance to a patient, a licensed prescriber shall ask the patient
16 about other controlled substances the patient may be using. The
17 prescriber shall record the patient's response in the patient's
18 medical or clinical record.

19 (4) ~~(3)~~—A licensed prescriber who dispenses controlled
20 substances shall maintain all of the following records separately
21 from other prescription records:

22 (a) All invoices and other acquisition records for each
23 controlled substance acquired by the prescriber for not less than 5
24 years after the date the prescriber acquires the controlled
25 substance.

26 (b) A log of all controlled substances dispensed by the
27 prescriber for not less than 5 years after the date the controlled

1 substance is dispensed.

2 (c) Records of all other dispositions of controlled substances
3 under the licensee's control for not less than 5 years after the
4 date of the disposition.

5 **(5)** ~~(4)~~—The requirement under section 7303 for a license is
6 waived in the following circumstances:

7 (a) When a controlled substance listed in schedules 2 to 5 is
8 administered on the order of a licensed prescriber by an individual
9 who is licensed under article 15 as a practical nurse or a
10 registered professional nurse.

11 (b) When methadone or a methadone congener is dispensed on the
12 order of a licensed prescriber in a methadone treatment program
13 licensed under article 6 or when a controlled substance listed in
14 schedules 2 to 5 is dispensed on the order of a licensed prescriber
15 in a hospice rendering emergency care services in a patient's home
16 as described in section 17746 by a registered professional nurse
17 licensed under article 15.

18 **(6) AS USED IN THIS SECTION:**

19 **(A) "BONA FIDE PRESCRIBER-PATIENT RELATIONSHIP" MEANS A**
20 **TREATMENT OR COUNSELING RELATIONSHIP BETWEEN A PRESCRIBER AND A**
21 **PATIENT IN WHICH BOTH OF THE FOLLOWING ARE PRESENT:**

22 **(i) THE PRESCRIBER HAS REVIEWED THE PATIENT'S RELEVANT MEDICAL**
23 **OR CLINICAL RECORDS AND COMPLETED A FULL ASSESSMENT OF THE**
24 **PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING**
25 **A RELEVANT MEDICAL EVALUATION OF THE PATIENT CONDUCTED IN PERSON OR**
26 **VIA TELEHEALTH.**

27 **(ii) THE PRESCRIBER HAS CREATED AND MAINTAINED RECORDS OF THE**

1 PATIENT'S CONDITION IN ACCORDANCE WITH MEDICALLY ACCEPTED
2 STANDARDS.

3 (B) "TELEHEALTH" MEANS THAT TERM AS DEFINED IN SECTION 16283.

4 SEC. 16204E. NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF
5 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT IN
6 CONSULTATION WITH THE MICHIGAN BOARD OF MEDICINE, THE MICHIGAN
7 BOARD OF OSTEOPATHIC MEDICINE AND SURGERY, THE MICHIGAN BOARD OF
8 DENTISTRY, THE MICHIGAN BOARD OF PODIATRIC MEDICINE AND SURGERY,
9 THE MICHIGAN BOARD OF OPTOMETRY, THE MICHIGAN TASK FORCE ON
10 PHYSICIAN'S ASSISTANTS, AND THE MICHIGAN BOARD OF NURSING MAY
11 PROMULGATE RULES DESCRIBING THE CIRCUMSTANCES UNDER WHICH A BONA
12 FIDE PRESCRIBER-PATIENT RELATIONSHIP IS NOT REQUIRED FOR PURPOSES
13 OF PRESCRIBING A SCHEDULE 2 TO 5 CONTROLLED SUBSTANCE UNDER SECTION
14 7303A(2). THE RULES MAY INCLUDE AN ALTERNATIVE REQUIREMENT FOR
15 PRESCRIBING A SCHEDULE 2 TO 5 CONTROLLED SUBSTANCE WHEN A BONA FIDE
16 PRESCRIBER-PATIENT RELATIONSHIP IS NOT REQUIRED BY THE RULES
17 PROMULGATED UNDER THIS SECTION.

18 Sec. 16221. The department shall investigate any allegation
19 that 1 or more of the grounds for disciplinary subcommittee action
20 under this section exist, and may investigate activities related to
21 the practice of a health profession by a licensee, a registrant, or
22 an applicant for licensure or registration. The department may hold
23 hearings, administer oaths, and order the taking of relevant
24 testimony. After its investigation, the department shall provide a
25 copy of the administrative complaint to the appropriate
26 disciplinary subcommittee. The disciplinary subcommittee shall
27 proceed under section 16226 if it finds that 1 or more of the

1 following grounds exist:

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

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

11 (i) Incompetence.

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

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

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

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

26 (vi) Lack of good moral character.

27 (vii) Conviction of a criminal offense under section 520e or

1 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
2 750.520g. A certified copy of the court record is conclusive
3 evidence of the conviction.

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

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

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

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

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

25 (xiii) Conviction of a criminal offense under section 83, 84,
26 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
27 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,

1 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the
2 court record is conclusive evidence of the conviction.

3 (xiv) Conviction of a violation of section 136 or 136a of the
4 Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A
5 certified copy of the court record is conclusive evidence of the
6 conviction.

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

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

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

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

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

18 (d) Except as otherwise specifically provided in this section,
19 unethical business practices, consisting of 1 or more of the
20 following:

21 (i) False or misleading advertising.

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

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

27 (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 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 or a registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest.

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

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

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

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

1 treatment, or comfort.

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

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

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

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

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

14 (j) Failure to pay an installment of an assessment levied
15 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
16 500.8302, within 60 days after notice by the appropriate board.

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

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

20 (m) A violation of section 17015, 17015a, 17017, 17515, or
21 17517.

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

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

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

25 (q) A violation of section 16274.

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

27 (s) A violation of the medical records access act, 2004 PA 47,

1 MCL 333.26261 to 333.26271.

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

3 (u) Failure to comply with the terms of a practice agreement
4 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
5 18047(2)(a) or (b).

6 **(V) A VIOLATION OF SECTION 7303A(2).**

7 Sec. 16226. (1) After finding the existence of 1 or more of
8 the grounds for disciplinary subcommittee action listed in section
9 16221, a disciplinary subcommittee shall impose 1 or more of the
10 following sanctions for each violation:

11	Violations of Section 16221	Sanctions
12	Subdivision (a), (b) (i),	Probation, limitation, denial,
13	(b) (ii), (b) (iii), (b) (iv),	suspension, revocation,
14	(b) (v), (b) (vi), (b) (vii),	permanent revocation,
15	(b) (ix), (b) (x), (b) (xi),	restitution, or fine.
16	or (b) (xii)	
17		
18	Subdivision (b) (viii)	Revocation, permanent revocation,
19		or denial.
20		
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.
27		

1	Subdivision (b) (xiv)	Permanent revocation.
2		
3	Subdivision (c) (i)	Denial, revocation, suspension,
4		probation, limitation, or fine.
5		
6	Subdivision (c) (ii)	Denial, suspension, revocation,
7		restitution, or fine.
8		
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,

1		denial, or fine.
2		
3	Subdivision (e) (vi)	Probation, suspension, revocation,
4	or (e) (vii)	limitation, denial,
5		restitution, or fine.
6		
7	Subdivision (f)	Reprimand, denial, limitation,
8		probation, or fine.
9		
10	Subdivision (g)	Reprimand or fine.
11		
12	Subdivision (j)	Suspension or fine.
13		
14	Subdivision (k), (p),	Reprimand, probation, suspension,
15	or (r)	revocation, permanent revocation,
16		or fine.
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		

1 Subdivision (q) Revocation.
 2
 3 Subdivision (t) Revocation, permanent revocation,
 4 fine, or restitution.
 5
 6 Subdivision (u) Denial, revocation, probation,
 7 suspension, limitation, reprimand,
 8 or fine.
 9
 10 **SUBDIVISION (V) PROBATION, LIMITATION, DENIAL,**
 11 **FINE, SUSPENSION, REVOCATION, OR**
 12 **PERMANENT REVOCATION.**

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

23 (3) A disciplinary subcommittee may impose a fine in an amount
 24 that does not exceed \$250,000.00 for a violation of section
 25 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
 26 at least \$25,000.00 if the violation of section 16221(a) or (b)
 27 results in the death of 1 or more patients.

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

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

14 (6) Except as otherwise provided in subsection (5) and this
15 subsection, a disciplinary subcommittee shall not impose the
16 sanction of permanent revocation under this section without a
17 finding that the licensee or registrant engaged in a pattern of
18 intentional acts of fraud or deceit resulting in personal financial
19 gain to the licensee or registrant and harm to the health of
20 patients under the licensee's or registrant's care. This subsection
21 does not apply if a disciplinary subcommittee finds that a licensee
22 or registrant has violated section 16221(b) (xiv) .