

**SUBSTITUTE FOR
SENATE BILL NO. 167**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226),
as amended by 2016 PA 379.

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

disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

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

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

(i) Incompetence.

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

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

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

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or 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.

1 (vi) Lack of good moral character.

2 (vii) Conviction of a criminal offense under section 520e or
3 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
4 750.520g. A certified copy of the court record is conclusive
5 evidence of the conviction.

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

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

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

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

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

27 (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.

(xiv) CONVICTION OF A VIOLATION OF SECTION 136 OR 136A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136 AND 750.136A. 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

1 third party reimbursement.

2 (e) Except as otherwise specifically provided in this section,
3 unprofessional conduct, consisting of 1 or more of the following:

4 (i) Misrepresentation to a consumer or patient or in obtaining
5 or attempting to obtain third party reimbursement in the course of
6 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 or a
12 registrant that an individual purchase or secure a drug, device,
13 treatment, procedure, or service from another person, place,
14 facility, or business in which the licensee or registrant has a
15 financial interest.

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

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

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

23 (vi) Any conduct by a health professional with a patient while
24 he or she is acting within the health profession for which he or
25 she is licensed or registered, including conduct initiated by a
26 patient or to which the patient consents, that is sexual or may
27 reasonably be interpreted as sexual, including, but not limited to,

1 sexual intercourse, kissing in a sexual manner, or touching of a
2 body part for any purpose other than appropriate examination,
3 treatment, or comfort.

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

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

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

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

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

16 (j) Failure to pay an installment of an assessment levied
17 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
18 500.8302, within 60 days after notice by the appropriate board.

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

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

22 (m) A violation of section 17015, 17015a, 17017, 17515, or
23 17517.

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

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

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

27 (q) A violation of section 16274.

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

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

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

5 (u) Failure to comply with the terms of a practice agreement
6 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
7 18047(2)(a) or (b).

8 **(V) A VIOLATION OF SECTION 7303A(3).**

9 Sec. 16226. (1) After finding the existence of 1 or more of
10 the grounds for disciplinary subcommittee action listed in section
11 16221, a disciplinary subcommittee shall impose 1 or more of the
12 following sanctions for each violation:

13 <u>Violations of Section 16221</u>	<u>Sanctions</u>
14 Subdivision (a), (b) (i),	Probation, limitation, denial,
15 (b) (ii), (b) (iii), (b) (iv),	suspension, revocation,
16 (b) (v), (b) (vi), (b) (vii),	permanent revocation,
17 (b) (ix), (b) (x), (b) (xi),	restitution, or fine.
18 or (b) (xii)	
19	
20 Subdivision (b) (viii)	Revocation, permanent revocation,
21	or denial.
22	
23 Subdivision (b) (xiii)	Permanent revocation
24	for a violation described in
25	subsection (5) , (6) ; otherwise,
26	probation, limitation, denial,
27	suspension, revocation,

1		restitution, or fine.
2		
3	SUBDIVISION (B) (xiv)	PERMANENT REVOCATION.
4		
5	Subdivision (c) (i)	Denial, revocation, suspension,
6		probation, limitation, or fine.
7		
8	Subdivision (c) (ii)	Denial, suspension, revocation,
9		restitution, or fine.
10		
11	Subdivision (c) (iii)	Probation, denial, suspension,
12		revocation, restitution, or fine.
13		
14	Subdivision (c) (iv)	Fine, probation, denial,
15	or (d) (iii)	suspension, revocation, permanent
16		revocation, or restitution.
17		
18	Subdivision (d) (i)	Reprimand, fine, probation,
19	or (d) (ii)	denial, or restitution.
20		
21	Subdivision (e) (i) ,	Reprimand, fine, probation,
22	(e) (iii) , (e) (iv) , (e) (v) ,	limitation, suspension,
23	(h) , or (s)	revocation, permanent revocation,
24		denial, or restitution.
25		
26	Subdivision (e) (ii)	Reprimand, probation, suspension,
27	or (i)	revocation, permanent

1		revocation, restitution,
2		denial, or fine.
3		
4	Subdivision (e) (vi)	Probation, suspension, revocation,
5	or (e) (vii)	limitation, denial,
6		restitution, or fine.
7		
8	Subdivision (f)	Reprimand, denial, limitation,
9		probation, or fine.
10		
11	Subdivision (g)	Reprimand or fine.
12		
13	Subdivision (j)	Suspension or fine.
14		
15	Subdivision (k), (p),	Reprimand, probation, suspension,
16	or (r)	revocation, permanent revocation,
17		or fine.
18		
19	Subdivision (l)	Reprimand, denial, or
20		limitation.
21		
22	Subdivision (m) or (o)	Denial, revocation, restitution,
23		probation, suspension,
24		limitation, reprimand, or fine.
25		
26	Subdivision (n)	Revocation or denial.
27		

1 Subdivision (q) Revocation.

2

3 Subdivision (t) Revocation, permanent revocation,
4 fine, or restitution.

5 Subdivision (u) Denial, revocation, probation,
6 suspension, limitation, reprimand,
7 or fine.

8

9 **SUBDIVISION (V) SUBJECT TO SUBSECTION (5),**
10 **DENIAL, FINE, REPRIMAND,**
11 **PROBATION, LIMITATION,**
12 **SUSPENSION, REVOCATION, OR**
13 **PERMANENT REVOCATION.**

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 THAT FINDS THAT A LICENSEE, A
11 REGISTRANT, OR AN APPLICANT FOR LICENSURE OR REGISTRATION HAS
12 VIOLATED SECTION 16221(V) SHALL, FOR A FIRST VIOLATION OF THAT
13 SECTION, ORDER THE LICENSEE, REGISTRANT, OR APPLICANT TO COMPLETE A
14 PROGRAM OF REMEDIAL CONTINUING EDUCATION APPROVED BY THE
15 APPROPRIATE BOARD THAT IS FOCUSED ON PRESCRIPTION DRUG AND OPIOID
16 ADDICTION, TO BE COMPLETED WITHIN 180 DAYS AFTER THE DEPARTMENT
17 SERVES ON HIM OR HER ITS ORDER UNDER THIS SUBSECTION. THE FAILURE
18 TO TIMELY COMPLETE A PROGRAM OF REMEDIAL CONTINUING EDUCATION
19 ORDERED UNDER THIS SUBSECTION IS A SEPARATE VIOLATION OF THIS
20 ARTICLE FOR PURPOSES OF SECTION 16221(H). FOR A SECOND OR
21 SUBSEQUENT VIOLATION OF SECTION 16221(V), THE DISCIPLINARY
22 SUBCOMMITTEE SHALL IMPOSE 1 OR MORE OF THE SANCTIONS DESCRIBED IN
23 SUBSECTION (1) FOR A VIOLATION OF SECTION 16221(V). HOWEVER, THE
24 DISCIPLINARY SUBCOMMITTEE SHALL NOT IMPOSE THE SANCTION OF
25 SUSPENSION, REVOCATION, OR PERMANENT REVOCATION FOR A VIOLATION OF
26 SECTION 16221(V) WITHOUT A FINDING THAT THE LICENSEE, REGISTRANT,
27 OR APPLICANT WILLFULLY DISREGARDED HIS OR HER DUTY TO OBTAIN AND

1 REVIEW A REPORT FROM THE ELECTRONIC SYSTEM FOR MONITORING SCHEDULE
2 2, 3, 4, OR 5 CONTROLLED SUBSTANCES UNDER SECTION 7303A, OR A
3 FINDING THAT THE LICENSEE, REGISTRANT, OR APPLICANT ENGAGED IN A
4 PATTERN OF INTENTIONAL ACTS OF FRAUD OR DECEIT RESULTING IN
5 PERSONAL FINANCIAL GAIN TO THE LICENSEE, REGISTRANT, OR APPLICANT.

6 (6) ~~(5)~~—A disciplinary subcommittee shall impose the sanction
7 of permanent revocation for a violation of section 16221(b) (xiii)
8 if the violation occurred while the licensee or registrant was
9 acting within the health profession for which he or she was
10 licensed or registered.

11 (7) ~~(6)~~—Except as otherwise provided in ~~subsection (5),~~
12 **SUBSECTIONS (5) AND (6) AND THIS SUBSECTION**, a disciplinary
13 subcommittee shall not impose the sanction of permanent revocation
14 under this section without a finding that the licensee or
15 registrant engaged in a pattern of intentional acts of fraud or
16 deceit resulting in personal financial gain to the licensee or
17 registrant and harm to the health of patients under the licensee's
18 or registrant's care. **THIS SUBSECTION DOES NOT APPLY IF A**
19 **DISCIPLINARY SUBCOMMITTEE FINDS THAT A LICENSEE OR REGISTRANT HAS**
20 **VIOLATED SECTION 16221(B) (xiv) .**

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. 166 of the 99th Legislature is enacted into
23 law.