

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 577

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), sections 16221,
16222, and 16226 as amended by 2013 PA 268 and section 16227 as
amended by 1993 PA 79.

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 activities
4 related to the practice of a health profession by a licensee, a
5 registrant, or an applicant for licensure or registration. The
6 department may hold hearings, administer oaths, and order the
7 taking of relevant testimony. ~~and~~ **AFTER ITS INVESTIGATION, THE**

1 **DEPARTMENT** shall ~~report its findings~~ **PROVIDE A COPY OF THE**
2 **ADMINISTRATIVE COMPLAINT** to the appropriate disciplinary
3 subcommittee. The disciplinary subcommittee shall proceed under
4 section 16226 if it finds that 1 or more of the following grounds
5 exist:

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

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

14 (i) Incompetence.

15 (ii) Subject to sections 16165 to 16170a, substance use
16 disorder as defined in section 100d of the mental health code,
17 1974 PA 258, MCL 330.1100d.

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

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

23 (v) Conviction of a misdemeanor punishable by imprisonment
24 for a maximum term of 2 years; **CONVICTION OF** a misdemeanor
25 involving the illegal delivery, possession, or use of a
26 controlled substance; or ~~a~~ **CONVICTION OF ANY FELONY OTHER THAN A**
27 **FELONY LISTED OR DESCRIBED IN ANOTHER SUBPARAGRAPH OF THIS**

1 **SUBDIVISION.** A certified copy of the court record is conclusive
2 evidence of the conviction.

3 (vi) Lack of good moral character.

4 (vii) Conviction of a criminal offense under section 520e or
5 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
6 750.520g. A certified copy of the court record is conclusive
7 evidence of the conviction.

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

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

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

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

26 (xii) Conviction of a violation of section 430 of the
27 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy

1 of the court record is conclusive evidence of the conviction.

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

6 (c) Prohibited acts, consisting of 1 or more of the
7 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
14 possess a controlled substance as defined in section 7104 or a
15 drug as defined in section 7105 without lawful authority; or
16 selling, prescribing, giving away, or administering drugs for
17 other than lawful diagnostic or therapeutic purposes.

18 (d) Unethical business practices, consisting of 1 or more of
19 the following:

20 (i) False or misleading advertising.

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

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

26 (e) Unprofessional conduct, consisting of 1 or more of the
27 following:

1 (i) Misrepresentation to a consumer or patient or in
2 obtaining or attempting to obtain third party reimbursement in
3 the course of professional practice.

4 (ii) Betrayal of a professional confidence.

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

7 (iv) Either of the following:

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

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

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

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

22 **(vi) ANY CONDUCT BY A HEALTH PROFESSIONAL WITH A PATIENT**
23 **WHILE HE OR SHE IS ACTING WITHIN THE HEALTH PROFESSION FOR WHICH**
24 **HE OR SHE IS LICENSED OR REGISTERED, INCLUDING CONDUCT INITIATED**
25 **BY A PATIENT OR TO WHICH THE PATIENT CONSENTS, THAT IS SEXUAL OR**
26 **MAY REASONABLY BE INTERPRETED AS SEXUAL, INCLUDING, BUT NOT**
27 **LIMITED TO, SEXUAL INTERCOURSE, KISSING IN A SEXUAL MANNER, OR**

1 TOUCHING OF A BODY PART FOR ANY PURPOSE OTHER THAN APPROPRIATE
2 EXAMINATION, TREATMENT, OR COMFORT.

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

5 (f) ~~Beginning June 3, 2003, the department of consumer and~~
6 ~~industry services shall prepare the first of 3 annual reports on~~
7 ~~the effect of 2002 PA 402 on access to care for the uninsured and~~
8 ~~Medicaid patients. The department shall report on the number of~~
9 ~~referrals by licensees of uninsured and Medicaid patients to~~
10 ~~purchase or secure a drug, device, treatment, procedure, or~~
11 ~~service from another person, place, facility, or business in~~
12 ~~which the licensee has a financial interest.~~ **FAILURE TO NOTIFY**
13 **UNDER SECTION 16222(3) OR (4).**

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

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

18 (i) Failure to comply with a subpoena issued pursuant to
19 this part, failure to respond to a complaint issued under this
20 article, article 7, or article 8, failure to appear at a
21 compliance conference or an administrative hearing, or failure to
22 report under section ~~16222~~ **16222(1)** or 16223.

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

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

27 (l) Failure to meet 1 or more of the requirements for

1 licensure or registration under section 16174.

2 (m) A violation of section 17015, 17015a, 17017, 17515, or
3 17517.

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

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

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

7 (q) A violation of section 16274.

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

9 (s) A violation of the medical records access act, 2004 PA
10 47, MCL 333.26261 to 333.26271.

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

12 Sec. 16222. (1) A licensee or registrant who has knowledge
13 that another licensee or registrant has committed a violation
14 under section 16221, article 7, or article 8 or a rule
15 promulgated under article 7 or article 8 shall report the conduct
16 and the name of the subject of the report to the department.
17 Information obtained by the department under this subsection is
18 confidential and is subject to sections 16238 and 16244. Failure
19 of a licensee or registrant to make a report under this
20 subsection does not give rise to a civil cause of action for
21 damages against the licensee or registrant, but the licensee or
22 registrant is subject to administrative action under sections
23 16221 and 16226. This subsection does not apply to a licensee or
24 registrant who obtains the knowledge of a violation while
25 providing professional services to the licensee or registrant to
26 whom the knowledge applies, who is serving on a duly constituted
27 ethics or peer review committee of a professional association, or

1 who is serving on a committee assigned a professional review
2 function in a health facility or agency.

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

10 (3) A licensee or registrant shall notify the department of
11 ~~a~~**ANY criminal conviction or a WITHIN 30 DAYS AFTER THE DATE OF**
12 **THE CONVICTION. FAILURE OF A LICENSEE OR REGISTRANT TO NOTIFY THE**
13 **DEPARTMENT UNDER THIS SUBSECTION SHALL RESULT IN ADMINISTRATIVE**
14 **ACTION UNDER SECTIONS 16221 AND 16226.**

15 (4) **A LICENSEE OR REGISTRANT SHALL NOTIFY THE DEPARTMENT OF**
16 **ANY** disciplinary licensing or registration action taken by
17 another state against the licensee or registrant within 30 days
18 after the date of the ~~conviction or~~ action. This subsection
19 includes, but is not limited to, a disciplinary action that is
20 stayed pending appeal. **FAILURE OF A LICENSEE OR REGISTRANT TO**
21 **NOTIFY THE DEPARTMENT UNDER THIS SUBSECTION SHALL RESULT IN**
22 **ADMINISTRATIVE ACTION UNDER SECTIONS 16221 AND 16226.**

23 Sec. 16226. (1) After finding the existence of 1 or more of
24 the grounds for disciplinary subcommittee action listed in
25 section 16221, a disciplinary subcommittee shall impose 1 or more
26 of the following sanctions for each violation:

| <u>1</u> <u>Violations of Section 16221</u> | <u>Sanctions</u> |
|---|---|
| 2 Subdivision (a), (b) (ii), | Probation, limitation, denial, |
| 3 (b) (iv), (b) (vi), or | suspension, revocation, |
| 4 (b) (vii) | restitution, community service, |
| 5 | or fine. |
| 6 | |
| 7 Subdivision (b) (viii) | Revocation or denial. |
| 8 | |
| 9 Subdivision (b) (i), | Limitation, suspension, |
| 10 (b) (iii), (b) (v), | revocation, denial, |
| 11 (b) (ix), (b) (x), | probation, restitution, |
| 12 (b) (xi), or (b) (xii) | community service, or fine. |
| 13 | |
| 14 Subdivision (b) (xiii) | Probation, PERMANENT REVOCATION |
| 15 | FOR A VIOLATION DESCRIBED IN |
| 16 | SUBSECTION (5); OTHERWISE, |
| 17 | PROBATION, limitation, denial, |
| 18 | suspension, revocation, OR |
| 19 | restitution. , community service, |
| 20 | fine, or, subject to subsection |
| 21 | (5), permanent revocation. A |
| 22 | FINE MAY ALSO BE ASSESSED. |
| 23 | |
| 24 Subdivision (c) (i) | Denial, revocation, suspension, |
| 25 | probation, limitation, community |
| 26 | service, or fine. |
| 27 | |
| 28 Subdivision (c) (ii) | Denial, suspension, revocation, |
| 29 | restitution, community service, |

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Subdivision (c) (iii)

Subdivision (c) (iv)
or (d) (iii)

Subdivision (d) (i)
or (d) (ii)

Subdivision (e) (i)

Subdivision (e) (ii)
or ~~(i)~~ (I)

Subdivision (e) (iii),
(e) (iv), or (e) (v)

SUBDIVISION (E) (vi) OR

or fine.

Probation, denial, suspension,
revocation, restitution,
~~community service,~~ or fine.

Fine, probation, denial,
suspension, revocation, ~~community~~
~~service,~~ or restitution.

Reprimand, fine, probation,
~~community service,~~ denial,
or restitution.

Reprimand, fine, probation,
limitation, suspension, ~~community~~
~~service,~~ denial, or restitution.

Reprimand, probation,
suspension, restitution,
~~community service,~~ denial, or
fine.

Reprimand, fine, probation,
suspension, revocation,
limitation, ~~community service,~~
denial, or restitution.

PROBATION, SUSPENSION, REVOCATION,

1 (E) (vii) LIMITATION, DENIAL, OR RESTITUTION.
2 A FINE MAY ALSO BE ASSESSED.
3
4 SUBDIVISION (F) REPRIMAND, DENIAL, LIMITATION,
5 PROBATION, OR FINE.
6
7 Subdivision (g) Reprimand or fine.
8
9 Subdivision (h) or (s) Reprimand, probation, denial,
10 suspension, revocation,
11 limitation, restitution,
12 ~~community service,~~ or fine.
13
14 Subdivision (j) Suspension or fine.
15
16 Subdivision (k), (p), Reprimand or fine.
17 or (r)
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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.
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28 Subdivision (q) Revocation.
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1 Subdivision (t) Revocation, fine, and
2 restitution.

3 (2) Determination of sanctions for violations under this
4 section shall be made by a disciplinary subcommittee. If, during
5 judicial review, the court of appeals determines that a final
6 decision or order of a disciplinary subcommittee prejudices
7 substantial rights of the petitioner for 1 or more of the grounds
8 listed in section 106 of the administrative procedures act of
9 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
10 or order is unlawful and is to be set aside, the court shall
11 state on the record the reasons for the holding and may remand
12 the case to the disciplinary subcommittee for further
13 consideration.

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

20 (4) A disciplinary subcommittee may require a licensee or
21 registrant or an applicant for licensure or registration who has
22 violated this article, article 7, or article 8 or a rule
23 promulgated under this article, article 7, or article 8 to
24 satisfactorily complete an educational program, a training
25 program, or a treatment program, a mental, physical, or
26 professional competence examination, or a combination of those

1 programs and examinations.

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

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

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

15 Enacting section 1. This amendatory act takes effect July 1,
16 2014.