

**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), 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
5 licensee, a registrant, or an applicant for licensure or
6 registration. ~~The~~ **AS PART OF THE INVESTIGATION, THE** department

1 may hold hearings, administer oaths, and order the taking of
2 relevant testimony. ~~and~~ **AFTER ITS INVESTIGATION, THE DEPARTMENT**
3 shall report its findings to the appropriate disciplinary
4 subcommittee. The disciplinary subcommittee shall proceed under
5 section 16226 if it finds that 1 or more of the following grounds
6 exist:

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

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

15 (i) Incompetence.

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

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

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

24 (v) Conviction of a misdemeanor punishable by imprisonment
25 for a maximum term of 2 years; **CONVICTION OF** a misdemeanor
26 involving the illegal delivery, possession, or use of a
27 controlled substance; or ~~a~~ **CONVICTION OF ANY** felony **OTHER THAN A**

1 **FELONY LISTED OR DESCRIBED IN ANOTHER SUBPARAGRAPH OF THIS**
2 **SUBDIVISION.** A certified copy of the court record is conclusive
3 evidence of the conviction.

4 (vi) Lack of good moral character.

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

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

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

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

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

27 (xii) Conviction of a violation of section 430 of the

1 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
2 of the court record is conclusive evidence of the conviction.

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

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

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

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

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

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

19 (d) Unethical business practices, consisting of 1 or more of
20 the 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) Unprofessional conduct, consisting of 1 or more of the

1 following:

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

5 (ii) Betrayal of a professional confidence.

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

8 (iv) Either of the following:

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

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

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

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

23 **(vi) ANY CONDUCT BY A HEALTH PROFESSIONAL WITH A PATIENT**
24 **WHILE HE OR SHE IS ACTING WITHIN THE HEALTH PROFESSION FOR WHICH**
25 **HE OR SHE IS LICENSED OR REGISTERED, INCLUDING CONDUCT INITIATED**
26 **BY A PATIENT OR TO WHICH THE PATIENT CONSENTS, THAT IS SEXUAL IN**
27 **ANY WAY OR MAY REASONABLY BE INTERPRETED AS SEXUAL, INCLUDING,**

1 BUT NOT LIMITED TO, SEXUAL INTERCOURSE, KISSING IN A SEXUAL
2 MANNER, OR TOUCHING OF A BODY PART FOR ANY PURPOSE OTHER THAN
3 APPROPRIATE EXAMINATION, TREATMENT, OR COMFORT.

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

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

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 or article 7, failure to appear at a compliance
21 conference or an administrative hearing, or failure to report
22 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 **(U) FAILURE TO NOTIFY UNDER SECTION 16222(3) OR (4).**

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

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

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

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

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

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

<u>Violations of Section 16221</u>	<u>Sanctions</u>
1 Subdivision (a), (b) (ii),	Probation, limitation, denial,
2 (b) (iv), (b) (vi), or	suspension, revocation,
3 (b) (vii)	restitution, community service,
4	or fine.
5	
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
21	to subsection (5),
22	permanent revocation. AND A FINE
23	MAY BE ASSESSED.
24	
25 Subdivision (c) (i)	Denial, revocation, suspension,
26	probation, limitation, community
27	service, or fine.
28	

1 Subdivision (c) (ii) Denial, suspension, revocation,
2 restitution, community service,
3 or fine.
4

5 Subdivision (c) (iii) Probation, denial, suspension,
6 revocation, restitution,
7 ~~community service~~, or fine.
8

9 Subdivision (c) (iv) Fine, probation, denial,
10 or (d) (iii) suspension, revocation, ~~community~~
11 ~~service~~, or restitution.
12

13 Subdivision (d) (i) Reprimand, fine, probation,
14 or (d) (ii) ~~community service~~, denial,
15 or restitution.
16

17 Subdivision (e) (i) Reprimand, fine, probation,
18 limitation, suspension, ~~community~~
19 ~~service~~, denial, or restitution.
20

21 Subdivision (e) (ii) Reprimand, probation,
22 or (i) suspension, restitution,
23 ~~community service~~, denial, or
24 fine.
25

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

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

1 restitution.

2

3 **SUBDIVISION (U) REPRIMAND, DENIAL, LIMITATION,**
4 **PROBATION, OR FINE.**

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

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

22 (4) A disciplinary subcommittee may require a licensee or
23 registrant or an applicant for licensure or registration who has
24 violated this article or article 7 or a rule promulgated under
25 this article or article 7 to satisfactorily complete an
26 educational program, a training program, or a treatment program,

1 a mental, physical, or professional competence examination, or a
2 combination of those programs and examinations.

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

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

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