

Act No. 15
Public Acts of 1989
Approved by the Governor
May 14, 1989
Filed with the Secretary of State
May 15, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Rep. Berman

ENROLLED HOUSE BILL No. 4018

AN ACT to amend sections 16221, 16226, 17013, and 17513 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," sections 16221 and 16226 as amended by Act No. 178 of the Public Acts of 1987 and sections 17013 and 17513 as added by Act No. 195 of the Public Acts of 1986, being sections 333.16221, 333.16226, 333.17013, and 333.17513 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 16221, 16226, 17013, and 17513 of Act No. 368 of the Public Acts of 1978, sections 16221 and 16226 as amended by Act No. 178 of the Public Acts of 1987 and sections 17013 and 17513 as added by Act No. 195 of the Public Acts of 1986, being sections 333.16221, 333.16226, 333.17013, and 333.17513 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate board or appropriate task force. The board shall proceed under section 16226 if the board finds that any of the following grounds exist:

(a) 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 which impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of any of the following:

(i) Incompetence.

- (ii) Substance abuse as defined in section 6107.
- (iii) Mental or physical inability reasonably related to and adversely affecting the licensee'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 or felony reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner. A certified copy of the court record shall be conclusive evidence of the conviction.
- (vi) Lack of good moral character.
- (vii) Conviction of a criminal offense under sections 520a to 520l of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520l of the Michigan Compiled Laws. A certified copy of the court record shall be conclusive evidence of the conviction.
- (viii) Conviction of a violation of section 492a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.492a of the Michigan Compiled Laws. A certified copy of the court record shall be 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 shall be conclusive evidence of the conviction.
- (c) Prohibited acts, consisting of any of the following:
 - (i) Fraud or deceit in obtaining or renewing a license.
 - (ii) Permitting the license 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) Unethical business practices, consisting of any 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) Unprofessional conduct, consisting of any 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) Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.
- (f) Failure to report a change of name or address within 30 days after the change occurs.
- (g) A violation, or aiding or abetting in a violation, of this article or of rules promulgated under this article.
- (h) Failure to comply with a subpoena issued pursuant to this part.
- (i) Failure to pay an installment of an assessment levied pursuant to section 2504 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being section 500.2504 of the Michigan Compiled Laws, within 60 days after notice by the appropriate board.
- (j) A violation of section 17013 or 17513.

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

<u>Violations of Section 16221</u>	<u>Sanctions</u>
Subdivision (a), (b)(ii), (b)(iv), (b)(v), or (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, or fine.
Subdivision (b)(iii)	Revocation.
Subdivision (b)(i), (b)(iii), (b)(v), or (b)(ix)	Limitation, suspension, revocation, denial, probation, restitution, or fine.
Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, or fine.

Subdivision (c)(<i>ii</i>)	Denial, suspension, revocation, restitution, or fine.
Subdivision (c)(<i>iii</i>)	Probation, denial, suspension, revocation, restitution, or fine.
Subdivision (c)(<i>iv</i>) or (d)(<i>iii</i>)	Fine, probation, denial, suspension, revocation, or restitution.
Subdivision (d)(<i>i</i>) or (d)(<i>ii</i>)	Reprimand, fine, probation, or restitution.
Subdivision (e)(<i>i</i>)	Reprimand, fine, probation, limitation, suspension, or restitution.
Subdivision (e)(<i>ii</i>) or (h)	Reprimand, probation, suspension, restitution, or fine.
Subdivision (e)(<i>iii</i>) or (e)(<i>iv</i>)	Reprimand, fine, probation, suspension, revocation, limitation, or restitution.
Subdivision (f)	Reprimand or fine.
Subdivision (g)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, or fine.
Subdivision (i)	Suspension or fine.
Subdivision (j)	Reprimand or fine.

(2) Determination of sanctions for violations under section 16226 shall be made by a board. If, during judicial review, a court holds that a sanction is unlawful under section 106 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.306 of the Michigan Compiled Laws, the court shall state on the record the reasons for the holding and may remand the case to the board for further consideration.

(3) A board created under part 170 or 175 may impose a fine of up to, but not exceeding, \$250,000.00 for a violation of section 16221(a) or (b).

Sec. 17013. (1) Beginning November 6, 1986, a physician who is administering the primary treatment for breast cancer to a patient who has been diagnosed as having breast cancer shall inform the patient, orally and in writing, about alternative methods of treatment of the cancer, including surgical, radiological, or chemotherapeutic treatments, or any other generally accepted medical treatment. The physician also shall inform the patient about the advantages, disadvantages, and risks of each method of treatment and about the procedures involved in each method of treatment.

(2) If a patient receives a standardized written summary or brochure, as described in this subsection or subsection (3), the physician shall be in full compliance with this section, including both the written and oral requirements. The standardized written summary:

(a) Shall be developed by the department of public health in cooperation with the chronic disease advisory committee.

(b) Shall be drafted in nontechnical terms that the patient can understand.

(c) Shall inform the patient about alternative methods of treatment of breast cancer, including surgical, radiological, or chemotherapeutic treatments, or any other generally accepted medical treatment.

(d) Shall inform the patient about the advantages, disadvantages, and risks of each method of treatment and about the procedures involved in each method of treatment.

(e) The standardized written summary or a brochure described in subsection (3), or both, shall be made available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing all physicians subject to this section of the requirements of this section and the availability of the standardized written summary by October 16, 1986.

(3) For purposes of subsection (2), a physician may use a brochure which contains information substantially similar to that contained in the standardized written summary developed by the department of public health and which is approved by the department of public health.

(4) The department of public health, after consultation with appropriate professional organizations, shall develop the standardized written summary required by subsection (2) by October 6, 1986.

(5) A form, signed by the patient, indicating that the patient has been given a copy of the brochure or the standardized written summary shall be included in the patient's medical record.

(6) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed under this article would know.

(7) A patient who signs a form pursuant to subsection (5) shall be barred from subsequently bringing a civil action against the physician providing the summary or brochure described in subsection (2) and (3) based on failure to obtain informed consent, but only in regard to information pertaining to alternative forms of treatment of breast cancer, and the advantages, disadvantages, and risks of each method.

Sec. 17513. (1) Beginning November 6, 1986, a physician who is administering the primary treatment for breast cancer to a patient who has been diagnosed as having breast cancer shall inform the patient, orally and in writing, about alternative methods of treatment of the cancer, including surgical, radiological, or chemotherapeutic treatments, or any other generally accepted medical treatment. The physician also shall inform the patient about the advantages, disadvantages, and risks of each method of treatment and about the procedures involved in each method of treatment.

(2) If a patient receives a standardized written summary or brochure, as described in section 17013(2) or (3), the physician shall be in full compliance with this section, including both the written and oral requirements.

(3) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed under this article would know.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.