

HOUSE BILL No. 4733

May 1, 1989, Introduced by Reps. Clack, DeMars, Rocca, Stallworth and Leland and referred to the Committee on Public Health.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 178 of the Public Acts of 1987, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 21514 and 21514a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221 and 16226 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 178 of the Public Acts
3 of 1987, being sections 333.16221 and 333.16226 of the Michigan
4 Compiled Laws, are amended and sections 21514 and 21514a are
5 added to read as follows:

6 Sec. 16221. (1) The department may investigate activities
7 related to the practice of a health profession by a licensee, a
8 registrant, or an applicant for licensure or registration. The

1 department may hold hearings, administer oaths, and order
2 relevant testimony to be taken and shall report its findings to
3 the appropriate board or appropriate task force. The board shall
4 proceed under section 16226 if the board finds that any of the
5 following grounds 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 which
10 impairs, or may impair, the ability to safely and skillfully
11 practice the health profession.

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

14 (i) Incompetence.

15 (ii) Substance abuse as defined in section 6107.

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

19 (iv) Declaration of mental incompetence by a court of compe-
20 tent jurisdiction.

21 (v) Conviction of a misdemeanor or felony reasonably related
22 to and adversely affecting the licensee's ability to practice in
23 a safe and competent manner. A certified copy of the court
24 record ~~shall be~~ IS conclusive evidence of the conviction.

25 (vi) Lack of good moral character.

26 (vii) Conviction of a criminal offense under sections 520a
27 to 520l of the Michigan penal code, Act No. 328 of the Public

1 Acts of 1931, being sections 750.520a to 750.520l of the Michigan
2 Compiled Laws. A certified copy of the court record ~~shall be~~
3 IS conclusive evidence of the conviction.

4 (viii) Conviction of a violation of section 492a of the
5 Michigan penal code, Act No. 328 of the Public Acts of 1931,
6 being section 750.492a of the Michigan Compiled Laws. A certi-
7 fied copy of the court record ~~shall be~~ IS conclusive evidence
8 of the conviction.

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

13 (c) Prohibited acts, consisting of any of the following:

14 (i) Fraud or deceit in obtaining or renewing a license.

15 (ii) Permitting the license to be used by an unauthorized
16 person.

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

18 (iv) Obtaining, possessing, or attempting to obtain or pos-
19 sess a controlled substance as defined in section 7104 or a drug
20 as defined in section 7105 without lawful authority; or selling,
21 prescribing, giving away, or administering drugs for other than
22 lawful diagnostic or therapeutic purposes.

23 (d) Unethical business practices, consisting of any of the
24 following:

25 (i) False or misleading advertising.

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

4 (iii) Fraud or deceit in obtaining or attempting to obtain
5 third party reimbursement.

6 (e) Unprofessional conduct, consisting of any of the
7 following:

8 (i) Misrepresentation to a consumer or patient or in obtain-
9 ing or attempting to obtain third party reimbursement in the
10 course of professional practice.

11 (ii) Betrayal of a professional confidence.

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

14 (iv) Directing or requiring an individual to purchase or
15 secure a drug, device, treatment, procedure, or service from
16 another person, place, facility, or business in which the
17 licensee has a financial interest.

18 (f) Failure to report a change of name or address within 30
19 days after the change occurs.

20 (g) A violation, or aiding or abetting in a violation, of
21 this article or of rules promulgated under this article.

22 (h) Failure to comply with a subpoena issued pursuant to
23 this part.

24 (i) Failure to pay an installment of an assessment levied
25 pursuant to section 2504 of the insurance code of 1956, Act
26 No. 218 of the Public Acts of 1956, as amended, being section

1 500.2504 of the Michigan Compiled Laws, within 60 days after
2 notice by the appropriate board.

3 (j) A violation of section 17013 or 17513.

4 (K) A VIOLATION OF SECTION 21514.

5 (2) Subsection (1)(j) shall not apply after July 1, 1989.

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

10 Violations of Section 16221

Sanctions

11 Subdivision (a),	Probation, limitation, denial,
12 (b)(ii),	suspension, revocation,
13 (b)(iv),	restitution, or fine.
14 (b)(vi), or	
15 (b)(vii)	
16 Subdivision (b)(viii)	Revocation.
17 Subdivision (b)(i),	Limitation, suspension,
18 (b)(iii),	revocation, denial,
19 (b)(v), or (b)(ix)	probation, restitution, or
20	fine.
21 Subdivision (c)(i)	Denial, revocation, suspension,
22	probation, limitation, or
23	fine.
24 Subdivision (c)(ii)	Denial, suspension, revocation,
25	restitution, or fine.

1	Subdivision (c)(iii)	Probation, denial, suspension,
2		revocation, restitution, or
3		fine.
4	Subdivision (c)(iv)	Fine, probation, denial,
5	or (d)(iii)	suspension, revocation,
6		or restitution.
7	Subdivision (d)(i)	Reprimand, fine, probation,
8	or (d)(ii)	or restitution.
9	Subdivision (e)(i)	Reprimand, fine, probation,
10		limitation, suspension, or
11		restitution.
12	Subdivision (e)(ii)	Reprimand, probation,
13	or (h)	suspension, restitution, or
14		fine.
15	Subdivision (e)(iii)	Reprimand, fine, probation,
16	or (e)(iv)	suspension, revocation, limita-
17		tion, or restitution.
18	Subdivision (f)	Reprimand or fine.
19	Subdivision (g)	Reprimand, probation, denial,
20		suspension, revocation, limita-
21		tion, restitution, or fine.
22	Subdivision (i)	Suspension or fine.
23	Subdivision (j)	Reprimand or fine.
24	SUBDIVISION (K)	REPRIMAND, FINE, PROBATION, LIMI-
25		TATION, SUSPENSION, OR
26		REVOCATION.

1 (2) The sanction for a violation of section 16221(1)(j) set
2 forth in subsection (1) shall not apply after July 1, 1989.

3 (3) Determination of sanctions for violations under THIS
4 section ~~16226~~ shall be made by a board. If, during judicial
5 review, a court holds that a sanction is unlawful under section
6 106 of the administrative procedures act of 1969, being section
7 24.306 of the Michigan Compiled Laws, the court shall state on
8 the record the reasons for the holding and may remand the case to
9 the board for further consideration.

10 (4) A board created under part 170 or 175 may impose a fine
11 of ~~up to, but not exceeding,~~ NOT MORE THAN \$250,000.00 for a
12 violation of section 16221(a) or (b).

13 SEC. 21514. (1) IF AN INDIVIDUAL REQUESTS AN EXAMINATION OR
14 TREATMENT AT A HOSPITAL EMERGENCY DEPARTMENT, A PHYSICIAN OR
15 OTHER QUALIFIED EMERGENCY DEPARTMENT PERSONNEL SHALL DETERMINE
16 WHETHER AN EMERGENCY MEDICAL CONDITION EXISTS OR WHETHER THE
17 INDIVIDUAL IS IN ACTIVE LABOR. IF AN EMERGENCY MEDICAL CONDITION
18 EXISTS OR THE INDIVIDUAL IS IN ACTIVE LABOR, THE PHYSICIAN OR
19 OTHER QUALIFIED EMERGENCY DEPARTMENT PERSONNEL SHALL EITHER PRO-
20 VIDE APPROPRIATE STABILIZING TREATMENT, UNLESS THAT TREATMENT IS
21 REFUSED BY THE INDIVIDUAL, OR TRANSFER THE INDIVIDUAL TO ANOTHER
22 HOSPITAL OR OTHER APPROPRIATE HEALTH FACILITY OR AGENCY IF THE
23 TRANSFER IS MEDICALLY APPROPRIATE. A TRANSFER IS MEDICALLY
24 APPROPRIATE UNDER THIS SECTION IF THE RECEIVING HOSPITAL OR OTHER
25 HEALTH FACILITY OR AGENCY HAS AVAILABLE SPACE, HAS QUALIFIED PER-
26 SONNEL, HAS AGREED TO ACCEPT THE TRANSFER OF THE INDIVIDUAL AND
27 TO PROVIDE MEDICAL TREATMENT, AND IS PROVIDED APPROPRIATE MEDICAL

1 RECORDS OF THE EXAMINATION AND TREATMENT PROVIDED BY THE
2 TRANSFERRING FACILITY, AND IF A PHYSICIAN, OR OTHER QUALIFIED
3 EMERGENCY DEPARTMENT PERSONNEL IF A PHYSICIAN IS NOT AVAILABLE IN
4 THE EMERGENCY DEPARTMENT, CERTIFIES IN WRITING THAT THE BENEFITS
5 OF TRANSFER OUTWEIGH THE INCREASED RISKS TO THE INDIVIDUAL'S MED-
6 ICAL CONDITION FROM THE TRANSFER. A HOSPITAL SHALL NOT DENY
7 APPROPRIATE STABILIZING TREATMENT TO AN INDIVIDUAL WITH AN EMER-
8 GENCY MEDICAL CONDITION OR IN ACTIVE LABOR SOLELY BECAUSE THE
9 INDIVIDUAL IS UNABLE TO PAY FOR THE TREATMENT.

10 (2) FOR THE PURPOSES OF THIS SECTION, A HOSPITAL SHALL NOT
11 DISCRIMINATE AGAINST AN INDIVIDUAL REQUESTING AN EXAMINATION OR
12 TREATMENT ON THE BASIS OF THE INDIVIDUAL'S PHYSICAL CONDITION,
13 ECONOMIC STATUS, SEXUAL PREFERENCE, HEALTH INSURANCE OR HEALTH
14 BENEFITS PROVIDER, OR A BASIS THAT IS PROHIBITED UNDER
15 SECTION 302 OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, ACT NO. 453
16 OF THE PUBLIC ACTS OF 1976, BEING SECTION 37.2302 OF THE MICHIGAN
17 COMPILED LAWS.

18 (3) IN ADDITION TO OTHER SANCTIONS OR PENALTIES PROVIDED IN
19 THIS ARTICLE, A HOSPITAL THAT VIOLATES THIS SECTION IS SUBJECT TO
20 THE SANCTIONS SET FORTH IN SECTION 21514A.

21 (4) A PHYSICIAN WHO VIOLATES THIS SECTION IS SUBJECT TO THE
22 SANCTIONS SET FORTH IN ARTICLE 15.

23 (5) AS USED IN THIS SECTION AND SECTION 21514A, "EMERGENCY
24 DEPARTMENT" INCLUDES A HOSPITAL EMERGENCY DEPARTMENT, HOSPITAL
25 EMERGENCY ROOM, OR HOSPITAL EMERGENCY CENTER.

1 (6) AS USED IN THIS SECTION, "PHYSICIAN" MEANS A PHYSICIAN
2 LICENSED UNDER PART 170 OR AN OSTEOPATHIC PHYSICIAN LICENSED
3 UNDER PART 175.

4 SEC. 21514A. (1) NOT MORE THAN 60 DAYS AFTER THE EFFECTIVE
5 DATE OF THIS SECTION, A HOSPITAL THAT HAS AN EMERGENCY DEPARTMENT
6 SHALL DEVELOP A WRITTEN POLICY CONCERNING THE TEMPORARY CLOSING
7 OF, OR REROUTING OF INDIVIDUALS FROM, ITS EMERGENCY DEPARTMENT.
8 IF THE HOSPITAL IS LOCATED IN A DEPARTMENT-APPROVED MEDICAL CON-
9 TROL AUTHORITY'S SERVICE AREA, THE POLICY SHALL INCLUDE CRITERIA
10 DEVELOPED BY THE MEDICAL CONTROL AUTHORITY. IF THE HOSPITAL IS
11 NOT LOCATED IN A DEPARTMENT-APPROVED MEDICAL AUTHORITY'S SERVICE
12 AREA, THE POLICY SHALL INCLUDE CRITERIA DEVELOPED BY THE
13 DEPARTMENT. THE POLICY SHALL INCLUDE, AT A MINIMUM, ALL OF THE
14 FOLLOWING:

15 (A) A DESCRIPTION OF CIRCUMSTANCES THAT JUSTIFY A TEMPORARY
16 CLOSING OF THE HOSPITAL EMERGENCY DEPARTMENT.

17 (B) A DESCRIPTION OF THE TYPES AND LEVELS OF EMERGENCY CASES
18 THAT WILL BE AFFECTED BY A TEMPORARY CLOSING.

19 (C) IDENTIFICATION OF THE INDIVIDUALS OR GOVERNING BODIES
20 AUTHORIZED TO MAKE A TEMPORARY CLOSURE DECISION.

21 (D) A DESCRIPTION OF THE AVAILABILITY OF ALTERNATE EMERGENCY
22 DEPARTMENTS THAT ARE AVAILABLE TO ACCEPT, AND AGREE TO ACCEPT,
23 THE TYPES AND LEVELS OF EMERGENCY CASES THAT WILL BE AFFECTED BY
24 A TEMPORARY CLOSING.

25 (E) A DESCRIPTION OF HOW A HOSPITAL WILL INFORM AMBULANCE
26 COMPANIES, EMERGENCY MEDICAL SERVICES PROVIDERS, AND OTHERS OF A

1 TEMPORARY CLOSING, INCLUDING SPECIFIC REROUTING AGREEMENTS FOR
2 ALL CASES THAT THE HOSPITAL CANNOT ACCOMMODATE.

3 (2) A HOSPITAL LOCATED IN A DEPARTMENT-APPROVED MEDICAL CON-
4 TROL AUTHORITY'S SERVICE AREA SHALL SUBMIT THE POLICY REQUIRED
5 UNDER SUBSECTION (1) TO THE MEDICAL CONTROL AUTHORITY FOR
6 APPROVAL. A HOSPITAL THAT IS NOT LOCATED IN A
7 DEPARTMENT-APPROVED MEDICAL CONTROL AUTHORITY'S SERVICE AREA
8 SHALL SUBMIT THE POLICY REQUIRED UNDER SUBSECTION (1) TO THE
9 DEPARTMENT FOR APPROVAL. THE MEDICAL CONTROL AUTHORITY OR THE
10 DEPARTMENT MAY WITHHOLD APPROVAL OF THE POLICY IF THE POLICY DOES
11 NOT INCLUDE ALL INFORMATION REQUIRED BY THE MEDICAL CONTROL
12 AUTHORITY OR THE DEPARTMENT.

13 (3) A DEPARTMENT-APPROVED MEDICAL CONTROL AUTHORITY SHALL
14 COORDINATE THE POLICIES OF HOSPITALS IN THE MEDICAL CONTROL
15 AUTHORITY'S SERVICE AREA CONCERNING SPECIFIC REFERRAL
16 ARRANGEMENTS. THE DEPARTMENT SHALL COORDINATE THE POLICIES OF
17 HOSPITALS THAT ARE NOT IN A DEPARTMENT-APPROVED MEDICAL CONTROL
18 AUTHORITY'S SERVICE AREA.

19 (4) IN ADDITION TO OTHER SANCTIONS OR PENALTIES PROVIDED FOR
20 IN THIS ARTICLE, A HOSPITAL THAT VIOLATES THIS SECTION OR
21 SECTION 21514 IS SUBJECT TO THE FOLLOWING SANCTIONS:

22 (A) FOR THE FIRST VIOLATION OF THIS SECTION, A WARNING THAT
23 ANOTHER VIOLATION MAY RESULT IN A COMPLIANCE ORDER PURSUANT TO
24 SECTION 20162(5).

25 (B) FOR A SECOND VIOLATION OF THIS SECTION WITHIN 5 YEARS
26 AFTER THE FIRST VIOLATION, ANOTHER WARNING OR A COMPLIANCE ORDER
27 PURSUANT TO SECTION 20162(5).

1 (C) FOR A THIRD VIOLATION OF THIS SECTION WITHIN 5 YEARS
2 AFTER THE FIRST VIOLATION, A COMPLIANCE ORDER PURSUANT TO SECTION
3 20162(5), OR LIMITATIONS ON, OR SUSPENSION OR REVOCATION OF, THE
4 HOSPITAL'S LICENSE.

5 Section 2. This amendatory act shall take effect upon the
6 expiration of 90 days after the date of its enactment.