

SENATE BILL No. 514

July 12, 1989, Introduced by Senators WELBORN,
DILLINGHAM, CARL, DI NELLO, BINSFELD, CRUCE,
CROPSEY and SHINKLE and referred to the Committee
on Human Resources and Senior Citizens.

A bill to amend sections 16215, 16221, and 16226 of Act
No. 368 of the Public Acts of 1978, entitled as amended
"Public health code,"

sections 16221 and 16226 as amended by Act No. 15 of the Public
Acts of 1989, being sections 333.16215, 333.16221, and 333.16226
of the Michigan Compiled Laws; and to add sections 16217, 17015,
17515, and 20185.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16215, 16221, and 16226 of Act No. 368
2 of the Public Acts of 1978, sections 16221 and 16226 as amended
3 by Act No. 15 of the Public Acts of 1989, being sections
4 333.16215, 333.16221, and 333.16226 of the Michigan Compiled
5 Laws, are amended and sections 16217, 17015, 17515, and 20185 are
6 added to read as follows:

1 Sec. 16215. (1) A licensee who holds a license other than a
2 health profession subfield license may delegate to a licensed or
3 unlicensed individual who is otherwise qualified by education,
4 training, or experience the performance of selected acts, tasks,
5 or functions ~~where~~ IF the acts, tasks, or functions fall within
6 the scope of practice of the licensee's profession, ~~and~~ will be
7 performed under the licensee's supervision, AND MAY LAWFULLY BE
8 PERFORMED BY THE LICENSEE. An act, task, or function shall not
9 be delegated under this section ~~which~~ IF, under standards of
10 acceptable and prevailing practice, THE ACT, TASK, OR FUNCTION
11 requires the level of education, skill, and judgment required of
12 a licensee under this article OR MAY NOT LAWFULLY BE PERFORMED BY
13 A LICENSEE.

14 (2) A board may promulgate rules to further prohibit or oth-
15 erwise restrict delegation of specific acts, tasks, or functions
16 to a licensed or unlicensed individual ~~where~~ IF the board
17 determines that the delegation constitutes or may constitute a
18 danger to the health, safety, or welfare of the patient or
19 public.

20 (3) To promote safe and competent practice, a board may
21 promulgate rules to specify conditions under which, and catego-
22 ries and types of licensed and unlicensed individuals for whom,
23 closer supervision may be required.

24 (4) An individual who performs acts, tasks, or functions
25 delegated pursuant to this section does not violate the part
26 which regulates the scope of practice of that health profession.

1 SEC. 16217. (1) AN INDIVIDUAL LICENSED OR REGISTERED UNDER
2 THIS ARTICLE WHO IS EMPLOYED BY OR UNDER CONTRACT TO THIS STATE
3 OR A POLITICAL SUBDIVISION OF THIS STATE SHALL NOT WITHIN THE
4 COURSE OF THE INDIVIDUAL'S EMPLOYMENT OR CONTRACT PERFORM OR
5 ASSIST IN THE PERFORMANCE OF AN ABORTION THAT IS NOT NECESSARY TO
6 SAVE THE LIFE OF THE MOTHER.

7 (2) AN INDIVIDUAL ALLEGING A VIOLATION OF THIS SECTION MAY
8 BRING AN ACTION FOR INJUNCTIVE RELIEF IN A CIRCUIT COURT OF
9 PROPER VENUE.

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

18 (a) A violation of general duty, consisting of negligence or
19 failure to exercise due care, including negligent delegation to
20 or supervision of employees or other individuals, whether or not
21 injury results, or any conduct, practice, or condition which
22 impairs, or may impair, the ability to safely and skillfully
23 practice the health profession.

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

26 (i) Incompetence.

1 (ii) Substance abuse as defined in section 6.107.

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

5 (iv) Declaration of mental incompetence by a court of compe-
6 tent jurisdiction.

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

11 (vi) Lack of good moral character.

12 (vii) Conviction of a criminal offense under sections 520a
13 to 5204 of the Michigan penal code, Act No. 328 of the Public
14 Acts of 1931, being sections 750.520a to 750.5204 of the Michigan
15 Compiled Laws. A certified copy of the court record ~~shall be~~
16 IS conclusive evidence of the conviction.

17 (viii) Conviction of a violation of section 492a of the
18 Michigan penal code, Act No. 328 of the Public Acts of 1931,
19 being section 750.492a of the Michigan Compiled Laws. A certi-
20 fied copy of the court record ~~shall be~~ IS conclusive evidence
21 of the conviction.

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

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

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

2 (ii) Permitting the license to be used by an unauthorized
3 person.

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

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

10 (d) Unethical business practices, consisting of any of the
11 following:

12 (i) False or misleading advertising.

13 (ii) Dividing fees for referral of patients or accepting
14 kickbacks on medical or surgical services, appliances, or medica-
15 tions purchased by or in behalf of patients.

16 (iii) Fraud or deceit in obtaining or attempting to obtain
17 third party reimbursement.

18 (e) Unprofessional conduct, consisting of any of the
19 following:

20 (i) Misrepresentation to a consumer or patient or in obtain-
21 ing or attempting to obtain third party reimbursement in the
22 course of professional practice.

23 (ii) Betrayal of a professional confidence.

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

26 (iv) Directing or requiring an individual to purchase or
27 secure a drug, device, treatment, procedure, or service from

1 another person, place, facility, or business in which the
2 licensee has a financial interest.

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

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

7 (h) Failure to comply with a subpoena issued pursuant to
8 this part.

9 (i) Failure to pay an installment of an assessment levied
10 pursuant to section 2504 of the insurance code of 1956, Act
11 No. 218 of the Public Acts of 1956, as amended, being section
12 500.2504 of the Michigan Compiled Laws, within 60 days after
13 notice by the appropriate board.

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

15 (K) A VIOLATION OF SECTION 16217, 17015, OR 17515.

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

20 Violations of Section 16221

Sanctions

21 Subdivision (a),	Probation, limitation, denial,
22 (b)(ii),	suspension, revocation,
23 (b)(iv),	restitution, or fine.
24 (b)(vi), or	
25 (b)(vii)	

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

- 1 Subdivision (f) Reprimand or fine.
- 2 Subdivision (g) Reprimand, probation, denial,
- 3 suspension, revocation, limita-
- 4 tion, restitution, or fine.
- 5 Subdivision (i) Suspension or fine.
- 6 Subdivision (j) Reprimand or fine.
- 7 SUBDIVISION (K) REVOCATION

8 (2) Determination of sanctions for violations under section

9 16226 shall be made by a board. If, during judicial review, a

10 court holds that a sanction is unlawful under section 106 of the

11 administrative procedures act of 1969, ~~Act No. 306 of the Public~~

12 ~~Acts of 1969,~~ being section 24.306 of the Michigan Compiled

13 Laws, the court shall state on the record the reasons for the

14 holding and may remand the case to the board for further

15 consideration.

16 (3) A board created under part 170 or 175 may impose a fine

17 of up to, but not exceeding, \$250,000.00 for a violation of

18 section 16221(a) or (b).

19 (4) THE SANCTIONS PRESCRIBED IN THIS SECTION FOR A VIOLATION

20 OF SECTION 16221 ARE IN ADDITION TO ANY OTHER CIVIL REMEDY OR

21 CRIMINAL PENALTY PROVIDED BY LAW.

22 SEC. 17015. (1) BEFORE A PHYSICIAN PERFORMS OR INDUCES AN

23 ABORTION ON A WOMAN WHO THE PHYSICIAN HAS REASON TO BELIEVE IS

24 CARRYING AN UNBORN CHILD OF 20 OR MORE WEEKS GESTATIONAL AGE, THE

25 PHYSICIAN SHALL FIRST DETERMINE IF THE UNBORN CHILD IS VIABLE BY

26 USING AND EXERCISING THAT DEGREE OF CARE, SKILL, AND PROFICIENCY

27 COMMONLY EXERCISED BY THE ORDINARILY SKILLFUL, CAREFUL, AND

1 PRUDENT PHYSICIAN ENGAGED IN SIMILAR PRACTICE IN THE COMMUNITY.
2 UNDER THE SAME OR SIMILAR CONDITIONS. IN MAKING THIS DETERMINA-
3 TION OF VIABILITY, THE PHYSICIAN SHALL PERFORM OR CAUSE TO BE
4 PERFORMED SUCH MEDICAL EXAMINATIONS AND TESTS AS ARE NECESSARY TO
5 MAKE A FINDING OF THE GESTATIONAL AGE, WEIGHT, AND LUNG MATURITY
6 OF THE UNBORN CHILD AND SHALL ENTER THOSE FINDINGS AND DETERMINA-
7 TION OF VIABILITY IN THE MEDICAL RECORD OF THE WOMAN.

8 (2) A PHYSICIAN SHALL NOT PERFORM OR INDUCE AN ABORTION OF
9 AN UNBORN CHILD DETERMINED UNDER SUBSECTION (1) TO BE VIABLE
10 UNLESS ALL OF THE FOLLOWING ARE MET:

11 (A) THE ABORTION IS NECESSARY TO PRESERVE THE LIFE OF THE
12 WOMAN, AND THE PHYSICIAN FIRST CERTIFIES IN WRITING IN THE
13 WOMAN'S MEDICAL RECORD THAT THE ABORTION IS NECESSARY TO PRESERVE
14 THE LIFE OF THE WOMAN. THE PHYSICIAN ALSO SHALL STATE IN THE
15 CERTIFICATION THE MEDICAL INDICATIONS FOR THE ABORTION AND THE
16 PROBABLE HEALTH CONSEQUENCES.

17 (B) THE PHYSICIAN USES THE AVAILABLE METHOD OR TECHNIQUE OF
18 ABORTION THAT IS MOST LIKELY TO PRESERVE THE LIFE AND HEALTH OF
19 THE UNBORN CHILD. IF THAT METHOD OR TECHNIQUE OF ABORTION WOULD
20 PRESENT A GREATER RISK TO THE LIFE OR HEALTH OF THE WOMAN THAN
21 ANOTHER AVAILABLE METHOD OR TECHNIQUE OF ABORTION, THE PHYSICIAN
22 MAY USE THE OTHER METHOD OR TECHNIQUE. THE PHYSICIAN SHALL CER-
23 TIFY IN WRITING IN THE WOMAN'S MEDICAL RECORD THE AVAILABLE
24 METHODS OR TECHNIQUES OF ABORTION CONSIDERED AND THE REASONS FOR
25 CHOOSING THE METHOD OR TECHNIQUE USED.

26 (C) A PHYSICIAN OTHER THAN THE PHYSICIAN PERFORMING OR
27 INDUCING THE ABORTION IS IN ATTENDANCE TO TAKE CONTROL OF AND

1 PROVIDE IMMEDIATE MEDICAL CARE FOR A CHILD BORN AS A RESULT OF
2 THE ABORTION, UNLESS A DELAY IN ENSURING THE ATTENDANCE OF THAT
3 PHYSICIAN WOULD POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF
4 THE WOMAN.

5 (3) DURING THE PERFORMANCE OF AN ABORTION UNDER SUBSECTION
6 (2), THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION SHALL TAKE
7 ALL REASONABLE ACTION IN KEEPING WITH GOOD MEDICAL PRACTICE, AND
8 CONSISTENT WITH THE ABORTION PROCEDURE USED, TO PRESERVE THE LIFE
9 AND HEALTH OF THE VIABLE UNBORN CHILD AS LONG AS THAT ACTION DOES
10 NOT POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF THE WOMAN.
11 SUBSEQUENT TO THE ABORTION, THE PHYSICIAN REQUIRED BY SUBSECTION
12 (2)(C) TO BE IN ATTENDANCE SHALL TAKE ALL REASONABLE ACTION IN
13 KEEPING WITH GOOD MEDICAL PRACTICE, AND CONSISTENT WITH THE ABOR-
14 TION PROCEDURE USED, TO PRESERVE THE LIFE AND HEALTH OF A CHILD
15 BORN AS A RESULT OF THE ABORTION AS LONG AS THAT ACTION DOES NOT
16 POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF THE WOMAN.

17 (4) AS USED IN THIS SECTION:

18 (A) "ABORTION" MEANS THE INTENTIONAL DESTRUCTION OF THE LIFE
19 OF AN UNBORN CHILD IN HIS OR HER MOTHER'S WOMB OR THE INTENTIONAL
20 TERMINATION OF THE PREGNANCY OF A WOMAN WITH AN INTENTION OTHER
21 THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH OR TO REMOVE A
22 DEAD OR DYING UNBORN CHILD.

23 (B) "CONCEPTION" MEANS THE FERTILIZATION OF THE OVUM OF A
24 FEMALE BY A SPERM OF A MALE.

25 (C) "GESTATIONAL AGE" MEANS THE LENGTH OF PREGNANCY AS MEAS-
26 SURED FROM THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

1 (D) "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS FROM
2 THE MOMENT OF CONCEPTION UNTIL BIRTH AND AT EACH STAGE OF ITS
3 BIOLOGICAL DEVELOPMENT, INCLUDING THE HUMAN CONCEPTUS, ZYGOTE,
4 MORULA, BLASTOCYST, EMBRYO, AND FETUS.

5 (E) "VIABLE" MEANS THE STAGE OF FETAL DEVELOPMENT WHEN THE
6 LIFE OF THE UNBORN CHILD MAY BE CONTINUED INDEFINITELY OUTSIDE
7 THE WOMB BY NATURAL OR ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.

8 SEC. 17515. (1) BEFORE A PHYSICIAN PERFORMS OR INDUCES AN
9 ABORTION ON A WOMAN WHO THE PHYSICIAN HAS REASON TO BELIEVE IS
10 CARRYING AN UNBORN CHILD OF 20 OR MORE WEEKS GESTATIONAL AGE, THE
11 PHYSICIAN SHALL FIRST DETERMINE IF THE UNBORN CHILD IS VIABLE BY
12 USING AND EXERCISING THAT DEGREE OF CARE, SKILL, AND PROFICIENCY
13 COMMONLY EXERCISED BY THE ORDINARILY SKILLFUL, CAREFUL, AND PRU-
14 DENT PHYSICIAN ENGAGED IN SIMILAR PRACTICE IN THE COMMUNITY UNDER
15 THE SAME OR SIMILAR CONDITIONS. IN MAKING THIS DETERMINATION OF
16 VIABILITY, THE PHYSICIAN SHALL PERFORM OR CAUSE TO BE PERFORMED
17 SUCH MEDICAL EXAMINATIONS AND TESTS AS ARE NECESSARY TO MAKE A
18 FINDING OF THE GESTATIONAL AGE, WEIGHT, AND LUNG MATURITY OF THE
19 UNBORN CHILD AND SHALL ENTER THOSE FINDINGS AND DETERMINATION OF
20 VIABILITY IN THE MEDICAL RECORD OF THE WOMAN.

21 (2) A PHYSICIAN SHALL NOT PERFORM OR INDUCE AN ABORTION OF
22 AN UNBORN CHILD DETERMINED UNDER SUBSECTION (1) TO BE VIABLE
23 UNLESS ALL OF THE FOLLOWING ARE MET:

24 (A) THE ABORTION IS NECESSARY TO PRESERVE THE LIFE OF THE
25 WOMAN, AND THE PHYSICIAN FIRST CERTIFIES IN WRITING IN THE
26 WOMAN'S MEDICAL RECORD THAT THE ABORTION IS NECESSARY TO PRESERVE
27 THE LIFE OF THE WOMAN. THE PHYSICIAN ALSO SHALL STATE IN THE

1 CERTIFICATION THE MEDICAL INDICATIONS FOR THE ABORTION AND THE
2 PROBABLE HEALTH CONSEQUENCES.

3 (B) THE PHYSICIAN USES THE AVAILABLE METHOD OR TECHNIQUE OF
4 ABORTION THAT IS MOST LIKELY TO PRESERVE THE LIFE AND HEALTH OF
5 THE UNBORN CHILD. IF THAT METHOD OR TECHNIQUE OF ABORTION WOULD
6 PRESENT A GREATER RISK TO THE LIFE OR HEALTH OF THE WOMAN THAN
7 ANOTHER AVAILABLE METHOD OR TECHNIQUE OF ABORTION, THE PHYSICIAN
8 MAY USE THE OTHER METHOD OR TECHNIQUE. THE PHYSICIAN SHALL CER-
9 TIFY IN WRITING IN THE WOMAN'S MEDICAL RECORD THE AVAILABLE
10 METHODS OR TECHNIQUES OF ABORTION CONSIDERED AND THE REASONS FOR
11 CHOOSING THE METHOD OR TECHNIQUE USED.

12 (C) A PHYSICIAN OTHER THAN THE PHYSICIAN PERFORMING OR
13 INDUCING THE ABORTION IS IN ATTENDANCE TO TAKE CONTROL OF AND
14 PROVIDE IMMEDIATE MEDICAL CARE FOR A CHILD BORN AS A RESULT OF
15 THE ABORTION, UNLESS A DELAY IN ENSURING THE ATTENDANCE OF THAT
16 PHYSICIAN WOULD POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF
17 THE WOMAN.

18 (3) DURING THE PERFORMANCE OF AN ABORTION UNDER SUBSECTION
19 (2), THE PHYSICIAN PERFORMING OR INDUCING THE ABORTION SHALL TAKE
20 ALL REASONABLE ACTION IN KEEPING WITH GOOD MEDICAL PRACTICE, AND
21 CONSISTENT WITH THE ABORTION PROCEDURE USED, TO PRESERVE THE LIFE
22 AND HEALTH OF THE VIABLE UNBORN CHILD AS LONG AS THAT ACTION DOES
23 NOT POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF THE WOMAN.
24 SUBSEQUENT TO THE ABORTION, THE PHYSICIAN REQUIRED BY SUBSECTION
25 (2)(C) TO BE IN ATTENDANCE SHALL TAKE ALL REASONABLE ACTION IN
26 KEEPING WITH GOOD MEDICAL PRACTICE, AND CONSISTENT WITH THE
27 ABORTION PROCEDURE USED, TO PRESERVE THE LIFE AND HEALTH OF A

1 CHILD BORN AS A RESULT OF THE ABORTION AS LONG AS THAT ACTION
2 DOES NOT POSE AN INCREASED RISK TO THE LIFE OR HEALTH OF THE
3 WOMAN.

4 (4) AS USED IN THIS SECTION:

5 (A) "ABORTION" MEANS THE INTENTIONAL DESTRUCTION OF THE LIFE
6 OF AN UNBORN CHILD IN HIS OR HER MOTHER'S WOMB OR THE INTENTIONAL
7 TERMINATION OF THE PREGNANCY OF A WOMAN WITH AN INTENTION OTHER
8 THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH OR TO REMOVE A
9 DEAD OR DYING UNBORN CHILD.

10 (B) "CONCEPTION" MEANS THE FERTILIZATION OF THE OVUM OF A
11 FEMALE BY A SPERM OF A MALE.

12 (C) "GESTATIONAL AGE" MEANS THE LENGTH OF PREGNANCY AS MEA-
13 SURED FROM THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

14 (D) "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS FROM
15 THE MOMENT OF CONCEPTION UNTIL BIRTH AND AT EACH STAGE OF ITS
16 BIOLOGICAL DEVELOPMENT, INCLUDING THE HUMAN CONCEPTUS, ZYGOTE,
17 MORULA, BLASTOCYST, EMBRYO, AND FETUS.

18 (E) "VIABLE" MEANS THE STAGE OF FETAL DEVELOPMENT WHEN THE
19 LIFE OF THE UNBORN CHILD MAY BE CONTINUED INDEFINITELY OUTSIDE
20 THE WOMB BY NATURAL OR ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.

21 SEC. 20185. (1) A HEALTH FACILITY OR AGENCY THAT IS OWNED,
22 LEASED, OR ADMINISTERED BY THIS STATE OR A POLITICAL SUBDIVISION
23 OF THIS STATE SHALL NOT PERMIT AN ABORTION TO BE PERFORMED ON ITS
24 PREMISES OR PERMIT ITS EQUIPMENT OR ANY PHYSICAL ASSET TO BE USED
25 FOR PERFORMING OR ASSISTING IN THE PERFORMANCE OF AN ABORTION IF
26 THE ABORTION IS NOT NECESSARY TO SAVE THE LIFE OF THE MOTHER.

1 (2) AN INDIVIDUAL ALLEGING A VIOLATION OF THIS SECTION MAY
2 BRING AN ACTION FOR INJUNCTIVE RELIEF IN A CIRCUIT COURT OF
3 PROPER VENUE.