



SENATE BILL No. 1029

May 15, 1996, Introduced by Senators GOUGEON, MILLER, CISKY, DUNASKISS, HOFFMAN, STILLE, STEIL, BENNETT, CARL, ROGERS, MC MANUS, EMMONS, NORTH, VAN REGENMORTER, SCHUETTE, SHUGARS, DINGELL and KOIVISTO and referred to the Committee on Families, Mental Health and Human Services.

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

section 16221 as amended by Act No. 196 of the Public Acts of 1995 and section 16226 as amended by Act No. 133 of the Public Acts of 1993, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 17016 and 17516.

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, section 16221 as amended by Act No. 196 of
3 the Public Acts of 1995 and section 16226 as amended by Act
4 No. 133 of the Public Acts of 1993, being sections 333.16221 and
5 333.16226 of the Michigan Compiled Laws, are amended and sections
6 17016 and 17516 are added to read as follows:

1 Sec. 16221. The department may investigate activities
2 related to the practice of a health profession by a licensee, a
3 registrant, or an applicant for licensure or registration. The
4 department may hold hearings, administer oaths, and order rele-
5 vant testimony to be taken and shall report its findings to the
6 appropriate disciplinary subcommittee. The disciplinary subcom-
7 mittee shall proceed under section 16226 if it finds that 1 or
8 more of the following grounds exist:

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

15 (b) Personal disqualifications, consisting of 1 or more of
16 the following:

17 (i) Incompetence.

18 (ii) Subject to sections 16165 to 16170a, substance abuse as
19 defined in section 6107.

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

23 (iv) Declaration of mental incompetence by a court of compe-
24 tent jurisdiction.

25 (v) Conviction of a misdemeanor punishable by imprisonment
26 for a maximum term of 2 years; a misdemeanor involving the
27 illegal delivery, possession, or use of a controlled substance;

1 or a felony. 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 sections 520a
5 to 520l of the Michigan penal code, Act No. 328 of the Public
6 Acts of 1931, being sections 750.520a to 750.520l of the Michigan
7 Compiled Laws. A certified copy of the court record is conclu-
8 sive evidence of the conviction.

9 (viii) Conviction of a violation of section 492a of the
10 Michigan penal code, Act No. 328 of the Public Acts of 1931,
11 being section 750.492a of the Michigan Compiled Laws. A certi-
12 fied copy of the court record is conclusive evidence of the
13 conviction.

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

18 (x) Final adverse administrative action by a licensure, reg-
19 istration, disciplinary, or certification board involving the
20 holder of, or an applicant for, a license or registration regu-
21 lated by another state or a territory of the United States. A
22 certified copy of the record of the board is conclusive evidence
23 of the final action.

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

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

3 (i) Fraud or deceit in obtaining or renewing a license or
4 registration.

5 (ii) Permitting the license or registration to be used by an
6 unauthorized person.

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

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

13 (d) Unethical business practices, consisting of 1 or more of
14 the following:

15 (i) False or misleading advertising.

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

19 (iii) Fraud or deceit in obtaining or attempting to obtain
20 third party reimbursement.

21 (e) Unprofessional conduct, consisting of 1 or more of the
22 following:

23 (i) Misrepresentation to a consumer or patient or in obtain-
24 ing or attempting to obtain third party reimbursement in the
25 course of professional practice.

26 (ii) Betrayal of a professional confidence.

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

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

7 (f) Failure to report a change of name or mailing address
8 within 30 days after the change occurs.

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

11 (h) Failure to comply with a subpoena issued pursuant to
12 this part, failure to respond to a complaint issued under this
13 article or article 7, failure to appear at a compliance confer-
14 ence or an administrative hearing, or failure to report under
15 section 16222 or 16223.

16 (i) Failure to pay an installment of an assessment levied
17 pursuant to section 2504 of the insurance code of 1956, Act
18 No. 218 of the Public Acts of 1956, being section 500.2504 of the
19 Michigan Compiled Laws, within 60 days after notice by the appro-
20 priate board.

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

22 (k) Failure to meet 1 or more of the requirements for licen-
23 sure or registration under section 16174.

24 (l) A violation of section 17015 or 17515.

25 (M) A VIOLATION OF SECTION 17016 OR 17516.

26 Sec. 16226. (1) After finding the existence of 1 or more of
27 the grounds for disciplinary subcommittee action listed in

1 section 16221, a disciplinary subcommittee shall impose 1 or more
2 of the following sanctions for each violation:

3 <u>Violations of Section 16221</u>	<u>Sanctions</u>
4 Subdivision (a), (b)(ii), 5 (b)(iv), (b)(vi), or 6 (b)(vii)	7 Probation, limitation, denial, 8 suspension, revocation, 9 restitution, community service, 10 or fine.
11 Subdivision (b)(viii)	12 Revocation or denial.
13 Subdivision (b)(i), 14 (b)(iii), (b)(v), 15 (b)(ix), 16 (b)(x), or (b)(xi)	17 Limitation, suspension, 18 revocation, denial, 19 probation, restitution, 20 community service, or fine.
21 Subdivision (c)(i)	22 Denial, revocation, suspension, 23 probation, limitation, commu- 24 nity service, or fine.
25 Subdivision (c)(ii)	26 Denial, suspension, revocation, restitution, community service, or fine.
27 Subdivision (c)(iii)	28 Probation, denial, suspension, 29 revocation, restitution, commu- 30 nity service, or fine.
31 Subdivision (c)(iv) 32 or (d)(iii)	33 Fine, probation, denial, 34 suspension, revocation, commu- 35 nity service, 36 or restitution.

1	Subdivision (d)(i)	Reprimand, fine, probation,
2	or (d)(ii)	community service, denial,
3		or restitution.
4	Subdivision (e)(i)	Reprimand, fine, probation,
5		limitation, suspension, commu-
6		nity service, denial, or
7		restitution.
8	Subdivision (e)(ii)	Reprimand, probation,
9	or (h)	suspension, restitution, commu-
10		nity service, denial, or fine.
11	Subdivision (e)(iii)	Reprimand, fine, probation,
12	or (e)(iv)	suspension, revocation, limita-
13		tion, community service,
14		denial, or restitution.
15	Subdivision (f)	Reprimand or fine.
16	Subdivision (g)	Reprimand, probation, denial,
17		suspension, revocation, limita-
18		tion, restitution, community
19		service, or fine.
20	Subdivision (i)	Suspension or fine.
21	Subdivision (j)	Reprimand or fine.
22	Subdivision (k)	Reprimand, denial, or
23		limitation.
24	Subdivision (l)	Denial, revocation, restitution,
25		probation, suspension, limita-
26		tion, reprimand, or fine.

1 SUBDIVISION (M)

DENIAL, SUSPENSION, OR

2

REVOCATION.

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 sub-
7 stantial rights of the petitioner for ~~any~~ 1 OR MORE of the
8 grounds listed in section 106 of the administrative procedures
9 act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~ being sec-
10 tion 24.306 of Michigan Compiled Laws, and holds that the final
11 decision or order is unlawful and is to be set aside, the court
12 shall state on the record the reasons for the holding and may
13 remand the case to the disciplinary subcommittee for further
14 consideration.

15 (3) A disciplinary subcommittee may impose a fine of up to,
16 but not exceeding, \$250,000.00 for a violation of
17 section 16221(a) or (b).

18 (4) IF A DISCIPLINARY SUBCOMMITTEE SUSPENDS A LICENSEE'S
19 LICENSE OR A REGISTRANT'S REGISTRATION FOR A VIOLATION OF SECTION
20 16221(M), THE SUSPENSION SHALL BE FOR NOT LESS THAN 2 YEARS.

21 (5) ~~(4)~~ A disciplinary subcommittee may require a licensee
22 or registrant or an applicant for licensure or registration who
23 has violated this article or article 7 or a rule promulgated
24 under this article or article 7 to satisfactorily complete an
25 educational program, a training program, or a treatment program,
26 a mental, physical, or professional competence examination, or a
27 combination of those programs and examinations.

1 SEC. 17016. (1) A PHYSICIAN OR AN INDIVIDUAL PERFORMING AN
2 ACT, TASK, OR FUNCTION UNDER THE DELEGATORY AUTHORITY OF A PHYSI-
3 CIAN SHALL NOT PERFORM A PARTIAL-BIRTH ABORTION, EVEN IF THE
4 ABORTION IS OTHERWISE PERMITTED BY LAW.

5 (2) IT IS AN AFFIRMATIVE DEFENSE TO DISCIPLINARY PROCEEDINGS
6 INITIATED UNDER THIS ARTICLE AGAINST A PHYSICIAN OR OTHER INDI-
7 VIDUAL DESCRIBED IN SUBSECTION (1) FOR A VIOLATION OF SECTION
8 16221(M) THAT THE PHYSICIAN OR OTHER INDIVIDUAL REASONABLY
9 BELIEVED ALL OF THE FOLLOWING:

10 (A) THAT A MEDICAL EMERGENCY EXISTED WHEN THE PARTIAL-BIRTH
11 ABORTION WAS PERFORMED.

12 (B) NO OTHER PROCEDURE WOULD RESOLVE THE MEDICAL EMERGENCY.

13 (3) THIS SECTION DOES NOT CREATE A RIGHT TO ABORTION.

14 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
15 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

16 (5) AS USED IN THIS SECTION:

17 (A) "ABORTION" MEANS THE INTENTIONAL USE OF AN INSTRUMENT,
18 DRUG, OR OTHER SUBSTANCE OR DEVICE TO TERMINATE A WOMAN'S PREG-
19 NANCY FOR A PURPOSE OTHER THAN TO INCREASE THE PROBABILITY OF A
20 LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER
21 LIVE BIRTH, OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE
22 THE USE OR PRESCRIPTION OF A DRUG OR DEVICE INTENDED AS A
23 CONTRACEPTIVE.

24 (B) "FETUS" MEANS AN INDIVIDUAL ORGANISM OF THE SPECIES HOMO
25 SAPIENS IN UTERO.

26 (C) "MEDICAL EMERGENCY" MEANS THAT CONDITION WHICH, ON THE
27 BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO

1 COMPLICATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO
2 NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER
3 DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTAN-
4 TIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

5 (D) "PARTIAL-BIRTH ABORTION" MEANS AN ABORTION IN WHICH THE
6 PHYSICIAN OR INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF
7 THE PHYSICIAN PERFORMING THE ABORTION PARTIALLY VAGINALLY DELIV-
8 ERS A LIVING FETUS BEFORE KILLING THE FETUS AND COMPLETING THE
9 DELIVERY.

10 SEC. 17516. (1) A PHYSICIAN OR AN INDIVIDUAL PERFORMING AN
11 ACT, TASK, OR FUNCTION UNDER THE DELEGATORY AUTHORITY OF A PHYSI-
12 CIAN SHALL NOT PERFORM A PARTIAL-BIRTH ABORTION, EVEN IF THE
13 ABORTION IS OTHERWISE PERMITTED BY LAW.

14 (2) IT IS AN AFFIRMATIVE DEFENSE TO DISCIPLINARY PROCEEDINGS
15 INITIATED UNDER THIS ARTICLE AGAINST A PHYSICIAN OR OTHER INDI-
16 VIDUAL DESCRIBED IN SUBSECTION (1) FOR A VIOLATION OF SECTION
17 16221(M) THAT THE PHYSICIAN OR OTHER INDIVIDUAL REASONABLY
18 BELIEVED ALL OF THE FOLLOWING:

19 (A) THAT A MEDICAL EMERGENCY EXISTED WHEN THE PARTIAL-BIRTH
20 ABORTION WAS PERFORMED.

21 (B) NO OTHER PROCEDURE WOULD RESOLVE THE MEDICAL EMERGENCY.

22 (3) THIS SECTION DOES NOT CREATE A RIGHT TO ABORTION.

23 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
24 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

25 (5) AS USED IN THIS SECTION:

26 (A) "ABORTION" MEANS THE INTENTIONAL USE OF AN INSTRUMENT,
27 DRUG, OR OTHER SUBSTANCE OR DEVICE TO TERMINATE A WOMAN'S

1 PREGNANCY FOR A PURPOSE OTHER THAN TO INCREASE THE PROBABILITY OF
2 A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER
3 LIVE BIRTH, OR TO REMOVE A DEAD FETUS. ABORTION DOES NOT INCLUDE
4 THE USE OR PRESCRIPTION OF A DRUG OR DEVICE INTENDED AS A
5 CONTRACEPTIVE.

6 (B) "FETUS" MEANS AN INDIVIDUAL ORGANISM OF THE SPECIES HOMO
7 SAPIENS IN UTERO.

8 (C) "MEDICAL EMERGENCY" MEANS THAT CONDITION WHICH, ON THE
9 BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLI-
10 CATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE
11 THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR
12 WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRRE-
13 VERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

14 (D) "PARTIAL-BIRTH ABORTION" MEANS AN ABORTION IN WHICH THE
15 PHYSICIAN OR INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF
16 THE PHYSICIAN PERFORMING THE ABORTION PARTIALLY VAGINALLY DELIV-
17 ERS A LIVING FETUS BEFORE KILLING THE FETUS AND COMPLETING THE
18 DELIVERY.