

HOUSE BILL No. 4655

May 7, 2003, Introduced by Reps. Newell, Vander Veen, Stakoe, Kooiman, Paletko, Caswell, Ehardt, Emmons, Sak, Shaffer, Rivet, Farhat, Nofs, Taub, Hummel, Palsrok, Sheen, Hart, Stahl, Ward, Robertson, Hune, Rocca, Pappageorge, Lipsey, Howell, Adamini, Woronchak, Gillard, O'Neil and Clack and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221 and 16226 (MCL 333.16221 and
333.16226), section 16221 as amended by 2002 PA 402 and
section 16226 as amended by 2002 PA 643.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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
5 relevant testimony to be taken and shall report its findings to
6 the appropriate disciplinary subcommittee. The disciplinary
7 subcommittee shall proceed under section 16226 if it finds that 1
8 or more of the following grounds exist:

9 (a) A violation of general duty, consisting of negligence or

1 failure to exercise due care, including negligent delegation to
2 or supervision of employees or other individuals, whether or not
3 injury results, or any conduct, practice, or condition that
4 impairs, or may impair, the ability to safely and skillfully
5 practice the health profession.

6 (b) Personal disqualifications, consisting of 1 or more of
7 the following:

8 (i) Incompetence.

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

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

14 (iv) Declaration of mental incompetence by a court of
15 competent jurisdiction.

16 (v) Conviction of a misdemeanor punishable by imprisonment
17 for a maximum term of 2 years; a misdemeanor involving the
18 illegal delivery, possession, or use of a controlled substance;
19 or a felony. A certified copy of the court record is conclusive
20 evidence of the conviction.

21 (vi) Lack of good moral character.

22 (vii) Conviction of a criminal offense under sections 520a to
23 ~~520l~~ **520g** of the Michigan penal code, 1931 PA 328, MCL 750.520a
24 to ~~750.520l~~ **750.520g**. A certified copy of the court record is
25 conclusive evidence of the conviction.

26 (viii) Conviction of a violation of section 492a of the
27 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy

1 of the court record is conclusive evidence of the conviction.

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

6 (x) Final adverse administrative action by a licensure,
7 registration, disciplinary, or certification board involving the
8 holder of, or an applicant for, a license or registration
9 regulated by another state or a territory of the United States,
10 by the United States military, by the federal government, or by
11 another country. A certified copy of the record of the board is
12 conclusive evidence of the final action.

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

17 **(xii) Conviction of a violation of section 430 of the**
18 **Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy**
19 **of the court record is conclusive evidence of the conviction.**

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

22 (i) Fraud or deceit in obtaining or renewing a license or
23 registration.

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

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

27 (iv) Obtaining, possessing, or attempting to obtain or

1 possess a controlled substance as defined in section 7104 or a
2 drug as defined in section 7105 without lawful authority; or
3 selling, prescribing, giving away, or administering drugs for
4 other than lawful diagnostic or therapeutic purposes.

5 (d) Unethical business practices, consisting of 1 or more of
6 the following:

7 (i) False or misleading advertising.

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

11 (iii) Fraud or deceit in obtaining or attempting to obtain
12 third party reimbursement.

13 (e) Unprofessional conduct, consisting of 1 or more of the
14 following:

15 (i) Misrepresentation to a consumer or patient or in
16 obtaining or attempting to obtain third party reimbursement in
17 the course of professional practice.

18 (ii) Betrayal of a professional confidence.

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

21 (iv) Either of the following:

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

26 (B) A referral by a physician for a designated health service
27 that violates section 1877 of part D of title XVIII of the social

1 security act, 42 U.S.C. 1395nn, or a regulation promulgated under
2 that section. Section 1877 of part D of title XVIII of the
3 social security act, 42 U.S.C. 1395nn, and the regulations
4 promulgated under that section, as they exist on ~~the effective~~
5 ~~date of the amendatory act that added this sentence~~ **June 3,**
6 **2002**, are incorporated by reference for purposes of this
7 subparagraph. A disciplinary subcommittee shall apply
8 section 1877 of part D of title XVIII of the social security act,
9 42 U.S.C. 1395nn, and the regulations promulgated under that
10 section regardless of the source of payment for the designated
11 health service referred and rendered. If section 1877 of part D
12 of title XVIII of the social security act, 42 U.S.C. 1395nn, or a
13 regulation promulgated under that section is revised after ~~the~~
14 ~~effective date of the amendatory act that added this sentence~~
15 **June 3, 2002**, the department shall officially take notice of the
16 revision. Within 30 days after taking notice of the revision,
17 the department shall decide whether or not the revision pertains
18 to referral by physicians for designated health services and
19 continues to protect the public from inappropriate referrals by
20 physicians. If the department decides that the revision does
21 both of those things, the department may promulgate rules to
22 incorporate the revision by reference. If the department does
23 promulgate rules to incorporate the revision by reference, the
24 department shall not make any changes to the revision. As used
25 in this subparagraph, "designated health service" means that term
26 as defined in section 1877 of part D of title XVIII of the social
27 security act, 42 U.S.C. 1395nn, and the regulations promulgated

1 under that section and "physician" means that term as defined in
2 sections 17001 and 17501.

3 (v) For a physician who makes referrals pursuant to section
4 1877 of part D of title XVIII of the social security act, 42
5 U.S.C. 1395nn, or a regulation promulgated under that section,
6 refusing to accept a reasonable proportion of patients eligible
7 for medicaid and refusing to accept payment from medicaid or
8 medicare as payment in full for a treatment, procedure, or
9 service for which the physician refers the individual and in
10 which the physician has a financial interest. A physician who
11 owns all or part of a facility in which he or she provides
12 surgical services is not subject to this subparagraph if a
13 referred surgical procedure he or she performs in the facility is
14 not reimbursed at a minimum of the appropriate medicaid or
15 medicare outpatient fee schedule, including the combined
16 technical and professional components.

17 (f) Beginning ~~1 year after the effective date of this act~~
18 **June 3, 2003**, the department of consumer and industry services
19 shall prepare the first of 3 annual reports on the effect of this
20 amendatory act on access to care for the uninsured and medicaid
21 patients. The department shall report on the number of referrals
22 by licensees of uninsured and medicaid patients to purchase or
23 secure a drug, device, treatment, procedure, or service from
24 another person, place, facility, or business in which the
25 licensee has a financial interest.

26 (g) Failure to report a change of name or mailing address
27 within 30 days after the change occurs.

1 (h) A violation, or aiding or abetting in a violation, of
2 this article or of a rule promulgated under this article.

3 (i) Failure to comply with a subpoena issued pursuant to this
4 part, failure to respond to a complaint issued under this article
5 or article 7, failure to appear at a compliance conference or an
6 administrative hearing, or failure to report under section 16222
7 or 16223.

8 (j) Failure to pay an installment of an assessment levied
9 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
10 to 500.8302, within 60 days after notice by the appropriate
11 board.

12 (k) A violation of section 17013 or 17513.

13 (l) Failure to meet 1 or more of the requirements for
14 licensure or registration under section 16174.

15 (m) A violation of section 17015 or 17515.

16 (n) A violation of section 17016 or 17516.

17 (o) Failure to comply with section 9206(3).

18 (p) A violation of section 5654 or 5655.

19 (q) A violation of section 16274.

20 (r) A violation of section 17020 or 17520.

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

25 Violations of Section 16221

Sanctions

- 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 Subdivision (b)(viii) Revocation or denial.
- 6 Subdivision (b)(i), Limitation, suspension,
 7 (b)(iii), (b)(v), revocation, denial,
 8 (b)(ix), (b)(x), probation, restitution,
 9 ~~or~~ (b)(xi), or **(b)(xii)** community service, or fine.
- 10 Subdivision (c)(i) Denial, revocation, suspension,
 11 probation, limitation, community
 12 service, or fine.
- 13 Subdivision (c)(ii) Denial, suspension, revocation,
 14 restitution, community service,
 15 or fine.
- 16 Subdivision (c)(iii) Probation, denial, suspension,
 17 revocation, restitution,
 18 community service, or fine.
- 19 Subdivision (c)(iv) or
 20 (d)(iii) Fine, probation, denial,

1 suspension, revocation, community
2 service, or restitution.

3 Subdivision (d)(i) Reprimand, fine, probation,
4 or (d)(ii) community service, denial,
5 or restitution.

6 Subdivision (e)(i) Reprimand, fine, probation,
7 limitation, suspension, community
8 service, denial, or restitution.

9 Subdivision (e)(ii) Reprimand, probation,
10 or (i) suspension, restitution,
11 community service, denial, or
12 fine.

13 Subdivision (e)(iii), Reprimand, fine, probation,
14 (e)(iv), or (e)(v) suspension, revocation,
15 limitation, community service,
16 denial, or restitution.

17 Subdivision (g) Reprimand or fine.

18 Subdivision (h) Reprimand, probation, denial,
19 suspension, revocation,
20 limitation, restitution,
21 community service, or fine.

- 1 Subdivision (j) Suspension or fine.

- 2 Subdivision (k), (p), or
- 3 (r) Reprimand or fine.
- 4 Subdivision (l) Reprimand, denial, or
- 5 limitation.

- 6 Subdivision (m) or (o) Denial, revocation, restitution,
- 7 probation, suspension,
- 8 limitation, reprimand, or fine.

- 9 Subdivision (n) Revocation or denial.

10 Subdivision (q) Revocation.

11 (2) Determination of sanctions for violations under this

12 section shall be made by a disciplinary subcommittee. If, during

13 judicial review, the court of appeals determines that a final

14 decision or order of a disciplinary subcommittee prejudices

15 substantial rights of the petitioner for 1 or more of the grounds

16 listed in section 106 of the administrative procedures act of

17 1969, 1969 PA 306, MCL 24.306, and holds that the final decision

18 or order is unlawful and is to be set aside, the court shall

19 state on the record the reasons for the holding and may remand

20 the case to the disciplinary subcommittee for further

21 consideration.

22 (3) A disciplinary subcommittee may impose a fine of up to,

1 but not exceeding, \$250,000.00 for a violation of
2 section 16221(a) or (b).

3 (4) A disciplinary subcommittee may require a licensee or
4 registrant or an applicant for licensure or registration who has
5 violated this article or article 7 or a rule promulgated under
6 this article or article 7 to satisfactorily complete an
7 educational program, a training program, or a treatment program,
8 a mental, physical, or professional competence examination, or a
9 combination of those programs and examinations.

10 Enacting section 1. This amendatory act does not take
11 effect unless Senate Bill No. _____ or House Bill No. 4656
12 (request no. 02759'03 a) of the 92nd Legislature is enacted into
13 law.