

HOUSE BILL No. 4469

February 26, 2009, Introduced by Reps. Bettie Scott, Rick Jones, Durhal, Walsh, Lori, Schuitmaker, Lund, Miller, LeBlanc, Gonzales, Lemmons, Espinoza, Haugh, Gregory, Geiss, Barnett, Robert Jones, Liss, Crawford, Haase, Kennedy, Knollenberg, Booher, Haines, Meadows, Opsommer, Marleau, Meekhof, Kowall, Leland, Moss, Denby, Johnson and Meltzer and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 16221 (MCL 333.16221), as amended by 2004 PA
214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

9 (i) Incompetence.

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

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

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

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

22 (vi) Lack of good moral character.

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

27 (viii) Conviction of a violation of section 492a of the Michigan

1 penal code, 1931 PA 328, MCL 750.492a. A certified copy of the
2 court record is conclusive evidence of the conviction.

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

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

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

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

21 **(xiii) CONVICTION OF A CRIMINAL OFFENSE UNDER SECTION 520B,**
22 **520C, 520D, 520F, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328,**
23 **MCL 750.520B, 750.520C, 750.520D, 750.520F, AND 750.520G. A**
24 **CERTIFIED COPY OF THE COURT RECORD IS CONCLUSIVE EVIDENCE OF THE**
25 **CONVICTION.**

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

27 (i) Fraud or deceit in obtaining or renewing a license or

1 registration.

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

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

5 (iv) Obtaining, possessing, or attempting to obtain or possess
6 a controlled substance as defined in section 7104 or a drug as
7 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 1 or more of
11 the 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
15 medications purchased by or in behalf of patients.

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

18 (e) Unprofessional conduct, consisting of 1 or more of the
19 following:

20 (i) Misrepresentation to a consumer or patient or in obtaining
21 or attempting to obtain third party reimbursement in the course of
22 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) Either of the following:

27 (A) A requirement by a licensee other than a physician that an

1 individual purchase or secure a drug, device, treatment, procedure,
2 or service from another person, place, facility, or business in
3 which the licensee has a financial interest.

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

1 health service" means that term as defined in ~~section 1877 of part~~
2 ~~D of title XVIII of the social security act, 42 USC 1395nn ,~~ and
3 the regulations promulgated under that section and "physician"
4 means that term as defined in sections 17001 and 17501.

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

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

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

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

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

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

11 (J) ~~(k)~~—A violation of section 17013 or 17513.

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

14 (L) ~~(m)~~—A violation of section 17015 or 17515.

15 (M) ~~(n)~~—A violation of section 17016 or 17516.

16 (N) ~~(o)~~—Failure to comply with section 9206(3).

17 (O) ~~(p)~~—A violation of section 5654 or 5655.

18 (P) ~~(q)~~—A violation of section 16274.

19 (Q) ~~(r)~~—A violation of section 17020 or 17520.

20 (R) ~~(s)~~—A violation of the medical records access act, **2004 PA**
21 **47, MCL 333.26261 TO 333.26271.**

22 (S) ~~(t)~~—A violation of section 17764(2).

23 Enacting section 1. This amendatory act does not take effect
24 unless Senate Bill No. _____ or House Bill No. 4468(request no.
25 01997'09) of the 95th Legislature is enacted into law.