

**SUBSTITUTE FOR
SENATE BILL NO. 167**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226),
as amended by 2016 PA 379.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16221. The department shall investigate any allegation
2 that 1 or more of the grounds for disciplinary subcommittee action
3 under this section exist, and may investigate activities related to
4 the practice of a health profession by a licensee, a registrant, or
5 an applicant for licensure or registration. The department may hold
6 hearings, administer oaths, and order the taking of relevant
7 testimony. After its investigation, the department shall provide a
8 copy of the administrative complaint to the appropriate

1 disciplinary subcommittee. The disciplinary subcommittee shall
2 proceed under section 16226 if it finds that 1 or more of the
3 following grounds exist:

4 (a) Except as otherwise specifically provided in this section,
5 a violation of general duty, consisting of negligence or failure to
6 exercise due care, including negligent delegation to or supervision
7 of employees or other individuals, whether or not injury results,
8 or any conduct, practice, or condition that impairs, or may impair,
9 the ability to safely and skillfully engage in the practice of the
10 health profession.

11 (b) Personal disqualifications, consisting of 1 or more of the
12 following:

13 (i) Incompetence.

14 (ii) Subject to sections 16165 to 16170a, substance use
15 disorder as defined in section 100d of the mental health code, 1974
16 PA 258, MCL 330.1100d.

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

20 (iv) Declaration of mental incompetence by a court of
21 competent jurisdiction.

22 (v) Conviction of a misdemeanor punishable by imprisonment for
23 a maximum term of 2 years; conviction of a misdemeanor involving
24 the illegal delivery, possession, or use of a controlled substance;
25 or conviction of any felony other than a felony listed or described
26 in another subparagraph of this subdivision. A certified copy of
27 the court record is conclusive evidence of the conviction.

- 1 (vi) Lack of good moral character.
- 2 (vii) Conviction of a criminal offense under section 520e or
3 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
4 750.520g. A certified copy of the court record is conclusive
5 evidence of the conviction.
- 6 (viii) Conviction of a violation of section 492a of the
7 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of
8 the court record is conclusive evidence of the conviction.
- 9 (ix) Conviction of a misdemeanor or felony involving fraud in
10 obtaining or attempting to obtain fees related to the practice of a
11 health profession. A certified copy of the court record is
12 conclusive evidence of the conviction.
- 13 (x) Final adverse administrative action by a licensure,
14 registration, disciplinary, or certification board involving the
15 holder of, or an applicant for, a license or registration regulated
16 by another state or a territory of the United States, by the United
17 States military, by the federal government, or by another country.
18 A certified copy of the record of the board is conclusive evidence
19 of the final action.
- 20 (xi) Conviction of a misdemeanor that is reasonably related to
21 or that adversely affects the licensee's or registrant's ability to
22 practice in a safe and competent manner. A certified copy of the
23 court record is conclusive evidence of the conviction.
- 24 (xii) Conviction of a violation of section 430 of the Michigan
25 penal code, 1931 PA 328, MCL 750.430. A certified copy of the court
26 record is conclusive evidence of the conviction.
- 27 (xiii) Conviction of a criminal offense under section 83, 84,

1 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
2 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,
3 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the
4 court record is conclusive evidence of the conviction.

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

6 (i) Fraud or deceit in obtaining or renewing a license or
7 registration.

8 (ii) Permitting a license or registration to be used by an
9 unauthorized person.

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

11 (iv) Obtaining, possessing, or attempting to obtain or possess
12 a controlled substance as defined in section 7104 or a drug as
13 defined in section 7105 without lawful authority; or selling,
14 prescribing, giving away, or administering drugs for other than
15 lawful diagnostic or therapeutic purposes.

16 (d) Except as otherwise specifically provided in this section,
17 unethical business practices, consisting of 1 or more of the
18 following:

19 (i) False or misleading advertising.

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

23 (iii) Fraud or deceit in obtaining or attempting to obtain
24 third party reimbursement.

25 (e) Except as otherwise specifically provided in this section,
26 unprofessional conduct, consisting of 1 or more of the following:

27 (i) Misrepresentation to a consumer or patient or in obtaining

1 or attempting to obtain third party reimbursement in the course of
2 professional practice.

3 (ii) Betrayal of a professional confidence.

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

6 (iv) Either of the following:

7 (A) A requirement by a licensee other than a physician or a
8 registrant that an individual purchase or secure a drug, device,
9 treatment, procedure, or service from another person, place,
10 facility, or business in which the licensee or registrant has a
11 financial interest.

12 (B) A referral by a physician for a designated health service
13 that violates 42 USC 1395nn or a regulation promulgated under that
14 section. For purposes of this subdivision, 42 USC 1395nn and the
15 regulations promulgated under that section as they exist on June 3,
16 2002 are incorporated by reference. A disciplinary subcommittee
17 shall apply 42 USC 1395nn and the regulations promulgated under
18 that section regardless of the source of payment for the designated
19 health service referred and rendered. If 42 USC 1395nn or a
20 regulation promulgated under that section is revised after June 3,
21 2002, the department shall officially take notice of the revision.
22 Within 30 days after taking notice of the revision, the department
23 shall decide whether or not the revision pertains to referral by
24 physicians for designated health services and continues to protect
25 the public from inappropriate referrals by physicians. If the
26 department decides that the revision does both of those things, the
27 department may promulgate rules to incorporate the revision by

1 reference. If the department does promulgate rules to incorporate
2 the revision by reference, the department shall not make any
3 changes to the revision. As used in this sub-subparagraph,
4 "designated health service" means that term as defined in 42 USC
5 1395nn and the regulations promulgated under that section and
6 "physician" means that term as defined in sections 17001 and 17501.

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

19 (vi) Any conduct by a health professional with a patient while
20 he or she is acting within the health profession for which he or
21 she is licensed or registered, including conduct initiated by a
22 patient or to which the patient consents, that is sexual or may
23 reasonably be interpreted as sexual, including, but not limited to,
24 sexual intercourse, kissing in a sexual manner, or touching of a
25 body part for any purpose other than appropriate examination,
26 treatment, or comfort.

27 (vii) Offering to provide practice-related services, such as

- 1 drugs, in exchange for sexual favors.
- 2 (f) Failure to notify under section 16222(3) or (4).
- 3 (g) Failure to report a change of name or mailing address as
4 required in section 16192.
- 5 (h) A violation, or aiding or abetting in a violation, of this
6 article or of a rule promulgated under this article.
- 7 (i) Failure to comply with a subpoena issued pursuant to this
8 part, failure to respond to a complaint issued under this article,
9 article 7, or article 8, failure to appear at a compliance
10 conference or an administrative hearing, or failure to report under
11 section 16222(1) or 16223.
- 12 (j) Failure to pay an installment of an assessment levied
13 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
14 500.8302, within 60 days after notice by the appropriate board.
- 15 (k) A violation of section 17013 or 17513.
- 16 (l) Failure to meet 1 or more of the requirements for
17 licensure or registration under section 16174.
- 18 (m) A violation of section 17015, 17015a, 17017, 17515, or
19 17517.
- 20 (n) A violation of section 17016 or 17516.
- 21 (o) Failure to comply with section 9206(3).
- 22 (p) A violation of section 5654 or 5655.
- 23 (q) A violation of section 16274.
- 24 (r) A violation of section 17020 or 17520.
- 25 (s) A violation of the medical records access act, 2004 PA 47,
26 MCL 333.26261 to 333.26271.
- 27 (t) A violation of section 17764(2).

1 (u) Failure to comply with the terms of a practice agreement
 2 described in section 17047(2) (a) or (b), 17547(2) (a) or (b), or
 3 18047(2) (a) or (b).

4 **(V) A VIOLATION OF SECTION 7303A(3).**

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

9 <u>Violations of Section 16221</u>	<u>Sanctions</u>
10 Subdivision (a), (b) (i),	Probation, limitation, denial,
11 (b) (ii), (b) (iii), (b) (iv),	suspension, revocation,
12 (b) (v), (b) (vi), (b) (vii),	permanent revocation,
13 (b) (ix), (b) (x), (b) (xi),	restitution, or fine.
14 or (b) (xii)	
15	
16 Subdivision (b) (viii)	Revocation, permanent revocation,
17	or denial.
18	
19 Subdivision (b) (xiii)	Permanent revocation
20	for a violation described in
21	subsection (5) (6) ; otherwise,
22	probation, limitation, denial,
23	suspension, revocation,
24	restitution, or fine.
25	
26 Subdivision (c) (i)	Denial, revocation, suspension,
27	probation, limitation, or fine.

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

1		
2	Subdivision (f)	Reprimand, denial, limitation,
3		probation, or fine.
4		
5	Subdivision (g)	Reprimand or fine.
6		
7	Subdivision (j)	Suspension or fine.
8		
9	Subdivision (k), (p),	Reprimand, probation, suspension,
10	or (r)	revocation, permanent revocation,
11		or fine.
12		
13	Subdivision (l)	Reprimand, denial, or
14		limitation.
15		
16	Subdivision (m) or (o)	Denial, revocation, restitution,
17		probation, suspension,
18		limitation, reprimand, or fine.
19		
20	Subdivision (n)	Revocation or denial.
21		
22	Subdivision (q)	Revocation.
23		
24	Subdivision (t)	Revocation, permanent revocation,
25		fine, or restitution.
26	Subdivision (u)	Denial, revocation, probation,
27		suspension, limitation, reprimand,

1 or fine.

2

3 **SUBDIVISION (V) SUBJECT TO SUBSECTION (5),**
4 **DENIAL, FINE, REPRIMAND,**
5 **PROBATION, LIMITATION,**
6 **SUSPENSION, REVOCATION, OR**
7 **PERMANENT REVOCATION.**

8 (2) Determination of sanctions for violations under this
9 section shall be made by a disciplinary subcommittee. If, during
10 judicial review, the court of appeals determines that a final
11 decision or order of a disciplinary subcommittee prejudices
12 substantial rights of the petitioner for 1 or more of the grounds
13 listed in section 106 of the administrative procedures act of 1969,
14 1969 PA 306, MCL 24.306, and holds that the final decision or order
15 is unlawful and is to be set aside, the court shall state on the
16 record the reasons for the holding and may remand the case to the
17 disciplinary subcommittee for further consideration.

18 (3) A disciplinary subcommittee may impose a fine in an amount
19 that does not exceed \$250,000.00 for a violation of section
20 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
21 at least \$25,000.00 if the violation of section 16221(a) or (b)
22 results in the death of 1 or more patients.

23 (4) A disciplinary subcommittee may require a licensee or
24 registrant or an applicant for licensure or registration who has
25 violated this article, article 7, or article 8 or a rule
26 promulgated under this article, article 7, or article 8 to
27 satisfactorily complete an educational program, a training program,

1 or a treatment program, a mental, physical, or professional
2 competence examination, or a combination of those programs and
3 examinations.

4 (5) A DISCIPLINARY SUBCOMMITTEE THAT FINDS THAT A LICENSEE, A
5 REGISTRANT, OR AN APPLICANT FOR LICENSURE OR REGISTRATION HAS
6 VIOLATED SECTION 16221(V) SHALL, FOR A FIRST VIOLATION OF THAT
7 SECTION, ORDER THE LICENSEE, REGISTRANT, OR APPLICANT TO COMPLETE A
8 PROGRAM OF REMEDIAL CONTINUING EDUCATION APPROVED BY THE
9 APPROPRIATE BOARD THAT IS FOCUSED ON PRESCRIPTION DRUG AND OPIOID
10 ADDICTION, TO BE COMPLETED WITHIN 180 DAYS AFTER THE DEPARTMENT
11 SERVES ON HIM OR HER ITS ORDER UNDER THIS SUBSECTION. THE FAILURE
12 TO TIMELY COMPLETE A PROGRAM OF REMEDIAL CONTINUING EDUCATION
13 ORDERED UNDER THIS SUBSECTION IS A SEPARATE VIOLATION OF THIS
14 ARTICLE FOR PURPOSES OF SECTION 16221(H). FOR A SECOND OR
15 SUBSEQUENT VIOLATION OF SECTION 16221(V), THE DISCIPLINARY
16 SUBCOMMITTEE SHALL IMPOSE 1 OR MORE OF THE SANCTIONS DESCRIBED IN
17 SUBSECTION (1) FOR A VIOLATION OF SECTION 16221(V). HOWEVER, THE
18 DISCIPLINARY SUBCOMMITTEE SHALL NOT IMPOSE THE SANCTION OF
19 SUSPENSION, REVOCATION, OR PERMANENT REVOCATION FOR A VIOLATION OF
20 SECTION 16221(V) WITHOUT A FINDING THAT THE LICENSEE, REGISTRANT,
21 OR APPLICANT WILLFULLY DISREGARDED HIS OR HER DUTY TO OBTAIN AND
22 REVIEW A REPORT FROM THE ELECTRONIC SYSTEM FOR MONITORING SCHEDULE
23 2, 3, 4, OR 5 CONTROLLED SUBSTANCES UNDER SECTION 7303A, OR A
24 FINDING THAT THE LICENSEE, REGISTRANT, OR APPLICANT ENGAGED IN A
25 PATTERN OF INTENTIONAL ACTS OF FRAUD OR DECEIT RESULTING IN
26 PERSONAL FINANCIAL GAIN TO THE LICENSEE, REGISTRANT, OR APPLICANT.

27 (6) ~~(5)~~—A disciplinary subcommittee shall impose the sanction

1 of permanent revocation for a violation of section 16221(b) (xiii)
2 if the violation occurred while the licensee or registrant was
3 acting within the health profession for which he or she was
4 licensed or registered.

5 (7) ~~(6)~~—Except as otherwise provided in ~~subsection (5),~~
6 **SUBSECTIONS (5) AND (6)**, a disciplinary subcommittee shall not
7 impose the sanction of permanent revocation under this section
8 without a finding that the licensee or registrant engaged in a
9 pattern of intentional acts of fraud or deceit resulting in
10 personal financial gain to the licensee or registrant and harm to
11 the health of patients under the licensee's or registrant's care.

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No. 166 of the 99th Legislature is enacted into
14 law.