

# HOUSE BILL No. 5789

April 12, 2018, Introduced by Reps. Noble, Kesto, Albert, LaSata, Iden, Chang and Theis and referred to the Committee on Law and Justice.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 16221 (MCL 333.16221), as amended by 2017 PA 249.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

1 subcommittee. The disciplinary subcommittee shall proceed under  
2 section 16226 if it finds that 1 or more of the following grounds  
3 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 (xiv) Conviction of a violation of section 136 or 136a of the  
6 Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A  
7 certified copy of the court record is conclusive evidence of the  
8 conviction.

9 **(xv) CONVICTION OF A VIOLATION OF SECTION 90 OF THE MICHIGAN**  
10 **PENAL CODE, 1931 PA 328, MCL 750.90. A CERTIFIED COPY OF THE COURT**  
11 **RECORD IS CONCLUSIVE EVIDENCE OF THE CONVICTION.**

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

13 (i) Fraud or deceit in obtaining or renewing a license or  
14 registration.

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

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

18 (iv) Obtaining, possessing, or attempting to obtain or possess  
19 a controlled substance ~~as defined in section 7104~~ or a drug as  
20 defined in section 7105 without lawful authority; or selling,  
21 prescribing, giving away, or administering drugs for other than  
22 lawful diagnostic or therapeutic purposes.

23 (d) Except as otherwise specifically provided in this section,  
24 unethical business practices, consisting of 1 or more of the  
25 following:

26 (i) False or misleading advertising.

27 (ii) Dividing fees for referral of patients or accepting

1 kickbacks on medical or surgical services, appliances, or  
2 medications purchased by or in behalf of patients.

3 (iii) Fraud or deceit in obtaining or attempting to obtain  
4 third party reimbursement.

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

7 (i) Misrepresentation to a consumer or patient or in obtaining  
8 or attempting to obtain third party reimbursement in the course of  
9 professional practice.

10 (ii) Betrayal of a professional confidence.

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

13 (iv) Either of the following:

14 (A) A requirement by a licensee other than a physician or a  
15 registrant that an individual purchase or secure a drug, device,  
16 treatment, procedure, or service from another person, place,  
17 facility, or business in which the licensee or registrant has a  
18 financial interest.

19 (B) A referral by a physician for a designated health service  
20 that violates 42 USC 1395nn or a regulation promulgated under that  
21 section. For purposes of this subdivision, 42 USC 1395nn and the  
22 regulations promulgated under that section as they exist on June 3,  
23 2002 are incorporated by reference. A disciplinary subcommittee  
24 shall apply 42 USC 1395nn and the regulations promulgated under  
25 that section regardless of the source of payment for the designated  
26 health service referred and rendered. If 42 USC 1395nn or a  
27 regulation promulgated under that section is revised after June 3,

1 2002, the department shall officially take notice of the revision.  
2 Within 30 days after taking notice of the revision, the department  
3 shall decide whether or not the revision pertains to referral by  
4 physicians for designated health services and continues to protect  
5 the public from inappropriate referrals by physicians. If the  
6 department decides that the revision does both of those things, the  
7 department may promulgate rules to incorporate the revision by  
8 reference. If the department does promulgate rules to incorporate  
9 the revision by reference, the department shall not make any  
10 changes to the revision. As used in this sub-subparagraph,  
11 "designated health service" means that term as defined in 42 USC  
12 1395nn and the regulations promulgated under that section and  
13 "physician" means that term as defined in sections 17001 and 17501.

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

26 (vi) Any conduct by a health professional with a patient while  
27 he or she is acting within the health profession for which he or

1 she is licensed or registered, including conduct initiated by a  
2 patient or to which the patient consents, that is sexual or may  
3 reasonably be interpreted as sexual, including, but not limited to,  
4 sexual intercourse, kissing in a sexual manner, or touching of a  
5 body part for any purpose other than appropriate examination,  
6 treatment, or comfort.

7 (vii) Offering to provide practice-related services, such as  
8 drugs, in exchange for sexual favors.

9 (f) Failure to notify under section 16222(3) or (4).

10 (g) Failure to report a change of name or mailing address as  
11 required in section 16192.

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

14 (i) Failure to comply with a subpoena issued pursuant to this  
15 part, failure to respond to a complaint issued under this article,  
16 article 7, or article 8, failure to appear at a compliance  
17 conference or an administrative hearing, or failure to report under  
18 section 16222(1) or 16223.

19 (j) Failure to pay an installment of an assessment levied  
20 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to  
21 500.8302, within 60 days after notice by the appropriate board.

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

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

25 (m) A violation of section 17015, 17015a, 17017, 17515, or  
26 17517.

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

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

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

3 (q) A violation of section 16274.

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

5 (s) A violation of the medical records access act, 2004 PA 47,  
6 MCL 333.26261 to 333.26271.

7 (t) A violation of section 17764(2).

8 (u) Failure to comply with the terms of a practice agreement  
9 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or  
10 18047(2)(a) or (b).

11 (v) A violation of section 7303a(2).

12 (w) A violation of section 7303a(4) or (5).

13 (x) A violation of section 7303b.

14 Enacting section 1. This amendatory act takes effect 90 days  
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act does not take effect  
17 unless all of the following bills of the 99th Legislature are  
18 enacted into law:

19 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5787 (request no.  
20 06052'18).

21 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5790 (request no.  
22 06153'18).