

HOUSE BILL No. 4639

May 23, 2017, Introduced by Reps. Kesto, Sheppard, Hoitenga, Hornberger, Hauck, Greimel, Chang, Hughes, Leutheuser, Farrington, Lasinski, Faris, Griffin, Lucido, Rendon, Alexander, Whiteford, Kelly, Bizon, Kahle, VanderWall, Sabo, Sowerby, Moss, Hammoud, Dianda, Brinks, Geiss, Ellison, Camilleri, Phelps, Jones, Chirkun, Durhal, Gay-Dagnogo, Clemente, Cochran, Peterson, Love, Hoadley, Pagan, Garrett, Green, Yanez, Rabhi, Byrd, Neeley, Scott, Schor, Zemke, Calley, Pagel, Wittenberg, LaSata, Greig, Allor, Lower and Lilly and referred to the Committee on Law and Justice.

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

10 (i) Fraud or deceit in obtaining or renewing a license or
11 registration.

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

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

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

20 (d) Except as otherwise specifically provided in this section,
21 unethical business practices, consisting of 1 or more of the
22 following:

23 (i) False or misleading advertising.

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

27 (iii) Fraud or deceit in obtaining or attempting to obtain

1 third party reimbursement.

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

4 (i) Misrepresentation to a consumer or patient or in obtaining
5 or attempting to obtain third party reimbursement in the course of
6 professional practice.

7 (ii) Betrayal of a professional confidence.

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

10 (iv) Either of the following:

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

16 (B) A referral by a physician for a designated health service
17 that violates 42 USC 1395nn or a regulation promulgated under that
18 section. For purposes of this subdivision, 42 USC 1395nn and the
19 regulations promulgated under that section as they exist on June 3,
20 2002 are incorporated by reference. A disciplinary subcommittee
21 shall apply 42 USC 1395nn and the regulations promulgated under
22 that section regardless of the source of payment for the designated
23 health service referred and rendered. If 42 USC 1395nn or a
24 regulation promulgated under that section is revised after June 3,
25 2002, the department shall officially take notice of the revision.
26 Within 30 days after taking notice of the revision, the department
27 shall decide whether or not the revision pertains to referral by

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

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

23 (vi) Any conduct by a health professional with a patient while
24 he or she is acting within the health profession for which he or
25 she is licensed or registered, including conduct initiated by a
26 patient or to which the patient consents, that is sexual or may
27 reasonably be interpreted as sexual, including, but not limited to,

1 sexual intercourse, kissing in a sexual manner, or touching of a
2 body part for any purpose other than appropriate examination,
3 treatment, or comfort.

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

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

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

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

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

16 (j) Failure to pay an installment of an assessment levied
17 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
18 500.8302, within 60 days after notice by the appropriate board.

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

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

22 (m) A violation of section 17015, 17015a, 17017, 17515, or
23 17517.

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

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

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

27 (q) A violation of section 16274.

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

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

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

5 (u) Failure to comply with the terms of a practice agreement
6 described in section 17047(2) (a) or (b), 17547(2) (a) or (b), or
7 18047(2) (a) or (b).

8 Sec. 16226. (1) After finding the existence of 1 or more of
9 the grounds for disciplinary subcommittee action listed in section
10 16221, a disciplinary subcommittee shall impose 1 or more of the
11 following sanctions for each violation:

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

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2	SUBDIVISION (B) (xiv)	PERMANENT REVOCATION.
3		
4	Subdivision (c) (i)	Denial, revocation, suspension,
5		probation, limitation, or fine.
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7	Subdivision (c) (ii)	Denial, suspension, revocation,
8		restitution, or fine.
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10	Subdivision (c) (iii)	Probation, denial, suspension,
11		revocation, restitution, or fine.
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13	Subdivision (c) (iv)	Fine, probation, denial,
14	or (d) (iii)	suspension, revocation, permanent
15		revocation, or restitution.
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17	Subdivision (d) (i)	Reprimand, fine, probation,
18	or (d) (ii)	denial, or restitution.
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20	Subdivision (e) (i),	Reprimand, fine, probation,
21	(e) (iii), (e) (iv), (e) (v),	limitation, suspension,
22	(h), or (s)	revocation, permanent revocation,
23		denial, or restitution.
24		
25	Subdivision (e) (ii)	Reprimand, probation, suspension,
26	or (i)	revocation, permanent
27		revocation, restitution,

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

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Subdivision (t) Revocation, permanent revocation,
fine, or restitution.

Subdivision (u) Denial, revocation, probation,
suspension, limitation, reprimand,
or fine.

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

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

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

1 satisfactorily complete an educational program, a training program,
2 or a treatment program, a mental, physical, or professional
3 competence examination, or a combination of those programs and
4 examinations.

5 (5) A disciplinary subcommittee shall impose the sanction of
6 permanent revocation for a violation of section 16221(b) (xiii) if
7 the violation occurred while the licensee or registrant was acting
8 within the health profession for which he or she was licensed or
9 registered.

10 (6) Except as otherwise provided in subsection (5) **AND THIS**
11 **SUBSECTION**, a disciplinary subcommittee shall not impose the
12 sanction of permanent revocation under this section without a
13 finding that the licensee or registrant engaged in a pattern of
14 intentional acts of fraud or deceit resulting in personal financial
15 gain to the licensee or registrant and harm to the health of
16 patients under the licensee's or registrant's care. **THIS SUBSECTION**
17 **DOES NOT APPLY IF A DISCIPLINARY SUBCOMMITTEE FINDS THAT A LICENSEE**
18 **OR REGISTRANT HAS VIOLATED SECTION 16221(B) (xiv) .**

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

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

24 (a) Senate Bill No. _____ or House Bill No. 4636 (request no.
25 02921'17 *).

26 (b) Senate Bill No. _____ or House Bill No. 4637 (request no.
27 03084'17 *).