

SENATE BILL No. 167

February 15, 2017, Introduced by Senator SCHUITMAKER 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), 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
3 action under this section exist, and may investigate activities
4 related to the practice of a health profession by a licensee, a
5 registrant, or an applicant for licensure or registration. The
6 department may hold hearings, administer oaths, and order the
7 taking of relevant testimony. After its investigation, the
8 department shall provide a copy of the administrative complaint
9 to the appropriate disciplinary subcommittee. The disciplinary

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

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

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

12 (i) Incompetence.

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

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

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

21 (v) Conviction of a misdemeanor punishable by imprisonment
22 for a maximum term of 2 years; conviction of a misdemeanor
23 involving the illegal delivery, possession, or use of a
24 controlled substance; or conviction of any felony other than a
25 felony listed or described in another subparagraph of this
26 subdivision. A certified copy of the court record is conclusive
27 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
8 of 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
11 a 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
16 regulated by another state or a territory of the United States,
17 by the United States military, by the federal government, or by
18 another country. A certified copy of the record of the board is
19 conclusive evidence of the final action.

20 (xi) Conviction of a misdemeanor that is reasonably related
21 to or that adversely affects the licensee's or registrant's
22 ability to practice in a safe and competent manner. A certified
23 copy of the court record is conclusive evidence of the
24 conviction.

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

1 (xiii) Conviction of a criminal offense under section 83, 84,
2 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
3 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,
4 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of
5 the court record is conclusive evidence of the conviction.

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

8 (i) Fraud or deceit in obtaining or renewing a license or
9 registration.

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

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

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

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

21 (i) False or misleading advertising.

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

25 (iii) Fraud or deceit in obtaining or attempting to obtain
26 third party reimbursement.

27 (e) Except as otherwise specifically provided in this

1 section, unprofessional conduct, consisting of 1 or more of the
2 following:

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

6 (ii) Betrayal of a professional confidence.

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

9 (iv) Either of the following:

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

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

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

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

24 (vi) Any conduct by a health professional with a patient
25 while he or she is acting within the health profession for which
26 he or she is licensed or registered, including conduct initiated
27 by a patient or to which the patient consents, that is sexual or

1 may reasonably be interpreted as sexual, including, but not
2 limited to, sexual intercourse, kissing in a sexual manner, or
3 touching of a body part for any purpose other than appropriate
4 examination, treatment, or comfort.

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

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

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

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

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

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

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

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

23 (m) A violation of section 17015, 17015a, 17017, 17515, or
24 17517.

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

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

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

1 (q) A violation of section 16274.

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

3 (s) A violation of the medical records access act, 2004 PA
4 47, MCL 333.26261 to 333.26271.

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

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

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

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

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

1 suspension, revocation,
2 restitution, or fine.
3
4 Subdivision (c) (i) Denial, revocation, suspension,
5 probation, limitation, or fine.
6
7 Subdivision (c) (ii) Denial, suspension, revocation,
8 restitution, or fine.
9
10 Subdivision (c) (iii) Probation, denial, suspension,
11 revocation, restitution, or fine.
12
13 Subdivision (c) (iv) Fine, probation, denial,
14 or (d) (iii) suspension, revocation, permanent
15 revocation, or restitution.
16
17 Subdivision (d) (i) Reprimand, fine, probation,
18 or (d) (ii) denial, or restitution.
19
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,
28 denial, or fine.
29

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

1 suspension, limitation, reprimand,
2 or fine.

3
4 **SUBDIVISION (V) SUBJECT TO SUBSECTION (5),**
5 **SUSPENSION, REVOCATION, OR**
6 **PERMANENT REVOCATION.**

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

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

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

4 (5) A DISCIPLINARY SUBCOMMITTEE THAT FINDS THAT A LICENSEE,
5 A 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
8 A PROGRAM OF REMEDIAL CONTINUING EDUCATION FOCUSED ON
9 PRESCRIPTION DRUG AND OPIOID ADDICTION, TO BE COMPLETED WITHIN
10 180 DAYS AFTER THE DEPARTMENT NOTIFIES HIM OR HER OF ITS ORDER
11 UNDER THIS SUBSECTION. FOR A SECOND OR SUBSEQUENT VIOLATION OF
12 SECTION 16221(V), OR A FAILURE TO COMPLETE THE PROGRAM DESCRIBED
13 IN THIS SUBSECTION, THE DISCIPLINARY SUBCOMMITTEE SHALL IMPOSE 1
14 OR MORE OF THE SANCTIONS DESCRIBED IN SUBSECTION (1) FOR A
15 VIOLATION OF SECTION 16221(V).

16 (6) ~~(5)~~—A disciplinary subcommittee shall impose the
17 sanction of permanent revocation for a violation of section
18 16221(b) *(xiii)* if the violation occurred while the licensee or
19 registrant was acting within the health profession for which he
20 or she was licensed or registered.

21 (7) ~~(6)~~—Except as otherwise provided in subsection ~~(5)~~, ~~(6)~~,
22 a disciplinary subcommittee shall not impose the sanction of
23 permanent revocation under this section without a finding that
24 the licensee or registrant engaged in a pattern of intentional
25 acts of fraud or deceit resulting in personal financial gain to
26 the licensee or registrant and harm to the health of patients
27 under the licensee's or registrant's care.

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