

SENATE BILL NO. 593

May 11, 1999, Introduced by Senators GOSCHKA, SCHWARZ,
HAMMERSTROM, JOHNSON, GOUGEON, SHUGARS, SIKKEMA and
MC COTTER 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), section 16221 as amended by 1998 PA 227 and section
16226 as amended by 1998 PA 109, and by adding sections 17020 and
17520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (a) A violation of general duty, consisting of negligence or
2 failure to exercise due care, including negligent delegation to
3 or supervision of employees or other individuals, whether or not
4 injury results, or any conduct, practice, or condition which
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
8 the 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 compe-
16 tent jurisdiction.

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

22 (vi) Lack of good moral character.

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

1 (viii) Conviction of a violation of section 492a of the
2 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy
3 of the court record is conclusive evidence of the conviction.

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

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

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

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

21 (i) Fraud or deceit in obtaining or renewing a license or
22 registration.

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

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

26 (iv) Obtaining, possessing, or attempting to obtain or
27 possess a controlled substance as defined in section 7104 or a

1 drug as defined in section 7105 without lawful authority; or
2 selling, prescribing, giving away, or administering drugs for
3 other than lawful diagnostic or therapeutic purposes.

4 (d) Unethical business practices, consisting of 1 or more of
5 the following:

6 (i) False or misleading advertising.

7 (ii) Dividing fees for referral of patients or accepting
8 kickbacks on medical or surgical services, appliances, or medica-
9 tions purchased by or in behalf of patients.

10 (iii) Fraud or deceit in obtaining or attempting to obtain
11 third party reimbursement.

12 (e) Unprofessional conduct, consisting of 1 or more of the
13 following:

14 (i) Misrepresentation to a consumer or patient or in obtain-
15 ing or attempting to obtain third party reimbursement in the
16 course of professional practice.

17 (ii) Betrayal of a professional confidence.

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

20 (iv) Directing or requiring an individual to purchase or
21 secure a drug, device, treatment, procedure, or service from
22 another person, place, facility, or business in which the
23 licensee has a financial interest.

24 (f) Failure to report a change of name or mailing address
25 within 30 days after the change occurs.

26 (g) A violation, or aiding or abetting in a violation, of
27 this article or of a rule promulgated under this article.

1 (h) Failure to comply with a subpoena issued pursuant to
2 this part, failure to respond to a complaint issued under this
3 article or article 7, failure to appear at a compliance confer-
4 ence or an administrative hearing, or failure to report under
5 section 16222 or 16223.

6 (i) Failure to pay an installment of an assessment levied
7 pursuant to ~~section 2504 of~~ the insurance code of 1956, 1956 PA
8 218, MCL ~~500.2504~~ 500.100 TO 500.8302, within 60 days after
9 notice by the appropriate board.

10 (j) A violation of section 17013 or 17513.

11 (k) Failure to meet 1 or more of the requirements for licen-
12 sure or registration under section 16174.

13 (l) A violation of section 17015 or 17515.

14 (m) A violation of section 17016 or 17516.

15 (n) Failure to comply with section 9206(3).

16 (o) A violation of section 5654 or 5655.

17 (p) A violation of section 16274.

18 (Q) A VIOLATION OF SECTION 17020 OR 17520.

19 Sec. 16226. (1) After finding the existence of 1 or more of
20 the grounds for disciplinary subcommittee action listed in sec-
21 tion 16221, a disciplinary subcommittee shall impose 1 or more of
22 the following sanctions for each violation:

23

24 Violations of Section 16221

Sanctions

25 Subdivision (a), (b)(ii), Probation, limitation, denial,

26 (b)(iv), (b)(vi), or suspension, revocation,

1	(b)(vii)	restitution, community service,
2		or fine.
3	Subdivision (b)(viii)	Revocation or denial.
4	Subdivision (b)(i),	Limitation, suspension,
5	(b)(iii), (b)(v),	revocation, denial,
6	(b)(ix),	probation, restitution,
7	(b)(x), or (b)(xi)	community service, or fine.
8	Subdivision (c)(i)	Denial, revocation, suspension,
9		probation, limitation, commu-
10		nity service, or fine.
11	Subdivision (c)(ii)	Denial, suspension, revocation,
12		restitution, community service,
13		or fine.
14	Subdivision (c)(iii)	Probation, denial, suspension,
15		revocation, restitution, commu-
16		nity service, or fine.
17	Subdivision (c)(iv)	Fine, probation, denial,
18	or (d)(iii)	suspension, revocation, commu-
19		nity service,
20		or restitution.
21	Subdivision (d)(i)	Reprimand, fine, probation,
22	or (d)(ii)	community service, denial,
23		or restitution.
24	Subdivision (e)(i)	Reprimand, fine, probation,
25		limitation, suspension, commu-
26		nity service, denial, or
27		restitution.

- 1 Subdivision (e)(ii) Reprimand, probation,
 2 or (h) suspension, restitution, commu-
 3 nity service, denial, or fine.
- 4 Subdivision (e)(iii) Reprimand, fine, probation,
 5 or (e)(iv) suspension, revocation, limita-
 6 tion, community service,
 7 denial, or restitution.
- 8 Subdivision (f) Reprimand or fine.
- 9 Subdivision (g) Reprimand, probation, denial,
 10 suspension, revocation, limita-
 11 tion, restitution, community
 12 service, or fine.
- 13 Subdivision (i) Suspension or fine.
- 14 Subdivision (j), ~~or~~
 15 (o), OR (Q) Reprimand or fine.
- 16 Subdivision (k) Reprimand, denial, or
 17 limitation.
- 18 Subdivision (l) or (n) Denial, revocation, restitution,
 19 probation, suspension, limita-
 20 tion, reprimand, or fine.
- 21 Subdivision (m) Revocation or denial.
- 22 Subdivision (p) Revocation.
- 23 (2) Determination of sanctions for violations under this
 24 section shall be made by a disciplinary subcommittee. If, during
 25 judicial review, the court of appeals determines that a final
 26 decision or order of a disciplinary subcommittee prejudices
 27 substantial rights of the petitioner for 1 or more of the grounds

1 listed in section 106 of the administrative procedures act of
2 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
3 or order is unlawful and is to be set aside, the court shall
4 state on the record the reasons for the holding and may remand
5 the case to the disciplinary subcommittee for further
6 consideration.

7 (3) A disciplinary subcommittee may impose a fine of up to,
8 but not exceeding, \$250,000.00 for a violation of
9 section 16221(a) or (b).

10 (4) A disciplinary subcommittee may require a licensee or
11 registrant or an applicant for licensure or registration who has
12 violated this article or article 7 or a rule promulgated under
13 this article or article 7 to satisfactorily complete an educa-
14 tional program, a training program, or a treatment program, a
15 mental, physical, or professional competence examination, or a
16 combination of those programs and examinations.

17 SEC. 17020. (1) BEGINNING UPON THE EXPIRATION OF 6 MONTHS
18 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
19 SECTION, A PHYSICIAN OR AN INDIVIDUAL TO WHOM THE PHYSICIAN HAS
20 DELEGATED AUTHORITY TO PERFORM A SELECTED ACT, TASK, OR FUNCTION
21 UNDER SECTION 16215 SHALL NOT ORDER A GENETIC TEST WITHOUT FIRST
22 OBTAINING THE WRITTEN, INFORMED CONSENT OF THE TEST SUBJECT, PUR-
23 SUANT TO THIS SECTION.

24 (2) FOR PURPOSES OF SUBSECTION (1), WRITTEN, INFORMED CON-
25 SENT CONSISTS OF A SIGNED WRITING EXECUTED BY THE TEST SUBJECT OR
26 THE LEGALLY AUTHORIZED REPRESENTATIVE OF THE TEST SUBJECT THAT
27 INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

1 (A) THE NATURE AND PURPOSE OF THE GENETIC TEST.

2 (B) THE EFFECTIVENESS AND LIMITATIONS OF THE GENETIC TEST,
3 INCLUDING, BUT NOT LIMITED TO, CLINICAL PREDICTIVENESS, FALSE
4 POSITIVE, OR SPECIFICITY, RATES, AND FALSE NEGATIVE, OR SENSITIV-
5 ITY, RATES.

6 (C) THE IMPLICATIONS OF TAKING THE GENETIC TEST, INCLUDING,
7 BUT NOT LIMITED TO, THE POTENTIAL MEDICAL AND NONMEDICAL RISKS
8 AND BENEFITS.

9 (D) THE POTENTIAL FUTURE USES OF THE SAMPLE TAKEN FROM THE
10 TEST SUBJECT IN ORDER TO CONDUCT THE GENETIC TEST AND THE INFOR-
11 MATION OBTAINED FROM THE GENETIC TEST.

12 (E) THE MEANING OF THE GENETIC TEST RESULTS AND THE PROCE-
13 DURE FOR PROVIDING NOTICE OF THE RESULTS.

14 (F) WHO WILL HAVE ACCESS TO THE SAMPLE TAKEN FROM THE TEST
15 SUBJECT IN ORDER TO CONDUCT THE GENETIC TEST AND THE INFORMATION
16 OBTAINED FROM THE GENETIC TEST, AND THE TEST SUBJECT'S RIGHT TO
17 CONFIDENTIAL TREATMENT OF THE SAMPLE AND THE INFORMATION.

18 (3) WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDA-
19 TORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN CONSULTATION
20 WITH THE MICHIGAN BOARD OF MEDICINE, THE MICHIGAN BOARD OF OSTEO-
21 PATHIC MEDICINE AND SURGERY, AND APPROPRIATE PROFESSIONAL ORGANI-
22 ZATIONS, SHALL DEVELOP AND DISTRIBUTE A MODEL INFORMED CONSENT
23 FORM FOR PURPOSES OF THIS SECTION. THE DEPARTMENT SHALL INCLUDE
24 IN THE MODEL FORM AT LEAST ALL OF THE INFORMATION REQUIRED UNDER
25 SUBSECTION (2). THE DEPARTMENT SHALL DISTRIBUTE THE MODEL FORM
26 TO PHYSICIANS AND OTHER INDIVIDUALS SUBJECT TO THIS SECTION UPON
27 REQUEST AND AT NO CHARGE.

1 (4) THE DEPARTMENT, IN CONSULTATION WITH THE ENTITIES
2 DESCRIBED IN SUBSECTION (3), MAY ALSO DEVELOP AND DISTRIBUTE A
3 PAMPHLET THAT PROVIDES FURTHER EXPLANATION OF THE INFORMATION
4 INCLUDED IN THE MODEL INFORMED CONSENT FORM.

5 (5) IF A TEST SUBJECT OR HIS OR HER LEGALLY AUTHORIZED REP-
6 REPRESENTATIVE SIGNS A COPY OF THE MODEL INFORMED CONSENT FORM
7 DEVELOPED AND DISTRIBUTED UNDER SUBSECTION (3), THE PHYSICIAN OR
8 INDIVIDUAL ACTING UNDER THE DELEGATORY AUTHORITY OF THE PHYSICIAN
9 SHALL GIVE THE TEST SUBJECT A COPY OF THE SIGNED INFORMED CONSENT
10 FORM AND SHALL INCLUDE THE ORIGINAL SIGNED INFORMED CONSENT FORM
11 IN THE TEST SUBJECT'S MEDICAL RECORD. THE PHYSICIAN OR OTHER
12 INDIVIDUAL SHALL ALSO HAVE THE TEST SUBJECT OR HIS OR HER LEGALLY
13 AUTHORIZED REPRESENTATIVE SIGN A FORM INDICATING THAT HE OR SHE
14 HAS BEEN GIVEN A COPY OF THE SIGNED INFORMED CONSENT FORM AND
15 SHALL INCLUDE THAT FORM IN THE TEST SUBJECT'S MEDICAL RECORD.

16 (6) IF A TEST SUBJECT OR HIS OR HER LEGALLY AUTHORIZED REP-
17 REPRESENTATIVE SIGNS THE INFORMED CONSENT FORM DEVELOPED AND DIS-
18 TRIBUTED UNDER SUBSECTION (3), THE TEST SUBJECT IS BARRED FROM
19 SUBSEQUENTLY BRINGING A CIVIL ACTION FOR DAMAGES AGAINST THE PHY-
20 SICIAN WHO ORDERED THE GENETIC TEST BASED ON FAILURE TO OBTAIN
21 INFORMED CONSENT FOR THE GENETIC TEST.

22 (7) AS USED IN THIS SECTION, "GENETIC TEST" MEANS THE ANALY-
23 SIS OF HUMAN DNA, RNA, CHROMOSOMES, PROTEINS, AND CERTAIN METABO-
24 LITES IN ORDER TO DETECT HERITABLE OR SOMATIC DISEASE-RELATED
25 GENOTYPES OR KARYOTYPES FOR CLINICAL PURPOSES. A GENETIC TEST
26 MUST BE GENERALLY ACCEPTED IN THE SCIENTIFIC AND MEDICAL
27 COMMUNITIES AS BEING SPECIFICALLY DETERMINATIVE FOR THE PRESENCE

1 OR ABSENCE OF A MUTATION OF A GENE OR CHROMOSOME IN ORDER TO
2 QUALIFY UNDER THIS DEFINITION.

3 SEC. 17520. (1) BEGINNING UPON THE EXPIRATION OF 6 MONTHS
4 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
5 SECTION, A PHYSICIAN OR AN INDIVIDUAL TO WHOM THE PHYSICIAN HAS
6 DELEGATED AUTHORITY TO PERFORM A SELECTED ACT, TASK, OR FUNCTION
7 UNDER SECTION 16215 SHALL NOT ORDER A GENETIC TEST WITHOUT FIRST
8 OBTAINING THE WRITTEN, INFORMED CONSENT OF THE TEST SUBJECT, PUR-
9 SUANT TO THIS SECTION.

10 (2) FOR PURPOSES OF SUBSECTION (1), WRITTEN, INFORMED CON-
11 SENT CONSISTS OF A SIGNED WRITING EXECUTED BY THE TEST SUBJECT OR
12 THE LEGALLY AUTHORIZED REPRESENTATIVE OF THE TEST SUBJECT THAT
13 INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

14 (A) THE NATURE AND PURPOSE OF THE GENETIC TEST.

15 (B) THE EFFECTIVENESS AND LIMITATIONS OF THE GENETIC TEST,
16 INCLUDING, BUT NOT LIMITED TO, CLINICAL PREDICTIVENESS, FALSE
17 POSITIVE, OR SPECIFICITY, RATES, AND FALSE NEGATIVE, OR SENSITIV-
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19 (C) THE IMPLICATIONS OF TAKING THE GENETIC TEST, INCLUDING,
20 BUT NOT LIMITED TO, THE POTENTIAL MEDICAL AND NONMEDICAL RISKS
21 AND BENEFITS.

22 (D) THE POTENTIAL FUTURE USES OF THE SAMPLE TAKEN FROM THE
23 TEST SUBJECT IN ORDER TO CONDUCT THE GENETIC TEST AND THE INFOR-
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5 (3) WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDA-
6 TORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN CONSULTATION
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