

SENATE BILL No. 1298

May 30, 2000, Introduced by Senators SCHWARZ, YOUNG, NORTH, GAST, GOUGEON, HAMMERSTROM, SHUGARS and EMERSON and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
 "Public health code,"
 by amending sections 7311, 16221, 16226, and 17766 (MCL 333.7311, 333.16221, 333.16226, and 333.17766), section 7311 as amended by 1993 PA 80, sections 16221 and 16226 as amended by 2000 PA 29, and section 17766 as amended by 1990 PA 30, and by adding section 17713.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7311. (1) A license under section 7306 to manufacture,
 2 distribute, prescribe, or dispense a controlled substance may be
 3 denied, suspended, or revoked or a licensee may be fined, reprimanded,
 4 ordered to perform community service or make restitution,
 5 or placed on probation by the disciplinary subcommittee upon a
 6 finding that an applicant for licensure or a licensee is subject
 7 to ~~any~~ 1 OR MORE of the following:

1 (a) The applicant or licensee has furnished false or
2 fraudulent material information in an application filed under
3 this article.

4 (b) The applicant's or licensee's federal registration to
5 manufacture, distribute, or dispense controlled substances has
6 been surrendered, suspended, or revoked.

7 (c) The applicant or licensee has promoted a controlled sub-
8 stance to the general public.

9 (d) The applicant or licensee is not a practitioner, manu-
10 facturer, or distributor.

11 (e) The applicant or licensee has not maintained effective
12 controls against diversion of controlled substances to other than
13 legitimate and professionally recognized therapeutic, scientific,
14 or industrial uses.

15 (f) The applicant or licensee is not in compliance with
16 applicable federal, state, and local laws.

17 (g) The applicant or licensee has manufactured, distributed,
18 or dispensed a controlled substance for other than legitimate or
19 professionally recognized therapeutic, scientific, or industrial
20 purposes or outside the scope of practice of the
21 practitioner-licensee or applicant.

22 (H) THE APPLICANT OR LICENSEE HAS PRESCRIBED OR DISPENSED A
23 CONTROLLED SUBSTANCE WITHOUT HAVING ESTABLISHED A
24 PHYSICIAN-PATIENT RELATIONSHIP OR OTHER HEALTH
25 PROFESSIONAL-PATIENT RELATIONSHIP BY HAVING AT LEAST 1
26 FACE-TO-FACE CONSULTATION WITH THE PATIENT FOR WHOM THE
27 CONTROLLED SUBSTANCE WAS PRESCRIBED OR DISPENSED.

1 (I) ~~(h)~~ The applicant or licensee has violated or
2 attempted to violate, directly or indirectly, assisted in or
3 abetted the violation of, or conspired to violate this article or
4 ~~rules~~ A RULE of the administrator promulgated under this
5 article.

6 (2) The disciplinary subcommittee may limit a license under
7 subsection (1) to a particular controlled substance.

8 (3) A license under section 7306 to manufacture, distribute,
9 prescribe, or dispense a controlled substance shall be denied or
10 revoked by the disciplinary subcommittee if the applicant or
11 licensee has been convicted of a felony under a state or federal
12 law relating to a controlled substance.

13 (4) If the disciplinary subcommittee suspends or revokes a
14 license or if a license is void under subsection (6), all con-
15 trolled substances owned or possessed by the licensee at the time
16 of suspension or the effective date of the revocation order may
17 be placed under seal or seized at the discretion of the disci-
18 plinary subcommittee. The department shall not dispose of con-
19 trolled substances under seal or seizure until the time for
20 taking an appeal has elapsed or until all appeals have been con-
21 cluded, unless a court, upon application therefor, orders the
22 sale of perishable controlled substances and the deposit of the
23 proceeds of the sale with the court. Upon a revocation order
24 becoming final or after a license becomes void under subsection
25 (6) because the licensee's license to practice is revoked under
26 article 15 and that revocation order becomes final, the

1 disciplinary subcommittee may order all controlled substances
2 under seal or seizure to be forfeited to this state.

3 (5) The disciplinary subcommittee shall promptly notify the
4 bureau of all orders suspending or revoking a license and all
5 forfeitures of controlled substances.

6 (6) A license under section 7306 to manufacture, distribute,
7 prescribe, or dispense a controlled substance is automatically
8 void if the licensee's license to practice is suspended or
9 revoked under article 15.

10 (7) Subject to subsection (8), if the administrator or the
11 disciplinary subcommittee finds that an applicant or licensee has
12 been convicted of a misdemeanor or a felony under a state or fed-
13 eral law relating to a controlled substance, the applicant or
14 licensee shall not have a direct financial interest in or be
15 employed by a person who is licensed under this article to manu-
16 facture, distribute, prescribe, or dispense a controlled sub-
17 stance in a capacity in which the individual has direct access to
18 controlled substances for a period of not less than 3 years after
19 the date of conviction. An individual who violates this subsec-
20 tion is subject to a civil fine of not more than \$25,000.00 in a
21 proceeding in the circuit court.

22 (8) Subsection (7) applies only to a conviction for a misde-
23 meanor that is directly related to the manufacture, delivery,
24 possession, possession with intent to manufacture or deliver,
25 use, distribution, prescription, or dispensing of a controlled
26 substance. Subsection (7) does not apply to a conviction for a

1 misdemeanor based upon an unintentional error or omission
2 involving a clerical or record-keeping function.

3 Sec. 16221. The department 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 rele-
7 vant testimony to be taken and shall report its findings to the
8 appropriate disciplinary subcommittee. The disciplinary subcom-
9 mittee shall proceed under section 16226 if it finds that 1 or
10 more of the following grounds exist:

11 (a) A violation of general duty, consisting of negligence or
12 failure to exercise due care, including negligent delegation to
13 or supervision of employees or other individuals, whether or not
14 injury results, or any conduct, practice, or condition which
15 impairs, or may impair, the ability to safely and skillfully
16 practice the health profession.

17 (b) Personal disqualifications, consisting of 1 or more of
18 the following:

19 (i) Incompetence.

20 (ii) Subject to sections 16165 to 16170a, substance abuse as
21 defined in section 6107.

22 (iii) Mental or physical inability reasonably related to and
23 adversely affecting the licensee's ability to practice in a safe
24 and competent manner.

25 (iv) Declaration of mental incompetence by a court of compe-
26 tent jurisdiction.

1 (v) Conviction of a misdemeanor punishable by imprisonment
2 for a maximum term of 2 years; a misdemeanor involving the
3 illegal delivery, possession, or use of a controlled substance;
4 or a felony. A certified copy of the court record is conclusive
5 evidence of the conviction.

6 (vi) Lack of good moral character.

7 (vii) Conviction of a criminal offense under sections 520a
8 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to
9 750.520l. A certified copy of the court record is conclusive
10 evidence of the conviction.

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

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

18 (x) Final adverse administrative action by a licensure, reg-
19 istration, disciplinary, or certification board involving the
20 holder of, or an applicant for, a license or registration regu-
21 lated by another state or a territory of the United States, by
22 the United States military, by the federal government, or by
23 another country. A certified copy of the record of the board is
24 conclusive evidence of the final action.

25 (xi) Conviction of a misdemeanor that is reasonably related
26 to or that adversely affects the licensee's ability to practice

1 in a safe and competent manner. A certified copy of the court
2 record is conclusive evidence of the conviction.

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

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

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

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

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

15 (d) Unethical business practices, consisting of 1 or more of
16 the following:

17 (i) False or misleading advertising.

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

21 (iii) Fraud or deceit in obtaining or attempting to obtain
22 third party reimbursement.

23 (e) Unprofessional conduct, consisting of 1 or more of the
24 following:

25 (i) Misrepresentation to a consumer or patient or in obtain-
26 ing or attempting to obtain third party reimbursement in the
27 course of professional practice.

- 1 (ii) Betrayal of a professional confidence.
- 2 (iii) Promotion for personal gain of an unnecessary drug,
3 device, treatment, procedure, or service.
- 4 (iv) Directing or requiring an individual to purchase or
5 secure a drug, device, treatment, procedure, or service from
6 another person, place, facility, or business in which the
7 licensee has a financial interest.
- 8 (f) Failure to report a change of name or mailing address
9 within 30 days after the change occurs.
- 10 (g) A violation, or aiding or abetting in a violation, of
11 this article or of a rule promulgated under this article.
- 12 (h) Failure to comply with a subpoena issued pursuant to
13 this part, failure to respond to a complaint issued under this
14 article or article 7, failure to appear at a compliance confer-
15 ence or an administrative hearing, or failure to report under
16 section 16222 or 16223.
- 17 (i) Failure to pay an installment of an assessment levied
18 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
19 to 500.8302, within 60 days after notice by the appropriate
20 board.
- 21 (j) A violation of section 17013 or 17513.
- 22 (k) Failure to meet 1 or more of the requirements for licen-
23 sure or registration under section 16174.
- 24 (l) A violation of section 17015 or 17515.
- 25 (m) A violation of section 17016 or 17516.
- 26 (n) Failure to comply with section 9206(3).

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

2 (p) A violation of section 16274.

3 (q) A violation of section 17020 or 17520.

4 (R) A VIOLATION OF SECTION 17713.

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

9

10 Violations of Section 16221

Sanctions

11 Subdivision (a), (b)(ii),	Probation, limitation, denial,
12 (b)(iv), (b)(vi), or	suspension, revocation,
13 (b)(vii)	restitution, community service,
14	or fine.

15 Subdivision (b)(viii)	Revocation or denial.
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16 Subdivision (b)(i),	Limitation, suspension,
17 (b)(iii), (b)(v),	revocation, denial,
18 (b)(ix),	probation, restitution,
19 (b)(x), or (b)(xi)	community service, or fine.

20 Subdivision (c)(i)	Denial, revocation, suspension,
21	probation, limitation, community
22	service, or fine.

1 Subdivision (c)(ii)	Denial, suspension, revocation,
2	restitution, community service,
3	or fine.
4 Subdivision (c)(iii)	Probation, denial, suspension,
5	revocation, restitution, commu-
6	nity service, or fine.
7 Subdivision (c)(iv)	Fine, probation, denial,
8	or restitution.
9 Subdivision (d)(i)	Reprimand, fine, probation,
10 or (d)(ii)	community service, denial,
11	or restitution.
12 Subdivision (e)(i)	Reprimand, fine, probation,
13	limitation, suspension, community
14	service, denial, or restitution.
15 Subdivision (e)(ii)	Reprimand, probation,
16 or (h)	suspension, restitution, commu-
17	nity service, denial, or fine.
18 Subdivision (e)(iii)	Reprimand, fine, probation,
19 or (e)(iv)	suspension, revocation, limita-
20	tion, community service, denial,
21	or restitution.

- 1 Subdivision (f) Reprimand or fine.
- 2 Subdivision (g) Reprimand, probation, denial,
 3 suspension, revocation, limita-
 4 tion, restitution, community
 5 service, or fine.
- 6 Subdivision (i) Suspension or fine.
- 7 Subdivision (j), (o), or
 8 (q) Reprimand or fine.
- 9 Subdivision (k) Reprimand, denial, or
 10 limitation.
- 11 Subdivision (l), ~~or~~
 12 (n), OR (R) Denial, revocation, restitution,
 13 probation, suspension, limita-
 14 tion, reprimand, or fine.
- 15 Subdivision (m) Revocation or denial.
- 16 Subdivision (p) Revocation.
- 17 (2) Determination of sanctions for violations under this
 18 section shall be made by a disciplinary subcommittee. If, during
 19 judicial review, the court of appeals determines that a final
 20 decision or order of a disciplinary subcommittee prejudices

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

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

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

18 SEC. 17713. A PRESCRIBER SHALL NOT ISSUE A PRESCRIPTION TO
19 A PATIENT UNLESS THE PRESCRIBER HAS ESTABLISHED A HEALTH
20 PROFESSIONAL-PATIENT RELATIONSHIP WITH THE PATIENT BY HAVING AT
21 LEAST 1 FACE-TO-FACE CONSULTATION WITH THE PATIENT.

22 Sec. 17766. Except as provided in section 17766a, a person
23 who does ~~any~~ 1 OR MORE of the following is guilty of a
24 misdemeanor:

25 (a) Obtains or attempts to obtain a prescription drug by
26 giving a false name to a pharmacist or other authorized seller,
27 prescriber, or dispenser.

1 (b) Obtains or attempts to obtain a prescription drug by
2 falsely representing that he or she is a lawful prescriber, dis-
3 penser, or licensee, or acting on behalf of a lawful prescriber,
4 dispenser, or licensee.

5 (C) OBTAINS OR ATTEMPTS TO OBTAIN A PRESCRIPTION OR A PRE-
6 SCRIPTON DRUG FROM A PRESCRIBER WITHOUT FIRST HAVING ESTABLISHED
7 A HEALTH PROFESSIONAL-PATIENT RELATIONSHIP WITH THE PRESCRIBER BY
8 HAVING AT LEAST 1 FACE-TO-FACE CONSULTATION WITH THE PRESCRIBER.

9 (D) ~~(c)~~ Falsely makes, utters, publishes, passes, alters,
10 or forges a prescription.

11 (E) ~~(d)~~ Knowingly possesses a false, forged, or altered
12 prescription.

13 (F) ~~(e)~~ Knowingly attempts to obtain, obtains, or pos-
14 sesses a drug by means of a prescription for other than a legiti-
15 mate therapeutic purpose, or as a result of a false, forged, or
16 altered prescription.

17 (G) ~~(f)~~ Possesses or controls for the purpose of resale,
18 or sells, offers to sell, dispenses, or gives away, a drug, phar-
19 maceutical preparation, or chemical that has been dispensed on
20 prescription and has left the control of a pharmacist, or that
21 has been damaged by heat, smoke, fire, water, or other cause and
22 is unfit for human or animal use.

23 (H) ~~(g)~~ Prepares or permits the preparation of a prescrip-
24 tion drug, except as delegated by a pharmacist.

25 (I) ~~(h)~~ Sells a drug in bulk or in an open package at auc-
26 tion, unless the sale has been approved in accordance with rules
27 of the board.