

**SUBSTITUTE FOR
SENATE BILL NO. 235**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 16221 (MCL 333.16221), as amended by 2004 PA
214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

9 (a) A violation of general duty, consisting of negligence or
10 failure to exercise due care, including negligent delegation to or

1 supervision of employees or other individuals, whether or not
2 injury results, or any conduct, practice, or condition that
3 impairs, or may impair, the ability to safely and skillfully
4 practice the health profession.

5 (b) Personal disqualifications, consisting of 1 or more of the
6 following:

7 (i) Incompetence.

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

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

13 (iv) Declaration of mental incompetence by a court of competent
14 jurisdiction.

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

20 (vi) Lack of good moral character.

21 (vii) Conviction of a criminal offense under ~~sections 520b to~~
22 ~~520g~~ **SECTION 520E OR 520G** of the Michigan penal code, 1931 PA 328,
23 ~~MCL 750.520b to 750.520g~~ **750.520E AND 750.520G**. A certified copy of
24 the court record is conclusive evidence of the conviction.

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

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

5 (x) Final adverse administrative action by a licensure,
6 registration, disciplinary, or certification board involving the
7 holder of, or an applicant for, a license or registration regulated
8 by another state or a territory of the United States, by the United
9 States military, by the federal government, or by another country.
10 A certified copy of the record of the board is conclusive evidence
11 of the final action.

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

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

19 **(xiii) CONVICTION OF A CRIMINAL OFFENSE UNDER SECTION 520B,**
20 **520C, 520D, OR 520F OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**
21 **750.520B, 750.520C, 750.520D, AND 750.520F. A CERTIFIED COPY OF THE**
22 **COURT RECORD IS CONCLUSIVE EVIDENCE OF THE CONVICTION.**

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

24 (i) Fraud or deceit in obtaining or renewing a license or
25 registration.

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

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

2 (iv) Obtaining, possessing, or attempting to obtain or possess
3 a controlled substance as defined in section 7104 or a drug as
4 defined in section 7105 without lawful authority; or selling,
5 prescribing, giving away, or administering drugs for other than
6 lawful diagnostic or therapeutic purposes.

7 (d) Unethical business practices, consisting of 1 or more of
8 the following:

9 (i) False or misleading advertising.

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

13 (iii) Fraud or deceit in obtaining or attempting to obtain third
14 party reimbursement.

15 (e) Unprofessional conduct, consisting of 1 or more of the
16 following:

17 (i) Misrepresentation to a consumer or patient or in obtaining
18 or attempting to obtain third party reimbursement in the course of
19 professional practice.

20 (ii) Betrayal of a professional confidence.

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

23 (iv) Either of the following:

24 (A) A requirement by a licensee other than a physician that an
25 individual purchase or secure a drug, device, treatment, procedure,
26 or service from another person, place, facility, or business in
27 which the licensee has a financial interest.

1 (B) A referral by a physician for a designated health service
2 that violates ~~section 1877 of part D of title XVIII of the social~~
3 ~~security act,~~ 42 USC 1395nn ~~,~~ or a regulation promulgated under
4 that section. ~~Section 1877 of part D of title XVIII of the social~~
5 ~~security act,~~ **FOR PURPOSES OF THIS SUBPARAGRAPH,** 42 USC 1395nn ~~,~~
6 and the regulations promulgated under that section ~~,~~ as they exist
7 on June 3, 2002 ~~,~~ are incorporated by reference. ~~for purposes of~~
8 ~~this subparagraph.~~ A disciplinary subcommittee shall apply ~~section~~
9 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC
10 1395nn ~~,~~ and the regulations promulgated under that section
11 regardless of the source of payment for the designated health
12 service referred and rendered. If ~~section 1877 of part D of title~~
13 ~~XVIII of the social security act,~~ 42 USC 1395nn ~~,~~ or a regulation
14 promulgated under that section is revised after June 3, 2002, the
15 department shall officially take notice of the revision. Within 30
16 days after taking notice of the revision, the department shall
17 decide whether or not the revision pertains to referral by
18 physicians for designated health services and continues to protect
19 the public from inappropriate referrals by physicians. If the
20 department decides that the revision does both of those things, the
21 department may promulgate rules to incorporate the revision by
22 reference. If the department does promulgate rules to incorporate
23 the revision by reference, the department shall not make any
24 changes to the revision. As used in this subparagraph, "designated
25 health service" means that term as defined in ~~section 1877 of part~~
26 ~~D of title XVIII of the social security act,~~ 42 USC 1395nn ~~,~~ and
27 the regulations promulgated under that section and "physician"

1 means that term as defined in sections 17001 and 17501.

2 (v) For a physician who makes referrals pursuant to ~~section~~
3 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC
4 1395nn ~~7~~—or a regulation promulgated under that section, refusing
5 to accept a reasonable proportion of patients eligible for medicaid
6 and refusing to accept payment from medicaid or medicare as payment
7 in full for a treatment, procedure, or service for which the
8 physician refers the individual and in which the physician has a
9 financial interest. A physician who owns all or part of a facility
10 in which he or she provides surgical services is not subject to
11 this subparagraph if a referred surgical procedure he or she
12 performs in the facility is not reimbursed at a minimum of the
13 appropriate medicaid or medicare outpatient fee schedule, including
14 the combined technical and professional components.

15 (f) Beginning June 3, 2003, the department of consumer and
16 industry services shall prepare the first of 3 annual reports on
17 the effect of ~~this amendatory act~~ **2002 PA 402** on access to care for
18 the uninsured and medicaid patients. The department shall report on
19 the number of referrals by licensees of uninsured and medicaid
20 patients to purchase or secure a drug, device, treatment,
21 procedure, or service from another person, place, facility, or
22 business in which the licensee has a financial interest.

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

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

27 (i) Failure to comply with a subpoena issued pursuant to this

1 part, failure to respond to a complaint issued under this article
2 or article 7, failure to appear at a compliance conference or an
3 administrative hearing, or failure to report under section 16222 or
4 16223.

5 (j) Failure to pay an installment of an assessment levied
6 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to
7 500.8302, within 60 days after notice by the appropriate board.

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

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

11 (m) A violation of section 17015 or 17515.

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

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

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

15 (q) A violation of section 16274.

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

17 (s) A violation of the medical records access act, **2004 PA 47,**
18 **MCL 333.26261 TO 333.26271.**

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

20 Enacting section 1. This amendatory act does not take effect
21 unless all of the following bills of the 96th Legislature are
22 enacted into law:

23 (a) House Bill No. 4411.

24 (b) House Bill No. 4412.