

# SENATE BILL No. 235

March 8, 2011, Introduced by Senator JONES and referred to the Committee on Judiciary.

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:

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

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

22 (vi) Lack of good moral character.

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

27 (viii) Conviction of a violation of section 492a of the Michigan

1 penal code, 1931 PA 328, MCL 750.492a. A certified copy of the  
2 court record is conclusive evidence of the conviction.

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

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

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

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

21 **(xiii) CONVICTION OF A CRIMINAL OFFENSE UNDER SECTION 520B,**  
22 **520C, 520D, OR 520F OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**  
23 **750.520B, 750.520C, 750.520D, AND 750.520F. A CERTIFIED COPY OF THE**  
24 **COURT RECORD IS CONCLUSIVE EVIDENCE OF THE CONVICTION.**

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

26 (i) Fraud or deceit in obtaining or renewing a license or  
27 registration.

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

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

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

9           (d) Unethical business practices, consisting of 1 or more of  
10 the following:

11           (i) False or misleading advertising.

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

15           (iii) Fraud or deceit in obtaining or attempting to obtain third  
16 party reimbursement.

17           (e) Unprofessional conduct, consisting of 1 or more of the  
18 following:

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

22           (ii) Betrayal of a professional confidence.

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

25           (iv) Either of the following:

26           (A) A requirement by a licensee other than a physician that an  
27 individual purchase or secure a drug, device, treatment, procedure,

1 or service from another person, place, facility, or business in  
2 which the licensee has a financial interest.

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

1 ~~D of title XVIII of the social security act, 42 USC 1395nn ,~~ and  
2 the regulations promulgated under that section and "physician"  
3 means that term as defined in sections 17001 and 17501.

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

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

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

27 (h) A violation, or aiding or abetting in a violation, of this

1 article or of a rule promulgated under this article.

2 (i) Failure to comply with a subpoena issued pursuant to this  
3 part, failure to respond to a complaint issued under this article  
4 or article 7, failure to appear at a compliance conference or an  
5 administrative hearing, or failure to report under section 16222 or  
6 16223.

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

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

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

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

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

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

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

17 (q) A violation of section 16274.

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

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

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

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

25 (a) Senate Bill No. 234.

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27 (b) Senate Bill No. 236.

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