

# HOUSE BILL No. 5840

September 23, 2014, Introduced by Rep. Somerville and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 16221 (MCL 333.16221), as amended by 2014 PA 97.

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

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

3 (a) ~~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 or  
6 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 **ENGAGE**  
9 **IN THE** practice **OF** the health profession.

10 (b) Personal disqualifications, consisting of 1 or more of the  
11 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, 1974  
15 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 competent  
20 jurisdiction.

21 (v) Conviction of a misdemeanor punishable by imprisonment for  
22 a maximum term of 2 years; conviction of a misdemeanor involving  
23 the illegal delivery, possession, or use of a controlled substance;  
24 or conviction of any felony other than a felony listed or described  
25 in another subparagraph of this subdivision. A certified copy of  
26 the court record is conclusive evidence of the conviction.

27 (vi) Lack of good moral character.

1           (vii) Conviction of a criminal offense under section 520e or  
2 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and  
3 750.520g. A certified copy of the court record is conclusive  
4 evidence of the conviction.

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

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

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

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

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

26           (xiii) Conviction of a criminal offense under section **83, 84,**  
27 **316, 317, 321,** 520b, 520c, 520d, or 520f of the Michigan penal

1 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,  
2 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the  
3 court record is conclusive evidence of the conviction.

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

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

7 (ii) Permitting a 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 possess  
11 a controlled substance as defined in section 7104 or a drug as  
12 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~~—**EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN**  
16 **THIS SECTION, UNETHICAL** business practices, consisting of 1 or more  
17 of the following:

18 (i) False or misleading advertising.

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

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

24 (e) ~~Unprofessional~~—**EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED**  
25 **IN THIS SECTION, UNPROFESSIONAL** conduct, consisting of 1 or more of  
26 the following:

27 (i) Misrepresentation to a consumer or patient or in obtaining

1 or attempting to obtain third party reimbursement in the course of  
2 professional practice.

3 (ii) Betrayal of a professional confidence.

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

6 (iv) Either of the following:

7 (A) A requirement by a licensee other than a physician **OR A**  
8 **REGISTRANT** that an individual purchase or secure a drug, device,  
9 treatment, procedure, or service from another person, place,  
10 facility, or business in which the licensee **OR REGISTRANT** has a  
11 financial interest.

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

1 reference. If the department does promulgate rules to incorporate  
2 the revision by reference, the department shall not make any  
3 changes to the revision. As used in this sub-subparagraph,  
4 "designated health service" means that term as defined in 42 USC  
5 1395nn and the regulations promulgated under that section and  
6 "physician" means that term as defined in sections 17001 and 17501.

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

19 (vi) Any conduct by a health professional with a patient while  
20 he or she is acting within the health profession for which he or  
21 she is licensed or registered, including conduct initiated by a  
22 patient or to which the patient consents, that is sexual or may  
23 reasonably be interpreted as sexual, including, but not limited to,  
24 sexual intercourse, kissing in a sexual manner, or touching of a  
25 body part for any purpose other than appropriate examination,  
26 treatment, or comfort.

27 (vii) Offering to provide practice-related services, such as

1 drugs, in exchange for sexual favors.

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

3 (g) Failure to report a change of name or mailing address

4 ~~within 30 days after the change occurs.~~ **AS REQUIRED IN SECTION**

5 **16192.**

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

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

13 (j) Failure to pay an installment of an assessment levied  
14 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to  
15 500.8302, within 60 days after notice by the appropriate board.

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

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

19 (m) A violation of section 17015, 17015a, 17017, 17515, or  
20 17517.

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

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

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

24 (q) A violation of section 16274.

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

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

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

2 Enacting section 1. This amendatory act takes effect 90 days  
3 after the date it is enacted into law.

4 Enacting section 2. This amendatory act does not take effect  
5 unless all of the following bills of the 97th Legislature are  
6 enacted into law:

7 (a) Senate Bill No.\_\_\_\_ or House Bill No. 5839 (request no.  
8 05248'14).

9 (b) Senate Bill No.\_\_\_\_ or House Bill No. 5841 (request no.  
10 05250'14).

11 (c) Senate Bill No.\_\_\_\_ or House Bill No. 5842 (request no.  
12 05252'14).