



HOUSE BILL No. 4389

February 14, 1995, Introduced by Reps. Bennane, DeMars, Baird, Martinez, Stallworth, Yokich, Saunders, Parks and Pitoniak and referred to the Committee on Health Policy.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 133 of the Public Acts of 1993, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add section 16177a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221 and 16226 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 133 of the Public Acts
3 of 1993, being sections 333.16221 and 333.16226 of the Michigan
4 Compiled Laws, are amended and section 16177a is added read as
5 follows:

6 SEC. 16177A. (1) IN ADDITION TO THE INFORMATION REQUIRED
7 UNDER SECTION 16177, AN APPLICANT FOR LICENSURE OR REGISTRATION

1 OR A LICENSEE OR REGISTRANT APPLYING FOR RENEWAL UNDER THIS
2 ARTICLE SHALL PROVIDE THE DEPARTMENT WITH A STATEMENT VERIFYING
3 OR IDENTIFYING EACH OF THE FOLLOWING ON A FORM PROVIDED BY THE
4 DEPARTMENT, AND SHALL ATTACH TO THAT FORM A COPY OF ANY DOCUMENT
5 REQUIRED UNDER THIS SECTION:

6 (A) WHETHER HE OR SHE PARTICIPATES IN MEDICAID OR MEDICARE.

7 (B) WHETHER HE OR SHE PROVIDES SERVICES PAID FOR BY A HEALTH
8 CARE CORPORATION REGULATED UNDER THE NONPROFIT HEALTH CARE CORPO-
9 RATION REFORM ACT, ACT NO. 350 OF THE PUBLIC ACTS OF 1980, BEING
10 SECTIONS 550.1101 TO 550.1704 OF THE MICHIGAN COMPILED LAWS.

11 (C) WHETHER HE OR SHE ACCEPTS 1 OR MORE OF THE FOLLOWING:

12 (i) NEW PATIENTS.

13 (ii) MEDICARE RECIPIENTS.

14 (iii) MEDICAID RECIPIENTS.

15 (D) THE ECONOMIC INTEREST OR BUSINESS RELATIONSHIP THAT HE
16 OR SHE HAS, OR HIS OR HER SPOUSE HAS, IN OR WITH ANY OF THE
17 FOLLOWING:

18 (i) A HEALTH FACILITY OR AGENCY, INCLUDING, BUT NOT LIMITED
19 TO, A CLINICAL LABORATORY.

20 (ii) A MANAGED CARE PROVIDER.

21 (iii) A MEDICAL SUPPLIER.

22 (iv) ANOTHER INDIVIDUAL LICENSED OR REGISTERED UNDER THIS
23 ARTICLE.

24 (E) THE INSURANCE CARRIER, IF ANY, THAT PROVIDES HIM OR HER
25 WITH PROFESSIONAL LIABILITY INSURANCE COVERAGE, AND A STATEMENT
26 VERIFYING EACH OF THE FOLLOWING:

1 (i) WHETHER HE OR SHE HAS EVER BEEN DENIED PROFESSIONAL
2 LIABILITY INSURANCE COVERAGE, AND THE REASON GIVEN FOR THAT
3 DENIAL.

4 (ii) WHETHER A SPECIAL ASSESSMENT OF PROFESSIONAL LIABILITY
5 INSURANCE PREMIUMS HAS BEEN MADE AGAINST HIM OR HER ON THE BASIS
6 OF HIS OR HER PROFESSIONAL PERFORMANCE.

7 (F) WHETHER HE OR SHE IS UNINSURED OR SELF-INSURED FOR PRO-
8 FESSIONAL LIABILITY, IF HE OR SHE DOES NOT MAINTAIN PROFESSIONAL
9 LIABILITY INSURANCE COVERAGE WITH AN INSURANCE CARRIER.

10 (G) HIS OR HER SPECIALTY BOARD OR CERTIFICATION STATUS.

11 (H) HIS OR HER HEALTH PROFESSION EDUCATIONAL HISTORY,
12 INCLUDING A TRANSCRIPT OF HIS OR HER ACADEMIC EVALUATIONS.

13 (I) WHETHER A PROFESSIONAL MALPRACTICE CLAIM HAS BEEN FILED
14 AGAINST HIM OR HER, AND EACH OF THE FOLLOWING IF SUCH A CLAIM HAS
15 BEEN FILED:

16 (i) THE NAMES OF THE PARTIES AND A COPY OF EACH PLEADING OR
17 CLAIM.

18 (ii) THE STATUS OF EACH CLAIM.

19 (iii) THE RESOLUTION OF EACH CLAIM.

20 (J) WHETHER A COMPLAINT AGAINST HIM OR HER HAS BEEN FILED OR
21 AN INVESTIGATION OF HIM OR HER HAS BEEN UNDERTAKEN BY ANY OF THE
22 FOLLOWING FOR AN ALLEGED VIOLATION OF THIS ACT OR RULE PROMUL-
23 GATED UNDER THIS ACT:

24 (i) THE DEPARTMENT OR A BOARD.

25 (ii) A HEALTH FACILITY OR AGENCY THAT GRANTED HIM OR HER
26 PRIVILEGES TO PERFORM AN ACTIVITY THAT REQUIRES LICENSURE OR
27 REGISTRATION UNDER THIS ACT.

1 (iv) A MEDICAID OR MEDICARE ADMINISTRATOR.

2 (v) A HEALTH INSURER OR OTHER PRIVATE HEALTH CARE BENEFITS
3 OR PAYMENT PLAN.

4 (vi) THE ATTORNEY GENERAL OR OTHER LAW ENFORCEMENT OFFICE OR
5 DEPARTMENT.

6 (vii) THE INSPECTOR GENERAL OF THE UNITED STATES DEPARTMENT
7 OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL.

8 (K) WHETHER DISCIPLINARY ACTION, INCLUDING ANY OF THE FOL-
9 LOWING, HAS BEEN INITIATED AGAINST HIM OR HER FOR AN ACT OR OMIS-
10 SION SUBJECT TO REGULATION UNDER THIS ACT:

11 (i) SUSPENSION OR REVOCATION OF A LICENSE.

12 (ii) SUSPENSION OR REVOCATION OF A REGISTRATION OR SPECIALTY
13 CERTIFICATION.

14 (iii) CRIMINAL PROSECUTION.

15 (l) A COPY OF THE COMPLAINT OR COMPLAINTS DESCRIBED IN SUB-
16 DIVISION (J), AND A STATEMENT VERIFYING THE STATUS OF EACH
17 COMPLAINT.

18 (M) A COPY OF THE RECORD OF ANY DISCIPLINARY ACTION
19 DESCRIBED IN SUBDIVISION (K).

20 (2) WITHIN 60 DAYS AFTER BECOMING INFORMED OF A CHANGE IN
21 THE FACTS DISCLOSED ON THE FORM DESCRIBED IN SUBSECTION (1), AN
22 INDIVIDUAL LICENSED OR REGISTERED UNDER THIS ARTICLE SHALL PRO-
23 VIDE THE DEPARTMENT WITH WRITTEN NOTICE OF THAT CHANGE.

24 (3) THE DEPARTMENT SHALL PROVIDE THE HEALTH PROFESSIONAL
25 CLEARINGHOUSE CREATED UNDER THE HEALTH PROFESSIONAL CLEARINGHOUSE
26 ACT WITH THE INFORMATION DISCLOSED OR OBTAINED UNDER THIS SECTION

1 AND SECTION 16177(2) AND (3) WITHIN 30 DAYS OF THE DEPARTMENT'S
2 RECEIPT OF THAT INFORMATION.

3 (4) AS USED IN THIS SECTION:

4 (A) "MEDICAID" MEANS BENEFITS UNDER TITLE XIX OF THE SOCIAL
5 SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g
6 AND 1396i TO 1396v.

7 (B) "MEDICARE" MEANS BENEFITS UNDER TITLE XVIII OF THE
8 SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO
9 1395b, 1395b-2, 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO
10 1395t, 1395u TO 1395w-2, AND 1395w-4 TO 1395ccc.

11 Sec. 16221. The department may investigate activities
12 related to the practice of a health profession by a licensee, a
13 registrant, or an applicant for licensure or registration. The
14 department may hold hearings, administer oaths, and order rele-
15 vant testimony to be taken and shall report its findings to the
16 appropriate disciplinary subcommittee. The disciplinary subcom-
17 mittee shall proceed under section 16226 if it finds that ~~any~~ 1
18 OR MORE of the following grounds exist:

19 (a) A violation of general duty, consisting of negligence or
20 failure to exercise due care, including negligent delegation to
21 or supervision of employees or other individuals, whether or not
22 injury results, or any conduct, practice, or condition which
23 impairs, or may impair, the ability to safely and skillfully
24 practice the health profession.

25 (b) Personal disqualifications, consisting of any of the
26 following:

1 (i) Incompetence.

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

4 (iii) Mental or physical inability reasonably related to and
5 adversely affecting the licensee's, REGISTRANT'S, OR APPLICANT'S
6 ability to practice in a safe and competent manner.

7 (iv) Declaration of mental incompetence by a court of compe-
8 tent jurisdiction.

9 (v) Conviction of a misdemeanor punishable by imprisonment
10 for a maximum term of 2 years, a misdemeanor involving the ille-
11 gal delivery, possession, or use of alcohol or a controlled sub-
12 stance, or a felony. A certified copy of the court record is
13 conclusive evidence of the conviction.

14 (vi) Lack of good moral character.

15 (vii) Conviction of a criminal offense under sections 520a
16 to 520l of the Michigan penal code, Act No. 328 of the Public
17 Acts of 1931, being sections 750.520a to 750.520l of the Michigan
18 Compiled Laws. A certified copy of the court record is conclu-
19 sive evidence of the conviction.

20 (viii) Conviction of a violation of section 492a of the
21 Michigan penal code, Act No. 328 of the Public Acts of 1931,
22 being section 750.492a of the Michigan Compiled Laws. A certi-
23 fied copy of the court record is conclusive evidence of the
24 conviction.

25 (ix) Conviction of a misdemeanor or felony involving fraud
26 in obtaining or attempting to obtain fees related to the practice

1 of a health profession. A certified copy of the court record is
2 conclusive evidence of the conviction.

3 (x) Final adverse administrative action by a licensure, reg-
4 istration, disciplinary, or certification board involving the
5 holder of, or an applicant for, a license or registration regu-
6 lated by another state or a territory of the United States. A
7 certified copy of the record of the board is conclusive evidence
8 of the final action.

9 (xi) Conviction of a misdemeanor that is reasonably related
10 to or that adversely affects the licensee's, REGISTRANT'S, OR
11 APPLICANT'S ability to practice in a safe and competent manner.
12 A certified copy of the court record is conclusive evidence of
13 the conviction.

14 (c) Prohibited acts, consisting of any of the following:

15 (i) Fraud or deceit in obtaining or renewing a license or
16 registration.

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

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

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

25 (d) Unethical business practices, consisting of any of the
26 following:

1 (i) False or misleading advertising.

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

5 (iii) Fraud or deceit in obtaining or attempting to obtain
6 third party reimbursement.

7 (e) Unprofessional conduct, consisting of any of the
8 following:

9 (i) Misrepresentation to a consumer or patient or in obtain-
10 ing or attempting to obtain third party reimbursement in the
11 course of professional practice.

12 (ii) Betrayal of a professional confidence.

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

15 (iv) Directing or requiring an individual to purchase or
16 secure a drug, device, treatment, procedure, or service from
17 another person, place, facility, or business in which the
18 licensee OR REGISTRANT has a financial interest.

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

21 (g) A violation, or aiding or abetting in a violation, of
22 this article or of rules promulgated under this article.

23 (h) Failure to comply with a subpoena issued pursuant to
24 this part, failure to respond to a complaint issued under this
25 article or article 7, failure to appear at a compliance confer-
26 ence or an administrative hearing, or failure to report under
27 section 16222 or 16223.

1 (i) Failure to pay an installment of an assessment levied
 2 pursuant to section 2504 of the insurance code of 1956, Act
 3 No. 218 of the Public Acts of 1956, as amended, being section
 4 500.2504 of the Michigan Compiled Laws, within 60 days after
 5 notice by the appropriate board.

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

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

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

10 (M) A VIOLATION OF SECTION 16177(2) OR (3) OR SECTION
 11 16177A.

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

16 <u>Violations of Section 16221</u>	<u>Sanctions</u>
17 Subdivision (a), (b)(ii), 18 (b)(iv), (b)(vi), or 19 (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
20 Subdivision (b)(viii)	Revocation or denial.
21 Subdivision (b)(i), 22 (b)(iii), (b)(v), 23 (b)(ix), 24 (b)(x), or (b)(xi)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.

1 Subdivision (c)(i) Denial, revocation, suspension,
2 probation, limitation,
3 community service, or fine.

4 Subdivision (c)(ii) Denial, suspension, revocation,
5 restitution, community service,
6 or fine.

7 Subdivision (c)(iii) Probation, denial, suspension,
8 revocation, restitution, commu-
9 nity service, or fine.

10 Subdivision (c)(iv) Fine, probation, denial,
11 or (d)(iii) suspension, revocation, commu-
12 nity service,
13 or restitution.

14 Subdivision (d)(i) Reprimand, fine, probation,
15 or (d)(ii) community service, denial,
16 or restitution.

17 Subdivision (e)(i) Reprimand, fine, probation,
18 limitation, suspension, commu-
19 nity service, denial, or
20 restitution.

21 Subdivision (e)(ii) Reprimand, probation,
22 or (h) suspension, restitution, commu-
23 nity service, denial, or fine.

24 Subdivision (e)(iii) Reprimand, fine, probation,
25 or (e)(iv) suspension, revocation, limita-
26 tion, community service,
27 denial, 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) Reprimand or fine.
- 8 Subdivision (k) Reprimand, denial, or
9 limitation.
- 10 Subdivision (l) OR (M) Denial, revocation, restitution,
11 probation, suspension, limita-
12 tion, reprimand, or fine.

13 (2) Determination of sanctions for violations under this
14 section shall be made by a disciplinary subcommittee. If, during
15 judicial review, the court of appeals determines that a final
16 decision or order of a disciplinary subcommittee prejudices sub-
17 stantial rights of the petitioner for any of the grounds listed
18 in section 106 of the administrative procedures act of 1969, Act
19 No. 306 of the Public Acts of 1969, being section 24.306 of
20 Michigan Compiled Laws, and holds that the final decision or
21 order is unlawful and is to be set aside, the court shall state
22 on the record the reasons for the holding and may remand the case
23 to the disciplinary subcommittee for further consideration.

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

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

8 Section 2. This amendatory act shall not take effect unless
9 Senate Bill No. _____ or House Bill No. 4388 (request no. 00145'95
10 a) of the 88th Legislature is enacted into law.