

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 517**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 16221 (MCL 333.16221), as amended by 2000
PA 29.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

SB517, As Passed House, May 9, 2002

Senate Bill No. 517

2

1 or supervision of employees or other individuals, whether or not
2 injury results, or any conduct, practice, or condition ~~which~~
3 THAT 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
6 the 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 compe-
14 tent jurisdiction.

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

20 (vi) Lack of good moral character.

21 (vii) Conviction of a criminal offense under sections 520a
22 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to
23 750.520l. A certified copy of the court record is conclusive
24 evidence of the conviction.

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

SB517, As Passed House, May 9, 2002

Senate Bill No. 517

3

1 (i) Conviction of a misdemeanor or felony involving fraud
2 in obtaining or attempting to obtain fees related to the practice
3 of a 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, reg-
6 istration, disciplinary, or certification board involving the
7 holder of, or an applicant for, a license or registration regu-
8 lated by another state or a territory of the United States, by
9 the United States military, by the federal government, or by
10 another country. A certified copy of the record of the board is
11 conclusive evidence of the final action.

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

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

18 (i) Fraud or deceit in obtaining or renewing a license or
19 registration.

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

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

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

SB517, As Passed House, May 9, 2002

Senate Bill No. 517

4

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

3 (i) False or misleading advertising.

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

7 (iii) Fraud or deceit in obtaining or attempting to obtain
8 third party reimbursement.

9 (e) Unprofessional conduct, consisting of 1 or more of the
10 following:

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

14 (ii) Betrayal of a professional confidence.

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

17 (iv) ~~Directing or requiring an individual to purchase or~~
18 ~~secure a drug, device, treatment, procedure, or service from~~
19 ~~another person, place, facility, or business in which the~~
20 ~~licensee has a financial interest.~~ EITHER OF THE FOLLOWING:

21 (A) A REQUIREMENT BY A LICENSEE OTHER THAN A PHYSICIAN THAT
22 AN INDIVIDUAL PURCHASE OR SECURE A DRUG, DEVICE, TREATMENT, PRO-
23 CEDURE, OR SERVICE FROM ANOTHER PERSON, PLACE, FACILITY, OR BUSI-
24 NESS IN WHICH THE LICENSEE HAS A FINANCIAL INTEREST.

25 (B) A REFERRAL BY A PHYSICIAN FOR A DESIGNATED HEALTH SERV-
26 ICE THAT VIOLATES SECTION 1877 OF PART D OF TITLE XVIII OF THE
27 SOCIAL SECURITY ACT, 42 U.S.C. 1395nn, OR A REGULATION

SB517, As Passed House, May 9, 2002

Sub. SB 517 (H-1) as amended May 8, 2002 5

1 PROMULGATED UNDER THAT SECTION. SECTION 1877 OF PART D OF TITLE
2 XVIII OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1395nn, AND THE REGU-
3 LATIONS PROMULGATED UNDER THAT SECTION, AS THEY EXIST ON THE
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,
5 ARE INCORPORATED BY REFERENCE FOR PURPOSES OF THIS SUBPARAGRAPH.
6 A DISCIPLINARY SUBCOMMITTEE SHALL APPLY SECTION 1877 OF PART D OF
7 TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1395nn, AND THE
8 REGULATIONS PROMULGATED UNDER THAT SECTION REGARDLESS OF THE
9 SOURCE OF PAYMENT FOR THE DESIGNATED HEALTH SERVICE REFERRED AND
10 RENDERED. IF SECTION 1877 OF PART D OF TITLE XVIII OF THE SOCIAL
11 SECURITY ACT, 42 U.S.C. 1395nn, OR A REGULATION PROMULGATED UNDER
12 THAT SECTION IS REVISED AFTER THE EFFECTIVE DATE OF THE AMENDA-
13 TORY ACT THAT ADDED THIS SENTENCE, THE DEPARTMENT SHALL OFFI-
14 CIALY TAKE NOTICE OF THE REVISION. WITHIN 30 DAYS AFTER TAKING
15 NOTICE OF THE REVISION, THE DEPARTMENT SHALL DECIDE WHETHER OR
16 NOT THE REVISION PERTAINS TO REFERRAL BY PHYSICIANS FOR DESIG-
17 NATED HEALTH SERVICES AND CONTINUES TO PROTECT THE PUBLIC FROM
18 INAPPROPRIATE REFERRALS BY PHYSICIANS. IF THE DEPARTMENT DECIDES
19 THAT THE REVISION DOES BOTH OF THOSE THINGS, THE DEPARTMENT MAY
20 PROMULGATE RULES TO INCORPORATE THE REVISION BY REFERENCE. IF
21 THE DEPARTMENT DOES PROMULGATE RULES TO INCORPORATE THE REVISION
22 BY REFERENCE, THE DEPARTMENT SHALL NOT MAKE ANY CHANGES TO THE
23 REVISION. AS USED IN THIS SUBPARAGRAPH, "DESIGNATED HEALTH
24 SERVICE" MEANS THAT TERM AS DEFINED IN SECTION 1877 OF PART D OF
25 TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1395nn, AND THE
26 REGULATIONS PROMULGATED UNDER THAT SECTION AND "PHYSICIAN" MEANS
27 THAT TERM AS DEFINED IN SECTIONS 17001 AND 17501.

[(v) FOR A PHYSICIAN WHO MAKES REFERRALS PURSUANT TO SECTION 1877 OF PART D OF TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1395nn, OR A REGULATION PROMULGATED UNDER THAT SECTION, REFUSING TO ACCEPT A REASONABLE PROPORTION OF PATIENTS ELIGIBLE FOR MEDICAID AND REFUSING TO ACCEPT PAYMENT FROM MEDICAID OR MEDICARE AS PAYMENT IN FULL FOR A TREATMENT, PROCEDURE, OR SERVICE FOR WHICH THE PHYSICIAN REFERS THE INDIVIDUAL AND IN WHICH THE PHYSICIAN HAS A FINANCIAL INTEREST. A PHYSICIAN WHO OWNS ALL OR PART OF A FACILITY IN WHICH HE OR SHE PROVIDES SURGICAL SERVICES IS NOT SUBJECT TO THIS SUBPARAGRAPH IF A REFERRED SURGICAL PROCEDURE HE OR SHE PERFORMS IN THE FACILITY IS NOT REIMBURSED AT A MINIMUM OF THE APPROPRIATE MEDICAID OR MEDICARE OUTPATIENT FEE SCHEDULE, INCLUDING THE COMBINED TECHNICAL AND PROFESSIONAL COMPONENTS.

(F) BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THIS ACT, THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL PREPARE THE FIRST OF 3 ANNUAL REPORTS ON THE EFFECT OF THIS AMENDATORY ACT ON ACCESS TO CARE FOR THE UNINSURED AND MEDICAID PATIENTS. THE DEPARTMENT SHALL REPORT ON THE NUMBER OF REFERRALS BY LICENSEES OF UNINSURED AND MEDICAID PATIENTS TO PURCHASE OR SECURE A DRUG, DEVICE, TREATMENT, PROCEDURE, OR SERVICE FROM ANOTHER PERSON, PLACE, FACILITY, OR BUSINESS IN WHICH THE LICENSEE HAS A FINANCIAL INTEREST.]

SB517, As Passed House, May 9, 2002

Sub. SB 517 (H-1) as amended May 8, 2002 6

1 [(G) ~~(f)~~] Failure to report a change of name or mailing address
2 within 30 days after the change occurs.

3 [(H) ~~(g)~~] A violation, or aiding or abetting in a violation, of
4 this article or of a rule promulgated under this article.

5 [(I) ~~(h)~~] Failure to comply with a subpoena issued pursuant to
6 this part, failure to respond to a complaint issued under this
7 article or article 7, failure to appear at a compliance confer-
8 ence or an administrative hearing, or failure to report under
9 section 16222 or 16223.

10 [(J) ~~(i)~~] Failure to pay an installment of an assessment levied
11 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
12 to 500.8302, within 60 days after notice by the appropriate
13 board.

14 [(K) ~~(j)~~] A violation of section 17013 or 17513.

15 [(L) ~~(k)~~] Failure to meet 1 or more of the requirements for licen-
16 sure or registration under section 16174.

17 [(M) ~~(l)~~] A violation of section 17015 or 17515.

18 [(N) ~~(m)~~] A violation of section 17016 or 17516.

19 [(O) ~~(n)~~] Failure to comply with section 9206(3).

20 [(P) ~~(o)~~] A violation of section 5654 or 5655.

21 [(Q) ~~(p)~~] A violation of section 16274.

22 [(R) ~~(q)~~] A violation of section 17020 or 17520.