

HOUSE BILL No. 4057

January 31, 2001, Introduced by Rep. Birkholz and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20165 and 20175 (MCL 333.20165 and 333.20175), section 20165 as amended by 1998 PA 108 and section 20175 as amended by 2000 PA 319, and by adding section 20173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20165. (1) Except as otherwise provided in this sec-
2 tion, after notice of intent to an applicant or licensee to deny,
3 limit, suspend, or revoke the applicant's or licensee's license
4 or certification and an opportunity for a hearing, the department
5 may deny, limit, suspend, or revoke the license or certification
6 or impose an administrative fine on a licensee if 1 or more of
7 the following exist:

1 (a) Fraud or deceit in obtaining or attempting to obtain a
2 license or certification or in the operation of the licensed
3 health facility or agency.

4 (b) A violation of this article or a rule promulgated under
5 this article.

6 (c) False or misleading advertising.

7 (d) Negligence or failure to exercise due care, including
8 negligent supervision of employees and subordinates.

9 (e) Permitting a license or certificate to be used by an
10 unauthorized health facility or agency.

11 (f) Evidence of abuse regarding a patient's health, welfare,
12 or safety or the denial of a patient's rights.

13 (g) Failure to comply with section 10102a(7).

14 (h) Failure to comply with part 222 or a term, condition, or
15 stipulation of a certificate of need issued under part 222, or
16 both.

17 (i) A violation of section 20197(1).

18 (J) FAILURE TO MAKE A REPORT UNDER SECTION 20175(5) OR (7).

19 (2) The department may deny an application for a license or
20 certification based on a finding of a condition or practice that
21 would constitute a violation of this article if the applicant
22 were a licensee.

23 (3) Denial, suspension, or revocation of an individual emer-
24 gency medical services personnel license under part 209 is gov-
25 erned by section 20958.

26 (4) If the department determines under subsection (1) that a
27 health facility or agency has violated section 20197(1), the

1 department shall impose an administrative fine of \$5,000,000.00
2 on the health facility or agency.

3 SEC. 20173. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
4 (2), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
5 MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT EMPLOY,
6 INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES TO AN
7 INDIVIDUAL WHO REGULARLY PROVIDES DIRECT SERVICES TO PATIENTS OR
8 RESIDENTS IN THE HEALTH FACILITY OR AGENCY AFTER THE EFFECTIVE
9 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IF THE INDI-
10 VIDUAL HAS BEEN CONVICTED IN THIS STATE OF 1 OR MORE OF THE
11 FOLLOWING:

12 (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A FELONY
13 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION
14 FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF THE EXECU-
15 TION OF THE CONTRACT OR WITHIN THE 15 YEARS IMMEDIATELY PRECEDING
16 THE DATE OF THE INDIVIDUAL'S MOST RECENT CRIMINAL HISTORY CHECK
17 PERFORMED UNDER THIS SECTION, IF THE INDIVIDUAL IS EMPLOYED BY,
18 UNDER CONTRACT TO, OR GRANTED CLINICAL PRIVILEGES IN THE HEALTH
19 FACILITY OR AGENCY BEFORE THE EFFECTIVE DATE OF THE AMENDATORY
20 ACT THAT ADDED THIS SECTION.

21 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLIGENCE, ASSAULT, BAT-
22 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT
23 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN
24 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,
25 MCL 750.145M, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE
26 OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE
27 OF THE EXECUTION OF THE CONTRACT OR WITHIN THE 10 YEARS

1 IMMEDIATELY PRECEDING THE DATE OF THE INDIVIDUAL'S MOST RECENT
2 CRIMINAL HISTORY CHECK PERFORMED UNDER THIS SECTION, IF THE INDI-
3 VIDUAL IS EMPLOYED BY, UNDER CONTRACT TO, OR GRANTED CLINICAL
4 PRIVILEGES IN THE HEALTH FACILITY OR AGENCY BEFORE THE EFFECTIVE
5 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

6 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND SUB-
7 SECTION (5), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
8 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT
9 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN
10 INDIVIDUAL AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
11 ADDED THIS SECTION UNTIL THE HEALTH FACILITY OR AGENCY COMPLIES
12 WITH SUBSECTION (4). THIS SUBSECTION AND SUBSECTION (1) DO NOT
13 APPLY TO AN INDIVIDUAL WHO IS EMPLOYED BY, UNDER CONTRACT TO, OR
14 GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY BEFORE
15 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSEC-
16 TION, IF THE INDIVIDUAL HAS HAD A CRIMINAL HISTORY CHECK THAT IS
17 EQUIVALENT TO THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
18 SECTION OR IS PERFORMED UNDER THIS SECTION WITHIN THE 2 YEARS
19 IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THE AMENDATORY ACT
20 THAT ADDED THIS SECTION.

21 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
22 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVI-
23 LEGES WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
24 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL GIVE
25 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
26 STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY TO
27 CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION (4). IF THE

1 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT
2 AGENCY HAS CONDUCTED A CRIMINAL HISTORY CHECK ON THE APPLICANT
3 WITHIN THE 6 MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICA-
4 TION, THE HEALTH FACILITY OR AGENCY MAY USE A CERTIFIED COPY OF
5 THAT CRIMINAL HISTORY CHECK IN LIEU OF OBTAINING WRITTEN CONSENT
6 AND REQUESTING A NEW CRIMINAL HISTORY CHECK UNDER THIS SUBSECTION
7 AND SUBSECTION (4). IF THE APPLICANT IS APPLYING FOR EMPLOYMENT
8 AS AN INDEPENDENT CONTRACTOR AND IS USING A PRIOR CRIMINAL HIS-
9 TORY CHECK AS DESCRIBED IN THIS SUBSECTION, THE HEALTH FACILITY
10 OR AGENCY SHALL ACCEPT THE CERTIFIED COPY OF THE CRIMINAL HISTORY
11 CHECK ONLY FROM THE FIRM OR AGENCY THAT EMPLOYS THE INDIVIDUAL OR
12 FROM THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
13 ENFORCEMENT AGENCY.

14 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-
15 SECTION (3), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
16 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL MAKE A
17 REQUEST TO THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED
18 LAW ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK ON THE
19 APPLICANT. THE REQUEST SHALL BE MADE ON A FORM AND IN A MANNER
20 PRESCRIBED BY THE DEPARTMENT OF STATE POLICE OR BY THE OTHER
21 AUTHORIZED LAW ENFORCEMENT AGENCY. IF THERE IS A CHARGE FOR CON-
22 DUCTING THE CRIMINAL HISTORY CHECK, THE HEALTH FACILITY OR AGENCY
23 REQUESTING THE CRIMINAL HISTORY CHECK SHALL PAY THE COST OF THE
24 CHARGE. THE HEALTH FACILITY OR AGENCY SHALL NOT SEEK REIMBURSE-
25 MENT FOR THE CHARGE FROM THE INDIVIDUAL WHO IS THE SUBJECT OF THE
26 CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE POLICE OR OTHER
27 AUTHORIZED LAW ENFORCEMENT AGENCY SHALL CONDUCT A CRIMINAL

1 HISTORY CHECK ON THE INDIVIDUAL NAMED IN THE REQUEST. THE
2 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT
3 AGENCY SHALL PROVIDE THE HEALTH FACILITY OR AGENCY WITH A REPORT
4 OF THE CRIMINAL HISTORY CHECK. THE REPORT SHALL CONTAIN ANY
5 CRIMINAL HISTORY RECORD INFORMATION ON THE APPLICANT MAINTAINED
6 BY THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
7 ENFORCEMENT AGENCY. THE DEPARTMENT OF STATE POLICE OR OTHER
8 AUTHORIZED LAW ENFORCEMENT AGENCY SHALL CERTIFY EACH REPORT WITH
9 AN OFFICIAL SEAL OR OTHER SYMBOL OF AUTHENTICITY.

10 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
11 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED DETERMINES IT
12 NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
13 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY
14 CHECK UNDER SUBSECTION (4), THE HEALTH FACILITY OR AGENCY MAY
15 EMPLOY OR GRANT CLINICAL PRIVILEGES TO THE INDIVIDUAL AS A CONDI-
16 TIONAL EMPLOYEE OR CONDITIONAL STAFF MEMBER IF ALL OF THE FOLLOW-
17 ING APPLY:

18 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL HIS-
19 TORY CHECK UNDER SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING OR
20 GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

21 (B) THE INDIVIDUAL SIGNS A STATEMENT THAT HE OR SHE HAS NOT
22 BEEN CONVICTED OF 1 OR MORE OF THE CRIMES THAT ARE DESCRIBED IN
23 SUBSECTION (1)(A) AND (B), AND AGREEING THAT, IF THE CRIMINAL
24 HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) IS NOT THE SAME AS
25 THE INDIVIDUAL'S STATEMENT UNDER THIS SUBDIVISION, HIS OR HER
26 EMPLOYMENT OR CLINICAL PRIVILEGES ARE TERMINABLE AT THE OPTION OF
27 THE HEALTH FACILITY OR AGENCY. NOT LATER THAN 90 DAYS AFTER THE

1 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION,
2 THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE
3 STATEMENT REQUIRED UNDER THIS SUBDIVISION. THE DEPARTMENT SHALL
4 MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES OR AGENCIES
5 UPON REQUEST AT NO CHARGE.

6 (6) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE
7 OR IS GRANTED CONDITIONAL STAFF PRIVILEGES UNDER SUBSECTION (5),
8 AND THE REPORT DESCRIBED IN SUBSECTION (4) IS SUBSTANTIALLY DIF-
9 FERENT FROM THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5)(B),
10 THE HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MED-
11 ICAL CARE FACILITY, OR HOME FOR THE AGED MAY TERMINATE THE
12 INDIVIDUAL'S EMPLOYMENT OR CLINICAL PRIVILEGES. AN INDIVIDUAL
13 WHO KNOWINGLY PROVIDES FALSE INFORMATION REGARDING CRIMINAL CON-
14 VICTIONS ON A STATEMENT DESCRIBED IN SUBSECTION (5)(B) IS GUILTY
15 OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90
16 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

17 (7) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
18 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL USE
19 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
20 OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFI-
21 CATIONS FOR CLINICAL PRIVILEGES OR FOR EMPLOYMENT IN THE POSITION
22 FOR WHICH HE OR SHE HAS APPLIED AND FOR THE PURPOSES OF SUBSEC-
23 TIONS (5) AND (6). A HEALTH FACILITY OR AGENCY OR AN EMPLOYEE OF
24 THE HEALTH FACILITY OR AGENCY SHALL NOT DISCLOSE CRIMINAL HISTORY
25 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) TO A
26 PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S
27 QUALIFICATIONS FOR EMPLOYMENT OR CLINICAL PRIVILEGES.

1 Sec. 20175. (1) A health facility or agency shall keep and
2 maintain a record for each patient including a full and complete
3 record of tests and examinations performed, observations made,
4 treatments provided, and in the case of a hospital, the purpose
5 of hospitalization. In addition to the sanctions set forth in
6 section 20165, a hospital that fails to comply with this subsec-
7 tion is subject to an administrative fine of \$10,000.00.

8 (2) A hospital shall take precautions to assure that the
9 records required by subsection (1) are not wrongfully altered or
10 destroyed. A hospital that fails to comply with this subsection
11 is subject to an administrative fine of \$10,000.00.

12 (3) Unless otherwise provided by law, the licensing and cer-
13 tification records required by this article are public records.

14 (4) Departmental officers and employees shall respect the
15 confidentiality of patient clinical records and shall not divulge
16 or disclose the contents of ~~records~~ A PATIENT CLINICAL RECORD
17 in a manner that identifies an individual except pursuant to
18 court order.

19 (5) A health facility or agency that employs, contracts
20 with, or grants privileges to a health professional licensed or
21 registered under article 15 shall report the following to the
22 department of consumer and industry services not more than 30
23 days after it occurs:

24 (a) Disciplinary action taken by the health facility or
25 agency against a health professional licensed or registered under
26 article 15 AND EMPLOYED BY, UNDER CONTRACT TO, OR GRANTED
27 CLINICAL PRIVILEGES IN THE HEALTH FACILITY OR AGENCY based on the

1 licensee's or registrant's professional competence, disciplinary
2 action that results in a change of employment status, or disci-
3 plinary action based on conduct that adversely affects the
4 licensee's or registrant's clinical privileges for a period of
5 more than 15 days. As used in this subdivision, "adversely
6 affects" means the reduction, restriction, suspension, revoca-
7 tion, denial, or failure to renew the clinical privileges of a
8 licensee or registrant by a health facility or agency.

9 (b) Restriction or acceptance of the surrender of the clini-
10 cal privileges of a ~~licensee or registrant~~ HEALTH PROFESSIONAL
11 LICENSED OR REGISTERED UNDER ARTICLE 15 under either of the fol-
12 lowing circumstances:

13 (i) The licensee or registrant is under investigation by the
14 health facility or agency.

15 (ii) There is an agreement in which the health facility or
16 agency agrees not to conduct an investigation into the licensee's
17 or registrant's alleged professional incompetence or improper
18 professional conduct.

19 (c) A case in which a health professional LICENSED OR REGIS-
20 TERED UNDER ARTICLE 15 resigns or terminates a contract or whose
21 contract is not renewed instead of the health facility OR AGENCY
22 taking disciplinary action against the health professional.

23 (6) Upon request by another health facility or agency seek-
24 ing a reference for purposes of changing or granting staff OR
25 CLINICAL privileges, credentials, or employment, a health facil-
26 ity or agency that employs, contracts with, or grants STAFF OR
27 CLINICAL privileges to health professionals licensed or

1 registered under article 15 shall notify the requesting health
2 facility or agency of ~~any~~ disciplinary or other action report-
3 able under subsection (5) that it has taken against a health pro-
4 fessional licensed or registered under article 15 and employed
5 by, under contract to, or granted STAFF OR CLINICAL privileges by
6 the health facility or agency.

7 (7) A HEALTH FACILITY OR AGENCY SHALL REPORT TO THE DEPART-
8 MENT OF CONSUMER AND INDUSTRY SERVICES FINAL DISCIPLINARY ACTION
9 TAKEN BY THE HEALTH FACILITY OR AGENCY AGAINST AN EMPLOYEE THAT
10 INVOLVES SEXUAL OR OTHER ABUSE, NEGLECT, PHYSICAL HARM, THEFT, OR
11 FRAUDULENT BEHAVIOR AGAINST A PATIENT OR RESIDENT OF THE HEALTH
12 FACILITY OR AGENCY. A REPORT REQUIRED UNDER THIS SUBSECTION IS
13 IN ADDITION TO, AND IS NOT SATISFIED BY, A REPORT MADE UNDER SUB-
14 SECTION (5)(A).

15 (8) A REPORT RECEIVED BY THE DEPARTMENT OF CONSUMER AND
16 INDUSTRY SERVICES UNDER SUBSECTION (5) OR (7) IS PUBLIC
17 INFORMATION.

18 (9) ~~(7)~~ For the purpose of reporting disciplinary actions
19 under this section, a health facility or agency shall include
20 only the following in the information provided:

21 (a) The name of the licensee or registrant OR OTHER EMPLOYEE
22 against whom disciplinary action has been taken.

23 (b) A description of the disciplinary action taken.

24 (c) The specific grounds for the disciplinary action taken.

25 (d) The date of the incident that is the basis for the dis-
26 ciplinary action.

1 (10) ~~(8)~~ The records, data, and knowledge collected for or
2 by individuals or committees assigned a professional review
3 function in a health facility or agency, or an institution of
4 higher education in this state that has colleges of osteopathic
5 and human medicine, are confidential, shall be used only for the
6 purposes provided in this article, are not public records, and
7 are not subject to court subpoena.