

# SENATE BILL No. 85

February 1, 2001, Introduced by Senator JAYE and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226), as amended by 2000 PA 29, and by adding sections 5114b and 16269.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 5114B. (1) ABSENT AN EMERGENCY, AN INDIVIDUAL WHO  
2 SEEKS TO UNDERGO AN INVASIVE MEDICAL PROCEDURE BENEATH THE SKIN  
3 OR SURGERY INSIDE THE MOUTH PERFORMED BY A HEALTH CARE PROFES-  
4 SIONAL SHALL SUBMIT TO THOSE TESTS DESCRIBED IN  
5 SECTION 16269(1)(A) AND SHALL ENSURE THAT THE RESULTS OF THOSE  
6 TESTS ARE TRANSMITTED TO THE HEALTH CARE PROFESSIONAL PERFORMING  
7 THE PROCEDURE OR SURGERY BEFORE UNDERGOING THAT PROCEDURE OR  
8 SURGERY.

1 (2) IF AN INDIVIDUAL IS CAPABLE OF COMMUNICATING AND HAS  
2 BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNODEFICIENCY SYNDROME OR IS  
3 HIV INFECTED OR INFECTED WITH THE HEPATITIS B VIRUS OR THE HEPAT-  
4 ITIS C VIRUS, HE OR SHE SHALL INFORM A HEALTH CARE PROFESSIONAL  
5 OF THAT FACT BEFORE THE HEALTH CARE PROFESSIONAL PROVIDES HEALTH  
6 CARE SERVICES TO THE PERSON.

7 (3) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS SUBJECT TO A  
8 CIVIL FINE OF NOT LESS THAN \$10,000.00.

9 (4) AS USED IN THIS SECTION, "HEALTH CARE PROFESSIONAL"  
10 MEANS AN INDIVIDUAL LICENSED, REGISTERED, OR OTHERWISE AUTHORIZED  
11 UNDER ARTICLE 15, BUT DOES NOT INCLUDE A SANITARIAN OR A  
12 VETERINARIAN.

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

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

1 (b) Personal disqualifications, consisting of 1 or more of  
2 the following:

3 (i) Incompetence.

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

6 (iii) Mental or physical inability reasonably related to and  
7 adversely affecting the licensee's ability to practice in a safe  
8 and competent manner.

9 (iv) Declaration of mental incompetence by a court of compe-  
10 tent jurisdiction.

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

16 (vi) Lack of good moral character.

17 (vii) Conviction of a criminal offense under sections 520a  
18 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to  
19 750.520l. A certified copy of the court record is conclusive  
20 evidence of the conviction.

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

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

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

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

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

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

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

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

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

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

26           (i) False or misleading advertising.

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

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

6           (e) Unprofessional conduct, consisting of 1 or more of the  
7 following:

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

11          (ii) Betrayal of a professional confidence.

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

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

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

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

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

1 (i) Failure to pay an installment of an assessment levied  
 2 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100  
 3 to 500.8302, within 60 days after notice by the appropriate  
 4 board.

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

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

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

9 (m) A violation of section 17016 or 17516.

10 (n) Failure to comply with section 9206(3).

11 (o) A violation of section 5654 or 5655.

12 (p) A violation of section 16274.

13 (q) A violation of section 17020 or 17520.

14 (R) A VIOLATION OF SECTION 16269.

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

19

20 Violations of Section 16221

Sanctions

21 Subdivision (a), (b)(ii),	Probation, limitation, denial,
22 (b)(iv), (b)(vi), or	suspension, revocation,
23 (b)(vii)	restitution, community service,
24	or fine.

- 1 Subdivision (b)(viii) Revocation or denial.
- 2 Subdivision (b)(i), Limitation, suspension,  
 3 (b)(iii), (b)(v), revocation, denial,  
 4 (b)(ix), probation, restitution,  
 5 (b)(x), or (b)(xi) community service, or fine.
- 6 Subdivision (c)(i) Denial, revocation, suspension,  
 7 probation, limitation, community  
 8 service, or fine.
- 9 Subdivision (c)(ii) Denial, suspension, revocation,  
 10 restitution, community service,  
 11 or fine.
- 12 Subdivision (c)(iii) Probation, denial, suspension,  
 13 revocation, restitution, commu-  
 14 nity service, or fine.
- 15 Subdivision (c)(iv) Fine, probation, denial,  
 16 or restitution.
- 17 Subdivision (d)(i) Reprimand, fine, probation,  
 18 or (d)(ii) community service, denial,  
 19 or restitution.

- 1 Subdivision (e)(i) Reprimand, fine, probation,  
 2 limitation, suspension, community  
 3 service, denial, or restitution.
- 4 Subdivision (e)(ii) Reprimand, probation,  
 5 or (h) suspension, restitution, commu-  
 6 nity service, denial, or fine.
- 7 Subdivision (e)(iii) Reprimand, fine, probation,  
 8 or (e)(iv) suspension, revocation, limita-  
 9 tion, community service, denial,  
 10 or restitution.
- 11 Subdivision (f) Reprimand or fine.
- 12 Subdivision (g) Reprimand, probation, denial,  
 13 suspension, revocation, limita-  
 14 tion, restitution, community  
 15 service, or fine.
- 16 Subdivision (i) Suspension or fine.
- 17 Subdivision (j), (o), or  
 18 (q) Reprimand or fine.
- 19 Subdivision (k) Reprimand, denial, or  
 20 limitation.



1 Subdivision (l) or (n) Denial, revocation, restitution,  
2 probation, suspension, limita-  
3 tion, reprimand, or fine.

4 Subdivision (m) Revocation or denial.

5 Subdivision (p) Revocation.

6 SUBDIVISION (Q) REVOCATION OR FINE.

7 (2) Determination of sanctions for violations under this  
8 section shall be made by a disciplinary subcommittee. If, during  
9 judicial review, the court of appeals determines that a final  
10 decision or order of a disciplinary subcommittee prejudices sub-  
11 stantial rights of the petitioner for 1 or more of the grounds  
12 listed in section 106 of the administrative procedures act of  
13 1969, 1969 PA 306, MCL 24.306, and holds that the final decision  
14 or order is unlawful and is to be set aside, the court shall  
15 state on the record the reasons for the holding and may remand  
16 the case to the disciplinary subcommittee for further  
17 consideration.

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

21 (4) A disciplinary subcommittee may require a licensee or  
22 registrant or an applicant for licensure or registration who has  
23 violated this article or article 7 or a rule promulgated under  
24 this article or article 7 to satisfactorily complete an

1 educational program, a training program, or a treatment program,  
2 a mental, physical, or professional competence examination, or a  
3 combination of those programs and examinations.

4 SEC. 16269. (1) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE  
5 OF THIS SECTION, A LICENSEE WHO MAY COME INTO CONTACT WITH THE  
6 BODY FLUIDS OF A PATIENT DURING THE PERFORMANCE OF A PROCEDURE  
7 GOVERNED BY THIS ARTICLE THAT INVOLVES THE POSSIBLE EXPOSURE OF  
8 THE PATIENT TO THE LICENSEE'S BODY FLUIDS SHALL DO EACH OF THE  
9 FOLLOWING:

10 (A) AT 6-MONTH INTERVALS, SUBMIT TO AN HIV TEST, A HEPATITIS  
11 B VIRUS TEST, AND A HEPATITIS C VIRUS TEST CONSIDERED RELIABLE BY  
12 THE FEDERAL CENTERS FOR DISEASE CONTROL AND APPROVED BY THE  
13 DEPARTMENT OF COMMUNITY HEALTH.

14 (B) IF THE RESULT OF A TEST ADMINISTERED UNDER SUBDIVISION  
15 (A) IS POSITIVE, IMMEDIATELY PROVIDE THE DEPARTMENT OF COMMUNITY  
16 HEALTH WITH NOTICE OF THAT POSITIVE TEST RESULT AND A LIST OF  
17 EACH PATIENT UPON WHOM THE LICENSEE HAS PERFORMED SUCH A PROCE-  
18 DURE DURING THE IMMEDIATELY PRECEDING 24 MONTHS.

19 (C) IF THE RESULT OF A TEST ADMINISTERED UNDER SUBDIVISION  
20 (A) IS POSITIVE, IMMEDIATELY REFRAIN FROM PERFORMING SUCH A PRO-  
21 CEDURE UNTIL THE DEPARTMENT OF COMMUNITY HEALTH APPROVES THE  
22 LICENSEE'S PERFORMANCE OF THAT PROCEDURE.

23 (D) BEFORE PERFORMING A PROCEDURE APPROVED BY THE DEPARTMENT  
24 OF COMMUNITY HEALTH PURSUANT TO SUBDIVISION (C), PROVIDE WRITTEN  
25 NOTICE OF THE LICENSEE'S TEST RESULTS TO THE PATIENT UPON WHOM  
26 THE PROCEDURE IS TO BE PERFORMED.

1 (E) ABSENT AN EMERGENCY, NOT PERFORM AN INVASIVE PROCEDURE  
2 BENEATH THE SKIN OR SURGERY INSIDE THE MOUTH OF A PATIENT UNLESS  
3 THAT PATIENT HAS UNDERGONE EACH TEST DESCRIBED IN SUBDIVISION  
4 (A), AND THE LICENSEE HAS RECEIVED THE RESULTS OF THAT TEST.

5 (2) WITHIN 10 DAYS OF RECEIPT OF A LIST PROVIDED PURSUANT TO  
6 SUBSECTION (1)(B), THE DEPARTMENT OF COMMUNITY HEALTH SHALL PRO-  
7 VIDE BY ORDINARY MAIL TO EACH PATIENT IDENTIFIED IN THAT LIST A  
8 NOTICE CONTAINING AT LEAST ALL OF THE FOLLOWING INFORMATION:

9 (A) A STATEMENT SPECIFYING THAT INDIVIDUAL'S POSSIBLE EXPO-  
10 SURE TO THE IDENTIFIED VIRUS.

11 (B) THE AVAILABILITY OF A TEST, AT NO COST TO THE INDIVIDU-  
12 AL, TO DETERMINE WHETHER THAT INDIVIDUAL HAS BEEN INFECTED WITH A  
13 VIRUS TO WHICH HE OR SHE HAS POSSIBLY BEEN EXPOSED.

14 (C) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INDIVIDU-  
15 AL, AGENCY, OR DEPARTMENT THAT CAN PROVIDE FURTHER INFORMATION  
16 AND SCHEDULE A TEST OR TESTS.

17 (3) UPON REQUEST, THE DEPARTMENT OF COMMUNITY HEALTH SHALL  
18 PROVIDE TO AN INDIVIDUAL IDENTIFIED IN A LIST CREATED PURSUANT TO  
19 SUBSECTION (1)(B) THE APPLICABLE TEST DESCRIBED IN SUBSECTION  
20 (1)(A). THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT CHARGE THE  
21 INDIVIDUAL BEING TESTED.