

HOUSE BILL No. 4724

May 8, 2007, Introduced by Reps. Rick Jones, Green, Stahl, Hildenbrand, Meekhof, Opsommer, Meltzer and Huizenga and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, 16245, 17001, and 17501 (MCL 333.16221, 333.16226, 333.16245, 333.17001, and 333.17501), sections 16221 and 16226 as amended by 2004 PA 214, section 16245 as amended by 2006 PA 26, and sections 17001 and 17501 as amended by 2006 PA 161, and by adding section 16182a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16182A. (1) AN INDIVIDUAL SHALL NOT PROVIDE EXPERT
2 WITNESS TESTIMONY ON THE APPROPRIATE STANDARD OF PRACTICE OR CARE
3 IN AN ACTION ALLEGING MEDICAL MALPRACTICE UNLESS HE OR SHE IS
4 LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE THAT HEALTH
5 PROFESSION IN THIS STATE OR HE OR SHE HOLDS A LIMITED LICENSE

1 ISSUED IN ACCORDANCE WITH THIS SECTION FOR THE PURPOSE OF
2 PROVIDING EXPERT WITNESS TESTIMONY.

3 (2) UPON APPLICATION AND PAYMENT OF THE REQUISITE FEE FOR A
4 LIMITED LICENSE, A BOARD MAY GRANT A LIMITED LICENSE TO AN
5 INDIVIDUAL WHO IS LICENSED IN ANOTHER STATE OR JURISDICTION FOR
6 THE PURPOSE OF PROVIDING EXPERT WITNESS TESTIMONY IN THIS STATE
7 IF THE BOARD DETERMINES THAT THE LIMITATION IS CONSISTENT WITH
8 THE ABILITY OF THE INDIVIDUAL TO PROVIDE KNOWLEDGEABLE, SKILLED,
9 EXPERIENCED, AND PROFICIENT EXPERT WITNESS TESTIMONY ON THE
10 APPROPRIATE STANDARD OF PRACTICE OR CARE IN AN ACTION ALLEGING
11 MEDICAL MALPRACTICE. AN INDIVIDUAL SEEKING A LIMITED LICENSE
12 UNDER THIS SECTION SHALL SATISFY THE REQUIREMENTS OF SECTION
13 16174 AND PROVIDE THE BOARD WITH VERIFICATION OF THE STATUS AND
14 GOOD STANDING OF HIS OR HER LICENSE FROM THE STATE OR
15 JURISDICTION IN WHICH HE OR SHE IS CURRENTLY LICENSED OR HAS BEEN
16 LICENSED TO ENGAGE IN THE PRACTICE OF THE HEALTH PROFESSION.

17 (3) THE HOLDER OF A LIMITED LICENSE ISSUED UNDER THIS
18 SECTION IS NOT AUTHORIZED TO ENGAGE IN THE PRACTICE OF THE HEALTH
19 PROFESSION IN THIS STATE. THE HOLDER OF A LIMITED LICENSE ISSUED
20 UNDER THIS SECTION IS ONLY AUTHORIZED TO PROVIDE EXPERT WITNESS
21 TESTIMONY.

22 (4) A LIMITED LICENSE ISSUED UNDER THIS SECTION IS VALID FOR
23 NOT MORE THAN 1 YEAR AND IS RENEWABLE.

24 Sec. 16221. The department may investigate activities
25 related to the practice of a health profession by a licensee, a
26 registrant, or an applicant for licensure or registration. The
27 department may hold hearings, administer oaths, and order

1 relevant testimony to be taken and shall report its findings to
2 the appropriate disciplinary subcommittee. The disciplinary
3 subcommittee shall proceed under section 16226 if it finds that 1
4 or more of the following grounds exist:

5 (a) A violation of general duty, consisting of negligence or
6 failure to exercise due care, including negligent delegation to
7 or supervision of employees or other individuals, whether or not
8 injury results, or any conduct, practice, or condition that
9 impairs, or may impair, the ability to safely and skillfully
10 practice the health profession.

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

13 (i) Incompetence.

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

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

19 (iv) Declaration of mental incompetence by a court of
20 competent jurisdiction.

21 (v) Conviction of a misdemeanor punishable by imprisonment
22 for a maximum term of 2 years; a misdemeanor involving the
23 illegal delivery, possession, or use of a controlled substance;
24 or a felony. A certified copy of the court record is conclusive
25 evidence of the conviction.

26 (vi) Lack of good moral character.

27 (vii) Conviction of a criminal offense under sections 520b to

1 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to
2 750.520g. A certified copy of the court record is conclusive
3 evidence of the conviction.

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

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

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

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

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

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

27 (i) Fraud or deceit in obtaining or renewing a license or

1 registration.

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

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

5 (iv) Obtaining, possessing, or attempting to obtain or
6 possess a controlled substance as defined in section 7104 or a
7 drug as defined in section 7105 without lawful authority; or
8 selling, prescribing, giving away, or administering drugs for
9 other than lawful diagnostic or therapeutic purposes.

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

12 (i) False or misleading advertising.

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

16 (iii) Fraud or deceit in obtaining or attempting to obtain
17 third party reimbursement.

18 (e) Unprofessional conduct, consisting of 1 or more of the
19 following:

20 (i) Misrepresentation to a consumer or patient or in
21 obtaining or attempting to obtain third party reimbursement in
22 the course of professional practice.

23 (ii) Betrayal of a professional confidence.

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

26 (iv) Either of the following:

27 (A) A requirement by a licensee other than a physician that

1 an individual purchase or secure a drug, device, treatment,
2 procedure, or service from another person, place, facility, or
3 business in which the licensee has a financial interest.

4 (B) A referral by a physician for a designated health
5 service that violates section 1877 of part D of title XVIII of
6 the social security act, 42 USC 1395nn, or a regulation
7 promulgated under that section. Section 1877 of part D of title
8 XVIII of the social security act, 42 USC 1395nn, and the
9 regulations promulgated under that section, as they exist on June
10 3, 2002, are incorporated by reference for purposes of this
11 subparagraph. A disciplinary subcommittee shall apply section
12 1877 of part D of title XVIII of the social security act, 42 USC
13 1395nn, and the regulations promulgated under that section
14 regardless of the source of payment for the designated health
15 service referred and rendered. If section 1877 of part D of title
16 XVIII of the social security act, 42 USC 1395nn, or a regulation
17 promulgated under that section is revised after June 3, 2002, the
18 department shall officially take notice of the revision. Within
19 30 days after taking notice of the revision, the department shall
20 decide whether or not the revision pertains to referral by
21 physicians for designated health services and continues to
22 protect the public from inappropriate referrals by physicians. If
23 the department decides that the revision does both of those
24 things, the department may promulgate rules to incorporate the
25 revision by reference. If the department does promulgate rules to
26 incorporate the revision by reference, the department shall not
27 make any changes to the revision. As used in this subparagraph,

1 "designated health service" means that term as defined in section
2 1877 of part D of title XVIII of the social security act, 42 USC
3 1395nn, and the regulations promulgated under that section and
4 "physician" means that term as defined in sections 17001 and
5 17501.

6 (v) For a physician who makes referrals pursuant to section
7 1877 of part D of title XVIII of the social security act, 42 USC
8 1395nn, or a regulation promulgated under that section, refusing
9 to accept a reasonable proportion of patients eligible for
10 medicaid and refusing to accept payment from medicaid or medicare
11 as payment in full for a treatment, procedure, or service for
12 which the physician refers the individual and in which the
13 physician has a financial interest. A physician who owns all or
14 part of a facility in which he or she provides surgical services
15 is not subject to this subparagraph if a referred surgical
16 procedure he or she performs in the facility is not reimbursed at
17 a minimum of the appropriate medicaid or medicare outpatient fee
18 schedule, including the combined technical and professional
19 components.

20 ~~—— (f) Beginning June 3, 2003, the department of consumer and~~
21 ~~industry services shall prepare the first of 3 annual reports on~~
22 ~~the effect of this amendatory act on access to care for the~~
23 ~~uninsured and medicaid patients. The department shall report on~~
24 ~~the number of referrals by licensees of uninsured and medicaid~~
25 ~~patients to purchase or secure a drug, device, treatment,~~
26 ~~procedure, or service from another person, place, facility, or~~
27 ~~business in which the licensee has a financial interest.~~

1 (vi) PROVIDING FALSE OR MISLEADING TESTIMONY AS AN EXPERT
2 WITNESS IN AN ACTION ALLEGING MEDICAL MALPRACTICE.

3 (F) ~~(g)~~—Failure to report a change of name or mailing
4 address within 30 days after the change occurs.

5 (G) ~~(h)~~—A violation, or aiding or abetting in a violation,
6 of this article or of a rule promulgated under this article.

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

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

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

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

19 (L) ~~(m)~~—A violation of section 17015 or 17515.

20 (M) ~~(n)~~—A violation of section 17016 or 17516.

21 (N) ~~(o)~~—Failure to comply with section 9206(3).

22 (O) ~~(p)~~—A violation of section 5654 or 5655.

23 (P) ~~(q)~~—A violation of section 16274.

24 (Q) ~~(r)~~—A violation of section 17020 or 17520.

25 (R) ~~(s)~~—A violation of the medical records access act, 2004
26 PA 47, MCL 333.26261 TO 333.26271.

27 (S) ~~(t)~~—A violation of section 17764(2).

1 Sec. 16226. (1) After finding the existence of 1 or more of
 2 the grounds for disciplinary subcommittee action listed in
 3 section 16221, a disciplinary subcommittee shall impose 1 or more
 4 of the following sanctions for each violation:

<u>5 Violations of Section 16221</u>	<u>Sanctions</u>
6 Subdivision (a), (b) (ii), 7 (b) (iv), (b) (vi), or 8 (b) (vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, 9 or fine.
10 Subdivision (b) (viii)	Revocation or denial.
11 Subdivision (b) (i), 12 (b) (iii), (b) (v), 13 (b) (ix), (b) (x), 14 (b) (xi), or (b) (xii)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
15 Subdivision (c) (i)	Denial, revocation, suspension, 16 probation, limitation, community 17 service, or fine.
18 Subdivision (c) (ii)	Denial, suspension, revocation, 19 restitution, community service, 20 or fine.
21 Subdivision (c) (iii)	Probation, denial, suspension, 22 revocation, restitution, 23 community service, or fine.
24 Subdivision (c) (iv) 25 or (d) (iii)	Fine, probation, denial, suspension, revocation, community 26 service, or restitution.
27 Subdivision (d) (i) 28 or (d) (ii)	Reprimand, fine, probation, community service, denial, 29 or restitution.
30 Subdivision (e) (i)	Reprimand, fine, probation,

1 limitation, suspension, community
 2 service, denial, or restitution.
 3 Subdivision (e) (ii) Reprimand, probation,
 4 or ~~(i)~~ (H) suspension, restitution,
 5 community service, denial, or
 6 fine.
 7 Subdivision (e) (iii), Reprimand, fine, probation,
 8 (e) (iv), ~~or~~ (e) (v), OR suspension, revocation,
 9 (E) (vi) limitation, community service,
 10 denial, or restitution.
 11 Subdivision ~~(g)~~ (F) Reprimand or fine.
 12 Subdivision ~~(h)~~ ~~or~~ ~~(s)~~ (G) Reprimand, probation, denial,
 13 OR (R) suspension, revocation,
 14 limitation, restitution,
 15 community service, or fine.
 16 Subdivision ~~(j)~~ (I) Suspension or fine.
 17 Subdivision ~~(k)~~, ~~(p)~~, Reprimand or fine.
 18 ~~or~~ ~~(r)~~ (J), (O), OR (Q)
 19 Subdivision ~~(l)~~ (K) Reprimand, denial, or
 20 limitation.
 21 Subdivision ~~(m)~~ ~~or~~ ~~(o)~~ Denial, revocation, restitution,
 22 (I) OR (N) probation, suspension,
 23 limitation, reprimand, or fine.
 24 Subdivision ~~(n)~~ (M) Revocation or denial.
 25 Subdivision ~~(q)~~ (P) Revocation.
 26 Subdivision ~~(t)~~ (S) Revocation, fine, and
 27 restitution.

28 (2) Determination of sanctions for violations under this
 29 section shall be made by a disciplinary subcommittee. If, during
 30 judicial review, the court of appeals determines that a final

1 decision or order of a disciplinary subcommittee prejudices
2 substantial rights of the petitioner for 1 or more of the grounds
3 listed in section 106 of the administrative procedures act of
4 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
5 or order is unlawful and is to be set aside, the court shall
6 state on the record the reasons for the holding and may remand
7 the case to the disciplinary subcommittee for further
8 consideration.

9 (3) A disciplinary subcommittee may impose a fine of up to,
10 but not exceeding, \$250,000.00 for a violation of section
11 16221(a) or (b).

12 (4) A disciplinary subcommittee may require a licensee or
13 registrant or an applicant for licensure or registration who has
14 violated this article or article 7 or a rule promulgated under
15 this article or article 7 to satisfactorily complete an
16 educational program, a training program, or a treatment program,
17 a mental, physical, or professional competence examination, or a
18 combination of those programs and examinations.

19 Sec. 16245. (1) An individual whose license is limited,
20 suspended, or revoked under this part may apply to his or her
21 board or task force for a reinstatement of a revoked or suspended
22 license or reclassification of a limited license pursuant to
23 section 16247 or 16249.

24 (2) An individual whose registration is suspended or revoked
25 under this part may apply to his or her board for a reinstatement
26 of a suspended or revoked registration pursuant to section 16248.

27 (3) A board or task force shall reinstate a license or

1 registration suspended for grounds stated in section ~~16221(j)~~
2 **16221(I)** upon payment of the installment.

3 (4) Except as otherwise provided in this subsection, in case
4 of a revoked license or registration, an applicant shall not
5 apply for reinstatement before the expiration of 3 years after
6 the effective date of the revocation. In the case of a license or
7 registration that was revoked for a violation of section
8 16221(b) (vii), a violation of section 16221(c) (iv) consisting of a
9 felony conviction, any other felony conviction involving a
10 controlled substance, or a violation of section ~~16221(q)~~
11 **16221(P)**, an applicant shall not apply for reinstatement before
12 the expiration of 5 years after the effective date of the
13 revocation. The department shall return an application for
14 reinstatement received before the expiration of the applicable
15 time period under this subsection.

16 (5) The department shall provide an opportunity for a
17 hearing before final rejection of an application for
18 reinstatement.

19 (6) Based upon the recommendation of the disciplinary
20 subcommittee for each health profession, the department shall
21 adopt guidelines to establish specific criteria to be met by an
22 applicant for reinstatement under this article or article 7. The
23 criteria may include corrective measures or remedial education as
24 a condition of reinstatement. If a board or task force, in
25 reinstating a license or registration, deviates from the
26 guidelines adopted under this subsection, the board or task force
27 shall state the reason for the deviation on the record.

1 (7) An individual who seeks reinstatement or
2 reclassification of a license or registration pursuant to this
3 section shall pay the application processing fee as a
4 reinstatement or reclassification fee. If approved for
5 reinstatement or reclassification, the individual shall pay the
6 per year license or registration fee for the applicable license
7 or registration period.

8 (8) An individual who seeks reinstatement of a revoked or
9 suspended license or reclassification of a limited license
10 pursuant to this section shall have a criminal history check
11 conducted in accordance with section 16174 and submit a copy of
12 the results of the background check to the board with his or her
13 application for reinstatement or reclassification.

14 Sec. 17001. (1) As used in this part:

15 (a) "Academic institution" means either of the following:

16 (i) A medical school approved by the board.

17 (ii) A hospital licensed under article 17 that meets all of
18 the following requirements:

19 (A) Was the sole sponsor or a co-sponsor, if each other co-
20 sponsor is either a medical school approved by the board or a
21 hospital owned by the federal government and directly operated by
22 the United States department of veterans' affairs, of not less
23 than 4 postgraduate education residency programs approved by the
24 board under section 17031(1) for not less than the 3 years
25 immediately preceding the date of an application for a limited
26 license under section 16182(2)(c) or an application for a full
27 license under section 17031(2), provided that at least 1 of the

1 residency programs is in the specialty area of medical practice,
2 or in a specialty area that includes the subspecialty of medical
3 practice, in which the applicant for a limited license proposes
4 to practice or in which the applicant for a full license has
5 practiced for the hospital.

6 (B) Has spent not less than \$2,000,000.00 for medical
7 education during each of the 3 years immediately preceding the
8 date of an application for a limited license under section
9 16182(2)(c) or an application for a full license under section
10 17031(2). As used in this subparagraph, "medical education" means
11 the education of physicians and candidates for degrees or
12 licenses to become physicians, including, but not limited to,
13 physician staff, residents, interns, and medical students.

14 (b) "Electrodiagnostic studies" means the testing of
15 neuromuscular functions utilizing nerve conduction tests and
16 needle electromyography. It does not include the use of surface
17 electromyography.

18 (c) "Medical care services" means those services within the
19 scope of practice of physicians licensed by the board, except
20 those services that the board determines shall not be delegated
21 by a physician without endangering the health and safety of
22 patients as provided for in section 17048(3).

23 (d) "Physician" means an individual licensed under this
24 article to engage in the practice of medicine.

25 (e) "Podiatrist" means an individual licensed under this
26 article to engage in the practice of podiatric medicine and
27 surgery.

1 (f) "Practice of medicine" means the diagnosis, treatment,
2 prevention, cure, or relieving of a human disease, ailment,
3 defect, complaint, or other physical or mental condition, by
4 attendance, advice, device, diagnostic test, or other means, or
5 offering, undertaking, attempting to do, or holding oneself out
6 as able to do, any of these acts. **THE PRACTICE OF MEDICINE**
7 **INCLUDES PROVIDING EXPERT WITNESS TESTIMONY ON THE APPROPRIATE**
8 **STANDARD OF PRACTICE OR CARE IN AN ACTION ALLEGING MEDICAL**
9 **MALPRACTICE.**

10 (g) "Practice as a physician's assistant" means the practice
11 of medicine, osteopathic medicine and surgery, or podiatric
12 medicine and surgery performed under the supervision of a
13 physician or podiatrist licensed under this article.

14 (h) "Supervision" means that term as defined in section
15 16109, except that it also includes the existence of a
16 predetermined plan for emergency situations, including, but not
17 limited to, the designation of a physician to supervise a
18 physician's assistant in the absence of the primary supervising
19 physician.

20 (i) "Task force" means the joint task force created in
21 section 17025.

22 (2) In addition to the definitions in this part, article 1
23 contains definitions and principles of construction applicable to
24 all articles in this code and part 161 contains definitions
25 applicable to this part.

26 Sec. 17501. (1) As used in this part:

27 (a) "Electrodiagnostic studies" means the testing of

1 neuromuscular functions utilizing nerve conduction tests and
2 needle electromyography. It does not include the use of surface
3 electromyography.

4 (b) "Medical care services" means those services within the
5 scope of practice of physicians licensed and approved by the
6 board, except those services that the board determines shall not
7 be delegated by a physician without endangering the health and
8 safety of patients as provided for in section 17548(3).

9 (c) "Physician" means an individual licensed under this
10 article to engage in the practice of osteopathic medicine and
11 surgery.

12 (d) "Practice of osteopathic medicine and surgery" means a
13 separate, complete, and independent school of medicine and
14 surgery utilizing full methods of diagnosis and treatment in
15 physical and mental health and disease, including the
16 prescription and administration of drugs and biologicals,
17 operative surgery, obstetrics, radiological and other
18 electromagnetic emissions, and placing special emphasis on the
19 interrelationship of the musculoskeletal system to other body
20 systems. **THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY**
21 **INCLUDES PROVIDING EXPERT WITNESS TESTIMONY ON THE APPROPRIATE**
22 **STANDARD OF PRACTICE OR CARE IN AN ACTION ALLEGING MEDICAL**
23 **MALPRACTICE.**

24 (e) "Practice as a physician's assistant" means the practice
25 of medicine, osteopathic medicine and surgery, and podiatric
26 medicine and surgery performed under the supervision of a
27 physician or podiatrist licensed under this article.

1 (f) "Supervision" has the meaning ascribed to it in section
2 16109 except that it includes the existence of a predetermined
3 plan for emergency situations, including, but not limited to, the
4 designation of a physician to supervise a physician's assistant
5 in the absence of the primary supervising physician.

6 (g) "Task force" means the joint task force created in
7 section 17025.

8 (2) In addition to the definitions in this part, article 1
9 contains general definitions and principles of construction
10 applicable to all articles in the code and part 161 contains
11 definitions applicable to this part.