

# HOUSE BILL No. 5125

June 18, 2009, Introduced by Reps. Opsommer, Meekhof, Agema, Lori, Crawford, Kurtz, Sheltroun, Schuitmaker, Kowall, Rick Jones, Marleau, Tyler, Moss, Denby, Rogers, Lund, Mayes, Pearce and McMillin 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 2004 PA 214, and by adding sections 17015a and 17515a.

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

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

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

9 (i) Incompetence.

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

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

15 (iv) Declaration of mental incompetence by a court of  
16 competent jurisdiction.

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

22 (vi) Lack of good moral character.

23 (vii) Conviction of a criminal offense under sections 520b to  
24 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to  
25 750.520g. A certified copy of the court record is conclusive  
26 evidence of the conviction.

27 (viii) Conviction of a violation of section 492a of the

1 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy  
2 of the court record is conclusive evidence of the conviction.

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

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

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

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

21 (c) Prohibited acts, consisting of 1 or more of the  
22 following:

23 (i) Fraud or deceit in obtaining or renewing a license or  
24 registration.

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

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

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

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

8           (i) False or misleading advertising.

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

12           (iii) Fraud or deceit in obtaining or attempting to obtain  
13 third party reimbursement.

14           (e) Unprofessional conduct, consisting of 1 or more of the  
15 following:

16           (i) Misrepresentation to a consumer or patient or in  
17 obtaining or attempting to obtain third party reimbursement in  
18 the course of professional practice.

19           (ii) Betrayal of a professional confidence.

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

22           (iv) Either of the following:

23           (A) A requirement by a licensee other than a physician that  
24 an individual purchase or secure a drug, device, treatment,  
25 procedure, or service from another person, place, facility, or  
26 business in which the licensee has a financial interest.

27           (B) A referral by a physician for a designated health

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

1 "physician" means that term as defined in sections 17001 and  
2 17501.

3 (v) For a physician who makes referrals pursuant to ~~section~~  
4 ~~1877 of part D of title XVIII of the social security act, 42 USC~~  
5 ~~1395nn 7~~, or a regulation promulgated under that section, refusing  
6 to accept a reasonable proportion of patients eligible for  
7 medicaid and refusing to accept payment from medicaid or medicare  
8 as payment in full for a treatment, procedure, or service for  
9 which the physician refers the individual and in which the  
10 physician has a financial interest. A physician who owns all or  
11 part of a facility in which he or she provides surgical services  
12 is not subject to this subparagraph if a referred surgical  
13 procedure he or she performs in the facility is not reimbursed at  
14 a minimum of the appropriate medicaid or medicare outpatient fee  
15 schedule, including the combined technical and professional  
16 components.

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

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

27 (G) ~~(h)~~ A violation, or aiding or abetting in a violation,

1 of this article or of a rule promulgated under this article.

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

7       (I) ~~(j)~~—Failure to pay an installment of an assessment  
8 levied pursuant to the insurance code of 1956, 1956 PA 218, MCL  
9 500.100 to 500.8302, within 60 days after notice by the  
10 appropriate board.

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

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

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

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

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

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

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

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

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

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

23       (T) **A VIOLATION OF SECTION 17015A OR 17515A.**

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

<u>1</u> <u>Violations of Section 16221</u>	<u>Sanctions</u>
2    Subdivision (a), (b) (ii),	Probation, limitation, denial,
3    (b) (iv), (b) (vi), or	suspension, revocation,
4    (b) (vii)	restitution, community service,
5	or fine.
6	
7    Subdivision (b) (viii)	Revocation or denial.
8	
9    Subdivision (b) (i),	Limitation, suspension,
10   (b) (iii), (b) (v),	revocation, denial,
11   (b) (ix), (b) (x),	probation, restitution,
12   (b) (xi), or (b) (xii)	community service, or fine.
13	
14   Subdivision (c) (i)	Denial, revocation, suspension,
15	probation, limitation, community
16	service, or fine.
17	
18   Subdivision (c) (ii)	Denial, suspension, revocation,
19	restitution, community service,
20	or fine.
21	
22   Subdivision (c) (iii)	Probation, denial, suspension,
23	revocation, restitution,
24	community service, or fine.
25	
26   Subdivision (c) (iv)	Fine, probation, denial,
27   or (d) (iii)	suspension, revocation, community
28	service, or restitution.
29	
30   Subdivision (d) (i)	Reprimand, fine, probation,
31   or (d) (ii)	community service, denial,



1 or restitution.

2

3 Subdivision (e) (i) Reprimand, fine, probation,

4 limitation, suspension, community

5 service, denial, or restitution.

6

7 Subdivision (e) (ii) Reprimand, probation,

8 or ~~(i)~~-(H) suspension, restitution,

9 community service, denial, or

10 fine.

11

12 Subdivision (e) (iii), Reprimand, fine, probation,

13 (e) (iv), or (e) (v) suspension, revocation,

14 limitation, community service,

15 denial, or restitution.

16

17 Subdivision ~~(g)~~-(F) Reprimand or fine.

18

19 Subdivision ~~(h)~~-(G) or ~~(s)~~-(R) Reprimand, probation, denial,

20 suspension, revocation,

21 limitation, restitution,

22 community service, or fine.

23

24 Subdivision ~~(j)~~-(I) Suspension or fine.

25

26 Subdivision ~~(k)~~-(J), ~~(p)~~-(O), Reprimand or fine.

27 or ~~(r)~~-(Q)

28

29 Subdivision ~~(l)~~-(K) Reprimand, denial, or

30 limitation.

31

1 Subdivision ~~(m)~~ **(I)** or ~~(o)~~ **(N)** Denial, revocation, restitution,  
 2 probation, suspension,  
 3 limitation, reprimand, or fine.  
 4

5 Subdivision ~~(n)~~ **(M)** Revocation or denial.  
 6

7 Subdivision ~~(q)~~ **(P)** Revocation.  
 8

9 Subdivision ~~(t)~~ **(S) OR (T)** Revocation, fine, and  
 10 restitution.

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

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

25 (4) A disciplinary subcommittee may require a licensee or  
 26 registrant or an applicant for licensure or registration who has  
 27 violated this article or article 7 or a rule promulgated under  
 28 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. 17015A. (1) A PHYSICIAN SHALL NOT INTENTIONALLY PERFORM  
5 AN ABORTION WITH KNOWLEDGE THAT THE PREGNANT WOMAN IS SEEKING THE  
6 ABORTION BASED ON ACCOUNT OF THE SEX OF THE FETUS OR THAT THE  
7 PREGNANT WOMAN IS BEING COMPELLED TO SEEK AN ABORTION IN  
8 VIOLATION OF SECTION 15A OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
9 MCL 750.15A.

10       (2) AS USED IN THIS SECTION:

11       (A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015.

12       (B) "FETUS" MEANS THAT TERM AS DEFINED IN SECTION 17015.

13       (3) THIS SECTION DOES NOT CREATE A RIGHT TO AN ABORTION.

14       (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A  
15 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

16       SEC. 17515A. (1) A PHYSICIAN SHALL NOT INTENTIONALLY PERFORM  
17 AN ABORTION WITH KNOWLEDGE THAT THE PREGNANT WOMAN IS SEEKING THE  
18 ABORTION BASED ON ACCOUNT OF THE SEX OF THE FETUS OR THAT THE  
19 PREGNANT WOMAN IS BEING COMPELLED TO SEEK AN ABORTION IN  
20 VIOLATION OF SECTION 15A OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
21 MCL 750.15A.

22       (2) AS USED IN THIS SECTION:

23       (A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015.

24       (B) "FETUS" MEANS THAT TERM AS DEFINED IN SECTION 17015.

25       (3) THIS SECTION DOES NOT CREATE A RIGHT TO AN ABORTION.

26       (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A  
27 PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

1           Enacting section 1. This amendatory act does not take effect  
2 unless House Bill No. 4525 of the 95th Legislature is enacted  
3 into law.