

HOUSE BILL No. 4688

May 31, 2011, Introduced by Reps. Forlini, LaFontaine, Lund, Pettalia, Johnson, Shirkey, Horn, Cotter, Darany, Dillon, Pscholka, Outman, Poleski, Price, Hooker, Goike, Roy Schmidt, Liss, LeBlanc, Knollenberg, Brunner, Scott, Womack and Genetski and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221 and 16299 (MCL 333.16221 and 333.16299),
section 16221 as amended by 2004 PA 214 and section 16299 as
amended by 2002 PA 685, and by adding sections 17017 and 17517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

9 (a) A violation of general duty, consisting of negligence or

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

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

8 (i) Incompetence.

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

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

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

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

21 (vi) Lack of good moral character.

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

26 (viii) Conviction of a violation of section 492a of the Michigan
27 penal code, 1931 PA 328, MCL 750.492a. A certified copy of the

1 court record is conclusive evidence of the conviction.

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

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

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

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

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

21 (i) Fraud or deceit in obtaining or renewing a license or
22 registration.

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

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

26 (iv) Obtaining, possessing, or attempting to obtain or possess
27 a controlled substance as defined in section 7104 or a drug as

1 defined in section 7105 without lawful authority; or selling,
2 prescribing, giving away, or administering drugs for other than
3 lawful diagnostic or therapeutic purposes.

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

6 (i) False or misleading advertising.

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

10 (iii) Fraud or deceit in obtaining or attempting to obtain third
11 party reimbursement.

12 (e) Unprofessional conduct, consisting of 1 or more of the
13 following:

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

17 (ii) Betrayal of a professional confidence.

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

20 (iv) Either of the following:

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

25 (B) A referral by a physician for a designated health service
26 that violates ~~section 1877 of part D of title XVIII of the social~~
27 ~~security act, 42 USC 1395nn ,~~ or a regulation promulgated under

1 that section. ~~Section 1877 of part D of title XVIII of the social~~
2 ~~security act,~~ **FOR PURPOSES OF THIS SUBPARAGRAPH,** 42 USC 1395nn ~~7~~
3 and the regulations promulgated under that section ~~7~~ as they exist
4 on June 3, 2002 ~~7~~ are incorporated by reference. ~~for purposes of~~
5 ~~this subparagraph.~~ A disciplinary subcommittee shall apply ~~section~~
6 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC
7 1395nn ~~7~~ and the regulations promulgated under that section
8 regardless of the source of payment for the designated health
9 service referred and rendered. If ~~section 1877 of part D of title~~
10 ~~XVIII of the social security act,~~ 42 USC 1395nn ~~7~~ or a regulation
11 promulgated under that section is revised after June 3, 2002, the
12 department shall officially take notice of the revision. Within 30
13 days after taking notice of the revision, the department shall
14 decide whether or not the revision pertains to referral by
15 physicians for designated health services and continues to protect
16 the public from inappropriate referrals by physicians. If the
17 department decides that the revision does both of those things, the
18 department may promulgate rules to incorporate the revision by
19 reference. If the department does promulgate rules to incorporate
20 the revision by reference, the department shall not make any
21 changes to the revision. As used in this subparagraph, "designated
22 health service" means that term as defined in ~~section 1877 of part~~
23 ~~D of title XVIII of the social security act,~~ 42 USC 1395nn ~~7~~ and
24 the regulations promulgated under that section and "physician"
25 means that term as defined in sections 17001 and 17501.

26 (v) For a physician who makes referrals pursuant to ~~section~~
27 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC

1 1395nn 7—or a regulation promulgated under that section, refusing
2 to accept a reasonable proportion of patients eligible for medicaid
3 and refusing to accept payment from medicaid or medicare as payment
4 in full for a treatment, procedure, or service for which the
5 physician refers the individual and in which the physician has a
6 financial interest. A physician who owns all or part of a facility
7 in which he or she provides surgical services is not subject to
8 this subparagraph if a referred surgical procedure he or she
9 performs in the facility is not reimbursed at a minimum of the
10 appropriate medicaid or medicare outpatient fee schedule, including
11 the combined technical and professional components.

12 (f) Beginning June 3, 2003, the department of consumer and
13 industry services shall prepare the first of 3 annual reports on
14 the effect of ~~this amendatory act~~ **2002 PA 402** on access to care for
15 the uninsured and medicaid patients. The department shall report on
16 the number of referrals by licensees of uninsured and medicaid
17 patients to purchase or secure a drug, device, treatment,
18 procedure, or service from another person, place, facility, or
19 business in which the licensee has a financial interest.

20 (g) Failure to report a change of name or mailing address
21 within 30 days after the change occurs.

22 (h) A violation, or aiding or abetting in a violation, of this
23 article or of a rule promulgated under this article.

24 (i) Failure to comply with a subpoena issued pursuant to this
25 part, failure to respond to a complaint issued under this article
26 or article 7, failure to appear at a compliance conference or an
27 administrative hearing, or failure to report under section 16222 or

1 16223.

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

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

6 (l) Failure to meet 1 or more of the requirements for licensure
7 or registration under section 16174.

8 (m) A violation of section 17015, ~~or 17017~~, 17515, **OR 17517**.

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

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

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

12 (q) A violation of section 16274.

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

14 (s) A violation of the medical records access act, **2004 PA 47,**
15 **MCL 333.26261 TO 333.26271.**

16 (t) A violation of section 17764(2).

17 Sec. 16299. (1) Except as otherwise provided in subsection
18 (2), a person who violates or aids or abets another in a violation
19 of this article, other than those matters described in sections
20 16294 and 16296, is guilty of a misdemeanor punishable as follows:

21 (a) For the first offense, by imprisonment for not more than
22 90 days, or a fine of not more than \$100.00, or both.

23 (b) For the second or subsequent offense, by imprisonment for
24 not less than 90 days nor more than 6 months, or a fine of not less
25 than \$200.00 nor more than \$500.00, or both.

26 (2) Subsection (1) does not apply to a violation of section
27 17015, ~~or 17017~~, 17515, **OR 17517**.

1 SEC. 17017. (1) A PHYSICIAN SHALL NOT DIAGNOSE AND PRESCRIBE A
2 MEDICAL ABORTION FOR A PATIENT WHO IS OR IS PRESUMED TO BE PREGNANT
3 WITHOUT FIRST PERSONALLY PERFORMING A PHYSICAL EXAMINATION OF THE
4 PATIENT. A PHYSICIAN SHALL NOT UTILIZE OTHER MEANS INCLUDING, BUT
5 NOT LIMITED TO, AN INTERNET WEB CAMERA, TO DIAGNOSE AND PRESCRIBE A
6 MEDICAL ABORTION.

7 (2) A PHYSICIAN SHALL OBTAIN THE INFORMED CONSENT OF A PATIENT
8 IN THE MANNER PRESCRIBED UNDER SECTION 17015 TO PERFORM A MEDICAL
9 ABORTION. THE PHYSICIAN SHALL BE PHYSICALLY PRESENT AT THE LOCATION
10 OF THE MEDICAL ABORTION AND AT THE TIME ANY PRESCRIPTION DRUG IS
11 DISPENSED OR ADMINISTERED DURING A MEDICAL ABORTION. THE
12 PRESCRIBING PHYSICIAN SHALL PROVIDE DIRECT SUPERVISION OF THE
13 DISPENSING OR ADMINISTERING OF A PRESCRIPTION DRUG DURING A MEDICAL
14 ABORTION. AN INDIVIDUAL UNDER THE DIRECT SUPERVISION OF THE
15 PRESCRIBING PHYSICIAN WHO IS QUALIFIED BY EDUCATION AND TRAINING AS
16 PROVIDED IN THIS ACT MAY DISPENSE OR ADMINISTER THE PRESCRIPTION
17 DRUG DURING A MEDICAL ABORTION.

18 (3) A PHYSICIAN SHALL NOT GIVE, SELL, DISPENSE, ADMINISTER,
19 OTHERWISE PROVIDE, OR PRESCRIBE A PRESCRIPTION DRUG TO AN
20 INDIVIDUAL FOR THE PURPOSE OF INDUCING AN ABORTION IN THE
21 INDIVIDUAL UNLESS THE PHYSICIAN SATISFIES ALL THE CRITERIA
22 ESTABLISHED BY FEDERAL LAW OR GUIDELINE THAT A PHYSICIAN MUST
23 SATISFY IN ORDER TO GIVE, SELL, DISPENSE, ADMINISTER, OTHERWISE
24 PROVIDE, OR PRESCRIBE A PRESCRIPTION DRUG FOR INDUCING AN ABORTION.

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

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

1 (6) AS USED IN THIS SECTION:

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

3 (B) "FEDERAL LAW OR GUIDELINE" MEANS ANY LAW, RULE, OR
4 REGULATION OF THE UNITED STATES OR ANY DRUG APPROVAL LETTER,
5 INCLUDING THE USE OF MEDICATION GUIDES AND PATIENT AGREEMENTS AS
6 DESCRIBED IN A DRUG APPROVAL LETTER, OF THE UNITED STATES FOOD AND
7 DRUG ADMINISTRATION, WHICH LAW, RULE, REGULATION, OR LETTER GOVERNS
8 OR REGULATES THE USE OF PRESCRIPTION DRUGS FOR THE PURPOSE OF
9 INDUCING ABORTIONS.

10 (C) "MEDICAL ABORTION" MEANS AN ABORTION PROCEDURE THAT
11 UTILIZES A PRESCRIPTION DRUG OR DRUGS INCLUDING, BUT NOT LIMITED
12 TO, MIFEPRISTONE, MISOPROSTOL, OR ULIPRISTAL ACETATE.

13 (D) "PRESCRIPTION DRUG" MEANS THAT TERM AS DEFINED IN SECTION
14 17708.

15 SEC. 17517. A PHYSICIAN SHALL COMPLY WITH SECTION 17017.