

# HOUSE BILL No. 4085

January 13, 2011, Introduced by Rep. Slavens 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), sections 16221 and 16226 as amended by 2004 PA 214.

## 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

1 or more of the following grounds exist:

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

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

10 (i) Incompetence.

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

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

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

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

23 (vi) Lack of good moral character.

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

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

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

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

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

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

22           **(xiii) CONVICTION OF A CRIMINAL OFFENSE UNDER SECTION 520B,**  
23 **520C, 520D, 520F, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA**  
24 **328, MCL 750.520B, 750.520C, 750.520D, 750.520F, AND 750.520G. A**  
25 **CERTIFIED COPY OF THE COURT RECORD IS CONCLUSIVE EVIDENCE OF THE**  
26 **CONVICTION.**

27           (c) Prohibited acts, consisting of 1 or more of the

1 following:

2 (i) Fraud or deceit in obtaining or renewing a license or  
3 registration.

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

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

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

12 (d) Unethical business practices, consisting of 1 or more of  
13 the following:

14 (i) False or misleading advertising.

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

18 (iii) Fraud or deceit in obtaining or attempting to obtain  
19 third party reimbursement.

20 (e) Unprofessional conduct, consisting of 1 or more of the  
21 following:

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

25 (ii) Betrayal of a professional confidence.

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

(iv) Either of the following:

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

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

**FOR PURPOSES OF THIS SUBPARAGRAPH,** 42 USC 1395nn ~~,~~ and the regulations promulgated under that section ~~,~~ as they exist on June 3, 2002 ~~,~~ are incorporated by reference. ~~for purposes of this subparagraph. A disciplinary subcommittee shall apply section 1877 of part D of title XVIII of the social security act,~~ 42 USC 1395nn ~~,~~ and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If ~~section 1877 of part D of title XVIII of the social security act,~~ 42 USC 1395nn ~~,~~ or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision

1 by reference. If the department does promulgate rules to  
2 incorporate the revision by reference, the department shall not  
3 make any changes to the revision. As used in this subparagraph,  
4 "designated health service" means that term as defined in ~~section~~  
5 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC  
6 1395nn ~~,~~ and the regulations promulgated under that section and  
7 "physician" means that term as defined in sections 17001 and  
8 17501.

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

23 (f) Beginning June 3, 2003, the department of consumer and  
24 industry services shall prepare the first of 3 annual reports on  
25 the effect of ~~this amendatory act~~ **2002 PA 402** on access to care  
26 for the uninsured and medicaid patients. The department shall  
27 report on the number of referrals by licensees of uninsured and

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

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

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

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

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

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

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

21       (m) A violation of section 17015 or 17515.

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

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

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

25       (q) A violation of section 16274.

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

27       (s) A violation of the medical records access act, **2004 PA**

1 47, MCL 333.26261 TO 333.26271.

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

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

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



1	Subdivision (d) (i)	Reprimand, fine, probation,
2	or (d) (ii)	community service, denial,
3		or restitution.
4	Subdivision (e) (i)	Reprimand, fine, probation,
5		limitation, suspension, community
6		service, denial, or restitution.
7	Subdivision (e) (ii)	Reprimand, probation,
8	or (i)	suspension, restitution,
9		community service, denial, or
10		fine.
11	Subdivision (e) (iii) ,	Reprimand, fine, probation,
12	(e) (iv) , or (e) (v)	suspension, revocation,
13		limitation, community service,
14		denial, or restitution.
15	Subdivision (g)	Reprimand or fine.
16	Subdivision (h) or	Reprimand, probation, denial,
17	(s)	suspension, revocation,
18		limitation, restitution,
19		community service, or fine.
20	Subdivision (j)	Suspension or fine.
21	Subdivision (k) , (p) , or	Reprimand or fine.
22	(r)	
23	Subdivision (l)	Reprimand, denial, or
24		limitation.
25	Subdivision (m) or	Denial, revocation, restitution,
26	(o)	probation, suspension,
27		limitation, reprimand, or fine.
28	Subdivision (n)	Revocation or denial.
29	Subdivision (q)	Revocation.
30	Subdivision (t)	Revocation, fine, and
		restitution.

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

12           (3) A disciplinary subcommittee may impose a fine of up to,  
13 but not exceeding, \$250,000.00 for a violation of section  
14 16221(a) or (b).

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