

SENATE BILL No. 1138

May 23, 2012, Introduced by Senators HOPGOOD and WARREN and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16241 and 20175 (MCL 333.16241 and 333.20175),
section 16241 as amended by 1993 PA 87 and section 20175 as amended
by 2006 PA 481.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16241. (1) After administrative disciplinary action is
2 final, the department ~~of commerce~~ shall publish a list of the names
3 and addresses of disciplined individuals. The department ~~of~~
4 ~~commerce~~ shall indicate on the list that a final administrative
5 disciplinary action is subject to judicial review. The department
6 ~~of commerce~~ shall report disciplinary action to the department of
7 ~~public~~ **COMMUNITY** health, the commissioner of ~~insurance~~, **THE OFFICE**
8 **OF FINANCIAL AND INSURANCE SERVICES**, the state and federal agencies
9 responsible for fiscal administration of federal health care

1 programs, and the appropriate professional association.

2 (2) Once each calendar year, the department ~~of commerce~~ shall
3 transmit to the library of Michigan sufficient copies of a
4 compilation of the lists required under subsection (1) for the
5 immediately preceding 3 calendar years. The library of Michigan
6 shall distribute the compilation to each depository library in the
7 state. The department ~~of commerce also~~ shall **ALSO** transmit the
8 compilation to each county clerk in the state once each calendar
9 year.

10 (3) ON OR BEFORE APRIL 1 OF EACH YEAR, THE DEPARTMENT SHALL
11 MAKE ALL OF THE FOLLOWING INFORMATION AVAILABLE TO THE PUBLIC ON
12 THE DEPARTMENT'S WEBSITE:

13 (A) THE NUMBER OF COMPLAINTS FILED AGAINST PHYSICIANS LICENSED
14 UNDER PARTS 170 AND 175 IN THE IMMEDIATELY PRECEDING CALENDAR YEAR.

15 (B) THE NUMBER OF INVESTIGATIONS OF LICENSEES THE DEPARTMENT
16 CONDUCTED IN THE IMMEDIATELY PRECEDING CALENDAR YEAR.

17 (C) THE NUMBER OF DISCIPLINARY HEARINGS CONDUCTED IN THE
18 IMMEDIATELY PRECEDING CALENDAR YEAR.

19 (D) THE NUMBER OF REPORTS OF DISCIPLINARY ACTION MADE BY THE
20 DEPARTMENT UNDER SUBSECTION (1) IN THE IMMEDIATELY PRECEDING
21 CALENDAR YEAR.

22 (E) THE TYPES OF ACTIONS, INCLUDING LICENSE REINSTATEMENTS,
23 TAKEN BY DISCIPLINARY SUBCOMMITTEES IN THE IMMEDIATELY PRECEDING
24 CALENDAR YEAR.

25 (4) ~~(3)~~ The department of ~~public~~ **COMMUNITY** health shall report
26 the disciplinary actions to appropriate licensed health facilities
27 and agencies. The commissioner of ~~insurance~~ **THE OFFICE OF FINANCIAL**

1 **AND INSURANCE SERVICES** shall report the disciplinary actions
2 received from the department ~~of commerce~~ to insurance carriers
3 providing professional liability insurance.

4 (5) ~~(4) In case of a summary suspension of~~ **IF THE DEPARTMENT**
5 **SUMMARILY SUSPENDS** a license under section 16233(5), the department
6 ~~of commerce~~ shall report the name and address of the individual
7 whose license has been suspended to the department of ~~public~~
8 **COMMUNITY** health, the commissioner of ~~insurance~~, **THE OFFICE OF**
9 **FINANCIAL AND INSURANCE SERVICES**, the state and federal agencies
10 responsible for fiscal administration of federal health care
11 programs, and the appropriate professional association.

12 (6) ~~(5)~~ A licensee or registrant whose license or registration
13 is revoked or suspended under this article shall give notice of the
14 revocation or suspension to each patient who contacts the licensee
15 or registrant for professional services during the term of the
16 revocation or suspension. The notice required under this subsection
17 may be given orally and shall be given at the time of contact.

18 (7) ~~(6)~~ A licensee or registrant whose license or registration
19 is revoked or is suspended for more than 60 days under this article
20 shall notify in writing each patient or client to whom the licensee
21 or registrant rendered professional services in the licensee's or
22 registrant's private practice during the 120 days immediately
23 preceding the date of the final order imposing the revocation or
24 suspension and to each individual who is already scheduled for
25 professional services during the first 120 days after the date of
26 the final order imposing the revocation or suspension.

27 (8) ~~The~~ A notice **REQUIRED UNDER SUBSECTION (7)** shall be on a

form provided by the licensee's or registrant's board or task force and shall ~~state, at a minimum, the~~ **INCLUDE AT LEAST ALL OF THE FOLLOWING:**

(A) **THE** name, address, and license or registration number of the licensee or registrant. ~~the~~

(B) **THE** fact that ~~his or her~~ **THE LICENSEE'S OR REGISTRANT'S** license or registration ~~has been~~ **WAS** revoked or suspended. ~~the~~

(C) **THE** effective date of the revocation or suspension. ~~and the~~

(D) **THE** term of the revocation or suspension.

(9) Each board or task force shall develop a notice form that meets at least the minimum requirements of ~~this subsection~~ (8). The

(10) **A** licensee or registrant shall send ~~the~~ **A notice REQUIRED UNDER SUBSECTION (7)** to each patient or client to whom the licensee or registrant rendered professional services in the licensee's or registrant's private practice during the 120 days immediately preceding the date of ~~the~~ **A** final order imposing the revocation or suspension within 30 days after the date of the final order imposing the revocation or suspension. ~~and~~ **THE LICENSEE OR REGISTRANT** shall simultaneously transmit a copy of the notice to the department. ~~The~~

(11) **A** licensee or registrant ~~orally shall~~ **SHALL ORALLY** notify each individual who contacts the licensee or registrant for professional services during the first 120 days after the date of ~~the~~ **A** final order imposing the revocation or suspension. ~~The~~

(12) **A** licensee or registrant shall ~~also~~ provide a copy of ~~the~~ **A notice REQUIRED UNDER SUBSECTION (7)** within 10 days after the

1 date of the final order imposing the revocation or suspension to
2 his or her employer, if any, and to each hospital, if any, in which
3 the licensee or registrant is admitted to practice.

4 (13) ~~(7)~~—A licensee or registrant who is reprimanded, fined,
5 placed on probation, or ordered to pay restitution under this
6 article or an applicant whose application for licensure or
7 registration is denied under this article shall notify his or her
8 employer, if any, and each hospital, if any, in which he or she is
9 admitted to practice, in the same manner as provided for notice of
10 revocation or suspension to an employer or hospital under
11 subsection ~~(6)~~—(12), within 10 days after the date of the final
12 order imposing the sanction.

13 (14) ~~(8)~~—The department ~~of commerce annually~~ shall **ANNUALLY**
14 report to the legislature and to each board and task force on
15 disciplinary actions taken under this article and article 7. The
16 report shall contain, at a minimum, all of the following
17 information:

18 (a) Investigations conducted, complaints issued, and
19 settlements reached by the department, ~~of commerce, separated out~~
20 **REPORTED** by type of complaint and health profession.

21 (b) Investigations and complaints closed or dismissed.

22 (c) Actions taken by each disciplinary subcommittee, ~~separated~~
23 ~~out~~—**REPORTED** by type of complaint, health profession, and final
24 order issued.

25 (d) Recommendations by boards and task forces.

26 (e) The number of extensions and delays granted by the
27 department that were in excess of the time limits required under

1 this article for each phase of the disciplinary process, and the
2 types of cases for which the extensions and delays were granted.

3 ~~—— (9) Within 2 years after the effective date of the amendatory~~
4 ~~act that added this subsection, the department of commerce shall~~
5 ~~submit a public report to the legislature on the effectiveness of~~
6 ~~the amendatory act that added this subsection. The report shall~~
7 ~~include a review and evaluation of the disciplinary process and the~~
8 ~~reporting requirements of this article and article 17 and~~
9 ~~recommended administrative or statutory changes, if any.~~

10 Sec. 20175. (1) A health facility or agency shall keep and
11 maintain a record for each patient, including a full and complete
12 record of tests and examinations performed, observations made,
13 treatments provided, and in the case of a hospital, the purpose of
14 hospitalization. Unless a longer retention period is otherwise
15 required under federal or state laws or regulations or by generally
16 accepted standards of medical practice, a health facility or agency
17 shall keep and retain each record for a minimum of 7 years from the
18 date of service to which the record pertains. A health facility or
19 agency shall maintain the records in such a manner as to protect
20 their integrity, to ensure their confidentiality and proper use,
21 and to ensure their accessibility and availability to each patient
22 or his or her authorized representative as required by law. A
23 health facility or agency may destroy a record that is less than 7
24 years old only if both of the following are satisfied:

25 (a) The health facility or agency sends a written notice to
26 the patient at the last known address of that patient informing the
27 patient that the record is about to be destroyed, offering the

1 patient the opportunity to request a copy of that record, and
2 requesting the patient's written authorization to destroy the
3 record.

4 (b) The health facility or agency receives written
5 authorization from the patient or his or her authorized
6 representative agreeing to the destruction of the record. Except as
7 otherwise provided under federal or state laws and regulations,
8 records required to be maintained under this subsection may be
9 destroyed or otherwise disposed of after being maintained for 7
10 years. If records maintained in accordance with this section are
11 subsequently destroyed or otherwise disposed of, those records
12 shall be shredded, incinerated, electronically deleted, or
13 otherwise disposed of in a manner that ensures continued
14 confidentiality of the patient's health care information and any
15 other personal information relating to the patient. If records are
16 destroyed or otherwise disposed of as provided under this
17 subsection, the department may take action including, but not
18 limited to, contracting for or making other arrangements to ensure
19 that those records and any other confidential identifying
20 information related to the patient are properly destroyed or
21 disposed of to protect the confidentiality of patient's health care
22 information and any other personal information relating to the
23 patient. Before the department takes action ~~in accordance with~~
24 **UNDER** this subsection, the department, if able to identify the
25 health facility or agency responsible for the improper destruction
26 or disposal of the medical records at issue, shall send a written
27 notice to that health facility or agency at the last known address

1 on file with the department and provide the health facility or
2 agency with an opportunity to properly destroy or dispose of those
3 medical records as required under this subsection unless a delay in
4 the proper destruction or disposal may compromise the patient's
5 confidentiality. The department may assess the health facility or
6 agency with the costs incurred by the department to enforce this
7 subsection. In addition to the sanctions ~~set forth~~ **DESCRIBED** in
8 section 20165, a hospital that fails to comply with this subsection
9 is subject to an administrative fine of \$10,000.00.

10 (2) A hospital shall take precautions to assure that the
11 records required ~~by~~ **UNDER** subsection (1) are not wrongfully altered
12 or destroyed. A hospital that fails to comply with this subsection
13 is subject to an administrative fine of \$10,000.00.

14 (3) Unless otherwise provided by law, the licensing and
15 certification records required ~~by~~ **UNDER** this article are public
16 records.

17 (4) Departmental officers and employees shall respect the
18 confidentiality of patient clinical records and shall not divulge
19 or disclose the contents of records in a manner that identifies an
20 individual except pursuant to court order or as otherwise
21 authorized by law.

22 (5) A health facility or agency that employs, contracts with,
23 or grants privileges to a health professional licensed or
24 registered under article 15 shall report the following to the
25 department not more than 30 days after it occurs:

26 (a) Disciplinary action taken by the health facility or agency
27 against a health professional licensed or registered under article

15 based on the licensee's or registrant's professional competence,
 disciplinary action that results in a change of employment status,
 or disciplinary action based on conduct that adversely affects the
 licensee's or registrant's clinical privileges for a period of more
 than 15 days. As used in this subdivision, "adversely affects"
 means the reduction, restriction, suspension, revocation, denial,
 or failure to renew the clinical privileges of a licensee or
 registrant by a health facility or agency.

(b) Restriction or acceptance of the surrender of the clinical
 privileges of a licensee or registrant under either of the
 following circumstances:

(i) The licensee or registrant is under investigation by the
 health facility or agency.

(ii) There is an agreement in which the health facility or
 agency agrees not to conduct an investigation into the licensee's
 or registrant's alleged professional incompetence or improper
 professional conduct.

~~(c) A case in which a health professional resigns or
 terminates a contract or whose~~ **THE ACCEPTANCE OF A HEALTH
 PROFESSIONAL'S RESIGNATION OR TERMINATION OR NONRENEWAL OF HIS OR
 HER contract is not renewed** instead of the health facility taking
 disciplinary action against the health professional.

**(6) ON OR BEFORE APRIL 1 OF EACH YEAR, A HEALTH FACILITY OR
 AGENCY SHALL MAKE ALL OF THE FOLLOWING INFORMATION AVAILABLE ON AN
 INTERNET WEBSITE ACCESSIBLE TO THE GENERAL PUBLIC:**

**(A) THE NUMBER OF INVESTIGATIONS CONDUCTED BY THE HEALTH
 FACILITY OR AGENCY IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR**

1 THE PURPOSE OF DETERMINING WHETHER TO TAKE DISCIPLINARY ACTION
2 AGAINST A HEALTH PROFESSIONAL LICENSED OR REGISTERED UNDER ARTICLE
3 15 THAT THE HEALTH FACILITY OR AGENCY EMPLOYED, CONTRACTED WITH, OR
4 GRANTED PRIVILEGES TO IN THE IMMEDIATELY PRECEDING CALENDAR YEAR.

5 (B) THE NUMBER OF INVESTIGATIONS DESCRIBED IN SUBDIVISION (A)
6 THAT ADVERSELY AFFECTED ANY OF THE FOLLOWING:

7 (i) THE HEALTH PROFESSIONAL'S EMPLOYMENT STATUS.

8 (ii) THE HEALTH PROFESSIONAL'S CLINICAL PRIVILEGES.

9 (7) ~~(6)~~—Upon request by another health facility or agency
10 seeking a reference for purposes of changing or granting staff
11 privileges, credentials, or employment, a health facility or agency
12 that employs, contracts with, or grants privileges to health
13 professionals licensed or registered under article 15 shall notify
14 the requesting health facility or agency of any disciplinary or
15 other action reportable under subsection (5) that it has taken
16 against a health professional licensed or registered under article
17 15 and employed by, under contract to, or granted privileges by the
18 health facility or agency.

19 (8) ~~(7)~~—For the purpose of reporting disciplinary actions
20 under ~~this section~~, **SUBSECTION (5)**, a health facility or agency
21 shall include only the following in the information provided:

22 (a) The name of the licensee or registrant against whom
23 disciplinary action has been taken.

24 (b) A description of the disciplinary action taken.

25 (c) The specific grounds for the disciplinary action taken.

26 (d) The date of the incident that is the basis for the
27 disciplinary action.

1 (9) ~~(8)~~—The records, data, and knowledge collected for or by
2 individuals or committees assigned a professional review function
3 in a health facility or agency, or an institution of higher
4 education in this state that has colleges of osteopathic and human
5 medicine, are confidential, shall be used only for the purposes
6 provided in this article, are not public records, and are not
7 subject to court subpoena.