

HOUSE BILL NO. 5715

February 02, 2022, Introduced by Reps. Breen, Coleman, Hope, Cynthia Johnson, Neeley, Tyrone Carter, Liberati, Steenland, Markkanen, Steckloff, Garza, Brabec, Hood, Cavanagh, Weiss, Cambensy, Kahle, Roth, Outman, Allor, Sneller, Yaroch, Brenda Carter, Brixie, Rogers, Clemente, Whitsett, Peterson, Bezotte and Yancey 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),
section 16221 as amended by 2020 PA 232 and section 16226 as
amended by 2020 PA 233.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16221. Subject to section 16221b, the department shall
2 investigate any allegation that 1 or more of the grounds for
3 disciplinary subcommittee action under this section exist, and may

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

10 (a) Except as otherwise specifically provided in this section,
11 a violation of general duty, consisting of negligence or failure to
12 exercise due care, including negligent delegation to or supervision
13 of employees or other individuals, whether or not injury results,
14 or any conduct, practice, or condition that impairs, or may impair,
15 the ability to safely and skillfully engage in the practice of the
16 health profession.

17 (b) Personal disqualifications, consisting of 1 or more of the
18 following:

19 (i) Incompetence.

20 (ii) Subject to sections 16165 to 16170a, substance use
21 disorder as defined in section 100d of the mental health code, 1974
22 PA 258, MCL 330.1100d.

23 (iii) Mental or physical inability reasonably related to and
24 adversely affecting the licensee's or registrant's ability to
25 practice in a safe and competent manner.

26 (iv) Declaration of mental incompetence by a court of competent
27 jurisdiction.

28 (v) Conviction of a misdemeanor punishable by imprisonment for
29 a maximum term of 2 years; conviction of a misdemeanor involving

1 the illegal delivery, possession, or use of a controlled substance;
2 or conviction of any felony other than a felony listed or described
3 in another subparagraph of this subdivision. A certified copy of
4 the court record is conclusive evidence of the conviction.

5 (vi) Lack of good moral character.

6 (vii) Conviction of a criminal offense under section 520e or
7 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
8 750.520g. A certified copy of the court record is conclusive
9 evidence of the conviction.

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

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

17 (x) Final adverse administrative action by a licensure,
18 registration, disciplinary, or certification board involving the
19 holder of, or an applicant for, a license or registration regulated
20 by another state or a territory of the United States, by the United
21 States military, by the federal government, or by another country.
22 A certified copy of the record of the board is conclusive evidence
23 of the final action.

24 (xi) Conviction of a misdemeanor that is reasonably related to
25 or that adversely affects the licensee's or registrant's ability to
26 practice in a safe and competent manner. A certified copy of the
27 court record is conclusive evidence of the conviction.

28 (xii) Conviction of a violation of section 430 of the Michigan
29 penal code, 1931 PA 328, MCL 750.430. A certified copy of the court

1 record is conclusive evidence of the conviction.

2 (xiii) Conviction of a criminal offense under section 83, 84,
3 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
4 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,
5 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the
6 court record is conclusive evidence of the conviction.

7 (xiv) Conviction of a violation of section 136 or 136a of the
8 Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A
9 certified copy of the court record is conclusive evidence of the
10 conviction.

11 (xv) Conviction of a violation of section 219g of the Michigan
12 penal code, 1931 PA 328, MCL 750.219g. A certified copy of the
13 court record is conclusive evidence of the conviction.

14 (xvi) A final order or judgment against the licensee or
15 registrant under section 2980 of the revised judicature act of
16 1961, 1961 PA 236, MCL 600.2980. A certified copy of the court
17 record is conclusive evidence of the final order or judgment.

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

19 (i) Fraud or deceit in obtaining or renewing a license or
20 registration.

21 (ii) Permitting a license or registration to be used by an
22 unauthorized person.

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

24 (iv) Obtaining, possessing, or attempting to obtain or possess
25 a controlled substance or a drug as defined in section 7105 without
26 lawful authority; or selling, prescribing, giving away, or
27 administering drugs for other than lawful diagnostic or therapeutic
28 purposes.

29 (d) Except as otherwise specifically provided in this section,

1 unethical business practices, consisting of 1 or more of the
2 following:

3 (i) False or misleading advertising.

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

7 (iii) Fraud or deceit in obtaining or attempting to obtain third
8 party reimbursement.

9 (e) Except as otherwise specifically provided in this section,
10 unprofessional conduct, consisting of 1 or more of the following:

11 (i) Misrepresentation to a consumer or patient or in obtaining
12 or attempting to obtain third party reimbursement in the course of
13 professional practice.

14 (ii) Betrayal of a professional confidence.

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

17 (iv) Either of the following:

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

23 (B) A referral by a physician for a designated health service
24 that violates 42 USC 1395nn or a regulation promulgated under that
25 section. For purposes of this subdivision, 42 USC 1395nn and the
26 regulations promulgated under that section as they exist on June 3,
27 2002 are incorporated by reference. A disciplinary subcommittee
28 shall apply 42 USC 1395nn and the regulations promulgated under
29 that section regardless of the source of payment for the designated

1 health service referred and rendered. If 42 USC 1395nn or a
2 regulation promulgated under that section is revised after June 3,
3 2002, the department shall officially take notice of the revision.
4 Within 30 days after taking notice of the revision, the department
5 shall decide whether or not the revision pertains to referral by
6 physicians for designated health services and continues to protect
7 the public from inappropriate referrals by physicians. If the
8 department decides that the revision does both of those things, the
9 department may promulgate rules to incorporate the revision by
10 reference. If the department does promulgate rules to incorporate
11 the revision by reference, the department shall not make any
12 changes to the revision. As used in this sub-subparagraph,
13 "designated health service" means that term as defined in 42 USC
14 1395nn and the regulations promulgated under that section and
15 "physician" means that term as defined in sections 17001 and 17501.

16 (v) For a physician who makes referrals under 42 USC 1395nn or
17 a regulation promulgated under that section, refusing to accept a
18 reasonable proportion of patients eligible for Medicaid and
19 refusing to accept payment from Medicaid or Medicare as payment in
20 full for a treatment, procedure, or service for which the physician
21 refers the individual and in which the physician has a financial
22 interest. A physician who owns all or part of a facility in which
23 he or she provides surgical services is not subject to this
24 subparagraph if a referred surgical procedure he or she performs in
25 the facility is not reimbursed at a minimum of the appropriate
26 Medicaid or Medicare outpatient fee schedule, including the
27 combined technical and professional components.

28 (vi) Any conduct by a health professional with a patient while
29 he or she is acting within the health profession for which he or

1 she is licensed or registered, including conduct initiated by a
2 patient or to which the patient consents, that is sexual or may
3 reasonably be interpreted as sexual, including, but not limited to,
4 sexual intercourse, kissing in a sexual manner, or touching of a
5 body part for any purpose other than appropriate examination,
6 treatment, or comfort.

7 (vii) Offering to provide practice-related services, such as
8 drugs, in exchange for sexual favors.

9 (viii) A violation of section 16655(4) by a dental therapist.

10 (f) Failure to notify under section 16222(3) or (4).

11 (g) Failure to report a change of name or mailing address as
12 required in section 16192.

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

15 (i) Failure to comply with a subpoena issued pursuant to this
16 part, failure to respond to a complaint issued under this article,
17 article 7, or article 8, failure to appear at a compliance
18 conference or an administrative hearing, or failure to report under
19 section 16222(1) or 16223.

20 (j) Failure to pay an installment of an assessment levied
21 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
22 500.8302, within 60 days after notice by the appropriate board.

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

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

26 (m) A violation of section 17015, 17015a, 17017, 17515, or
27 17517.

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

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

- 1 (p) A violation of section 5654 or 5655.
 2 (q) A violation of section 16274.
 3 (r) A violation of section 17020 or 17520.
 4 (s) A violation of the medical records access act, 2004 PA 47,
 5 MCL 333.26261 to 333.26271.
 6 (t) A violation of section 17764(2).
 7 (u) Failure to comply with the terms of a practice agreement
 8 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
 9 18047(2)(a) or (b).
 10 (v) A violation of section 7303a(2).
 11 (w) A violation of section 7303a(4) or (5).
 12 (x) A violation of section 7303b.
 13 (y) A violation of section 17754a.
 14 (z) Beginning January 1, 2021, a violation of section 24507 or
 15 24509.

16 Sec. 16226. (1) After finding the existence of 1 or more of
 17 the grounds for disciplinary subcommittee action listed in section
 18 16221, a disciplinary subcommittee shall impose 1 or more of the
 19 following sanctions for each violation:

<u>Violations of Section 16221</u>	<u>Sanctions</u>
Subdivision (a), (b) (i),	Probation, limitation, denial,
(b) (ii), (b) (iii), (b) (iv),	suspension, revocation,
(b) (v), (b) (vi), (b) (vii),	permanent revocation,
(b) (ix), (b) (x), (b) (xi),	restitution, or fine.
or (b) (xii), (b) (xv), or	
(b) (xvi)	
Subdivision (b) (viii)	Revocation, permanent revocation,

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1 or denial.
2 Subdivision (b) (xiii) Permanent revocation
3 for a violation described in
4 subsection (5); otherwise,
5 probation, limitation, denial,
6 suspension, revocation,
7 restitution, or fine.
8 Subdivision (b) (xiv) Permanent revocation.
9 Subdivision (c) (i) Denial, revocation, suspension,
10 probation, limitation, or fine.
11 Subdivision (c) (ii) Denial, suspension, revocation,
12 restitution, or fine.
13 Subdivision (c) (iii) Probation, denial, suspension,
14 revocation, restitution, or fine.
15 Subdivision (c) (iv) Fine, probation, denial,
16 or (d) (iii) suspension, revocation, permanent
17 revocation, or restitution.
18 Subdivision (d) (i) Reprimand, fine, probation,
19 or (d) (ii) denial, or restitution.
20 Subdivision (e) (i), Reprimand, fine, probation,
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1 (e) (iii), (e) (iv), (e) (v), limitation, suspension,
2 (h), or (s) revocation, permanent revocation,
3 denial, or restitution.
4 Subdivision (e) (ii) Reprimand, probation, suspension,
5 or (i) revocation, permanent
6 revocation, restitution,
7 denial, or fine.
8 Subdivision (e) (vi), Probation, suspension, revocation,
9 (e) (vii), or (e) (viii) limitation, denial,
10 restitution, or fine.
11 Subdivision (f) Reprimand, denial, limitation,
12 probation, or fine.
13 Subdivision (g) Reprimand or fine.
14 Subdivision (j) Suspension or fine.
15 Subdivision (k), (p), Reprimand, probation, suspension,
16 or (r) revocation, permanent revocation,
17 or fine.
18 Subdivision (l) Reprimand, denial, or
19 limitation.
20 Subdivision (m) or (o) Denial, revocation, restitution,
21 probation, suspension,
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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 1969,
4 MCL 24.306, and holds that the final decision or order is unlawful
5 and is to be set aside, the court shall state on the record the
6 reasons for the holding and may remand the case to the disciplinary
7 subcommittee for further consideration.

8 (3) A disciplinary subcommittee may impose a fine in an amount
9 that does not exceed \$250,000.00 for a violation of section
10 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
11 at least \$25,000.00 if the violation of section 16221(a) or (b)
12 results in the death of 1 or more patients.

13 (4) A disciplinary subcommittee may require a licensee or
14 registrant or an applicant for licensure or registration who has
15 violated this article, article 7, or article 8 or a rule
16 promulgated under this article, article 7, or article 8 to
17 satisfactorily complete an educational program, a training program,
18 or a treatment program, a mental, physical, or professional
19 competence examination, or a combination of those programs and
20 examinations.

21 (5) A disciplinary subcommittee shall impose the sanction of
22 permanent revocation for a violation of section 16221(b) (xiii) if the
23 violation occurred while the licensee or registrant was acting
24 within the health profession for which he or she was licensed or
25 registered.

26 (6) Except as otherwise provided in subsection (5) and this
27 subsection, a disciplinary subcommittee shall not impose the
28 sanction of permanent revocation under this section without a
29 finding that the licensee or registrant engaged in a pattern of

1 intentional acts of fraud or deceit resulting in personal financial
2 gain to the licensee or registrant and harm to the health of
3 patients under the licensee's or registrant's care. This subsection
4 does not apply if a disciplinary subcommittee finds that a licensee
5 or registrant has violated section 16221(b) (xiv).

6 (7) A disciplinary subcommittee shall impose a fine of not
7 more than \$250.00 for each violation of section 16221(y).

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 101st Legislature are
10 enacted into law:

11 (a) Senate Bill No. _____ or House Bill No. 5716 (request no.
12 03803'21).

13 (b) Senate Bill No. _____ or House Bill No. 5714 (request no.
14 03805'21).