

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5789**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 16221 (MCL 333.16221), as amended by 2017 PA
249.

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
4 investigate activities related to the practice of a health
5 profession by a licensee, a registrant, or an applicant for
6 licensure or registration. The department may hold hearings,
7 administer oaths, and order the taking of relevant testimony. After
8 its investigation, the department shall provide a copy of the

1 administrative complaint to the appropriate disciplinary
2 subcommittee. The disciplinary subcommittee shall proceed under
3 section 16226 if it finds that 1 or more of the following grounds
4 exist:

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

12 (b) Personal disqualifications, consisting of 1 or more of the
13 following:

14 (i) Incompetence.

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

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

21 (iv) Declaration of mental incompetence by a court of
22 competent jurisdiction.

23 (v) Conviction of a misdemeanor punishable by imprisonment for
24 a maximum term of 2 years; conviction of a misdemeanor involving
25 the illegal delivery, possession, or use of a controlled substance;
26 or conviction of any felony other than a felony listed or described
27 in another subparagraph of this subdivision. A certified copy of

1 the court record is conclusive evidence of the conviction.

2 (vi) Lack of good moral character.

3 (vii) Conviction of a criminal offense under section 520e or
4 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
5 750.520g. A certified copy of the court record is conclusive
6 evidence of the conviction.

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

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

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

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

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

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

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

10 (xv) **CONVICTION OF A VIOLATION OF SECTION 90 OF THE MICHIGAN**
11 **PENAL CODE, 1931 PA 328, MCL 750.90, OR OF A VIOLATION OF ANY OTHER**
12 **STATE OR FEDERAL LAW THAT IS SUBSTANTIALLY SIMILAR TO SECTION 90 OF**
13 **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.90. A CERTIFIED COPY**
14 **OF THE COURT RECORD IS CONCLUSIVE EVIDENCE OF THE CONVICTION.**

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

16 (i) Fraud or deceit in obtaining or renewing a license or
17 registration.

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

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

21 (iv) Obtaining, possessing, or attempting to obtain or possess
22 a controlled substance ~~as defined in section 7104~~ or a drug as
23 defined in section 7105 without lawful authority; or selling,
24 prescribing, giving away, or administering drugs for other than
25 lawful diagnostic or therapeutic purposes.

26 (d) Except as otherwise specifically provided in this section,
27 unethical business practices, consisting of 1 or more of the

1 following:

2 (i) False or misleading advertising.

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

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

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

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

13 (ii) Betrayal of a professional confidence.

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

16 (iv) Either of the following:

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

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

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

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

1 combined technical and professional components.

2 (vi) Any conduct by a health professional with a patient while
3 he or she is acting within the health profession for which he or
4 she is licensed or registered, including conduct initiated by a
5 patient or to which the patient consents, that is sexual or may
6 reasonably be interpreted as sexual, including, but not limited to,
7 sexual intercourse, kissing in a sexual manner, or touching of a
8 body part for any purpose other than appropriate examination,
9 treatment, or comfort.

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

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

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

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

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

22 (j) Failure to pay an installment of an assessment levied
23 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
24 500.8302, within 60 days after notice by the appropriate board.

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

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

1 (m) A violation of section 17015, 17015a, 17017, 17515, or
2 17517.

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

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

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

6 (q) A violation of section 16274.

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

8 (s) A violation of the medical records access act, 2004 PA 47,
9 MCL 333.26261 to 333.26271.

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

11 (u) Failure to comply with the terms of a practice agreement
12 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
13 18047(2)(a) or (b).

14 (v) A violation of section 7303a(2).

15 (w) A violation of section 7303a(4) or (5).

16 (x) A violation of section 7303b.

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.

19 Enacting section 2. This amendatory act does not take effect
20 unless all of the following bills of the 99th Legislature are
21 enacted into law:

22 (a) House Bill No. 5787.

23 (b) House Bill No. 5790.