



HOUSE BILL No. 4309

February 7, 1995, Introduced by Reps. Jaye, Cropsey, London, Oxender, Perricone and Green and referred to the Committee on Health Policy.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 133 of the Public Acts of 1993, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 5114b and 16269.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221 and 16226 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 133 of the Public Acts
3 of 1993, being sections 333.16221 and 333.16226 of the Michigan
4 Compiled Laws, are amended and sections 5114b and 16269 are added
5 to read as follows:

6 SEC. 5114B. (1) ABSENT AN EMERGENCY, A PERSON WHO SEEKS TO
7 UNDERGO AN INVASIVE MEDICAL PROCEDURE BENEATH THE SKIN OR SURGERY

1 INSIDE THE MOUTH SHALL SUBMIT TO THOSE TESTS DESCRIBED IN
2 SECTION 16269(2)(A) BEFORE UNDERGOING THAT PROCEDURE OR SURGERY.

3 (2) IF A PERSON IS CAPABLE OF COMMUNICATING AND HAS BEEN
4 DIAGNOSED AS HAVING ACQUIRED IMMUNODEFICIENCY SYNDROME OR IS HIV
5 INFECTED OR INFECTED WITH THE HEPATITIS B VIRUS, HE OR SHE SHALL
6 INFORM A HEALTH CARE PROFESSIONAL OF THAT FACT BEFORE THE HEALTH
7 CARE PROFESSIONAL PROVIDES SERVICES TO THE PERSON.

8 (3) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL
9 FINE OF NOT LESS THAN \$10,000.00.

10 (4) AS USED IN THIS SECTION, "HEALTH CARE PROFESSIONAL"
11 MEANS A PERSON LICENSED OR REGISTERED UNDER ARTICLE 15, BUT DOES
12 NOT INCLUDE A SANITARIAN OR A VETERINARIAN.

13 Sec. 16221. The department may investigate activities
14 related to the practice of a health profession by a licensee, a
15 registrant, or an applicant for licensure or registration. The
16 department may hold hearings, administer oaths, and order rele-
17 vant testimony to be taken and shall report its findings to the
18 appropriate disciplinary subcommittee. The disciplinary subcom-
19 mittee shall proceed under section 16226 if it finds that ~~any~~ 1
20 OR MORE of the following grounds exist:

21 (a) A violation of general duty, consisting of negligence or
22 failure to exercise due care, including negligent delegation to
23 or supervision of employees or other individuals, whether or not
24 injury results, or any conduct, practice, or condition which
25 impairs, or may impair, the ability to safely and skillfully
26 practice the health profession.

1 (b) Personal disqualifications, consisting of any of the
2 following:

3 (i) Incompetence.

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

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

9 (iv) Declaration of mental incompetence by a court of compe-
10 tent jurisdiction.

11 (v) Conviction of a misdemeanor punishable by imprisonment
12 for a maximum term of 2 years, a misdemeanor involving the ille-
13 gal delivery, possession, or use of alcohol or a controlled sub-
14 stance, or a felony. A certified copy of the court record is
15 conclusive evidence of the conviction.

16 (vi) Lack of good moral character.

17 (vii) Conviction of a criminal offense under sections 520a
18 to 520l of the Michigan penal code, Act No. 328 of the Public
19 Acts of 1931, being sections 750.520a to 750.520l of the Michigan
20 Compiled Laws. A certified copy of the court record is conclu-
21 sive evidence of the conviction.

22 (viii) Conviction of a violation of section 492a of the
23 Michigan penal code, Act No. 328 of the Public Acts of 1931,
24 being section 750.492a of the Michigan Compiled Laws. A certi-
25 fied copy of the court record is conclusive evidence of the
26 conviction.

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

5 (x) Final adverse administrative action by a licensure, reg-
6 istration, disciplinary, or certification board involving the
7 holder of, or an applicant for, a license or registration regu-
8 lated by another state or a territory of the United States. A
9 certified copy of the record of the board is conclusive evidence
10 of the final action.

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

15 (c) Prohibited acts, consisting of ~~any~~ 1 OR MORE of the
16 following:

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

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

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

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

1 (d) Unethical business practices, consisting of ~~any~~ 1 OR
2 MORE of the 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 medica-
6 tions purchased by or in behalf of patients.

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

9 (e) Unprofessional conduct, consisting of ~~any~~ 1 OR MORE of
10 the following:

11 (i) Misrepresentation to a consumer or patient or in obtain-
12 ing or attempting to obtain third party reimbursement in the
13 course of 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) Directing or requiring an individual to purchase or
18 secure a drug, device, treatment, procedure, or service from
19 another person, place, facility, or business in which the
20 licensee has a financial interest.

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

23 (g) A violation, or aiding or abetting in a violation, of
24 this article or of ~~rules~~ A RULE promulgated under this
25 article.

26 (h) Failure to comply with a subpoena issued pursuant to
27 this part, failure to respond to a complaint issued under this

1 article or article 7, failure to appear at a compliance
 2 conference or an administrative hearing, or failure to report
 3 under section 16222 or 16223.

4 (i) Failure to pay an installment of an assessment levied
 5 pursuant to section 2504 of the insurance code of 1956, Act
 6 No. 218 of the Public Acts of 1956, as amended, being section
 7 500.2504 of the Michigan Compiled Laws, within 60 days after
 8 notice by the appropriate board.

9 (j) A violation of section 17013 or 17513.

10 (k) Failure to meet 1 or more of the requirements for licen-
 11 sure or registration under section 16174.

12 (l) A violation of section 17015 or 17515.

13 (M) A VIOLATION OF SECTION 16269.

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

18 Violations of Section 16221

Sanctions

19 Subdivision (a), (b)(ii),	Probation, limitation, denial,
20 (b)(iv), (b)(vi), or	suspension, revocation,
21 (b)(vii)	restitution, community service,
22	or fine.
23 Subdivision (b)(viii)	Revocation or denial.
24 Subdivision (b)(i),	Limitation, suspension,
25 (b)(iii), (b)(v),	revocation, denial,

1	(b)(ix),	probation, restitution,
2	(b)(x), or (b)(xi)	community service, or fine.
3	Subdivision (c)(i)	Denial, revocation, suspension,
4		probation, limitation, commu-
5		nity service, or fine.
6	Subdivision (c)(ii)	Denial, suspension, revocation,
7		restitution, community service,
8		or fine.
9	Subdivision (c)(iii)	Probation, denial, suspension,
10		revocation, restitution, commu-
11		nity service, or fine.
12	Subdivision (c)(iv)	Fine, probation, denial,
13	or (d)(iii)	suspension, revocation, commu-
14		nity service,
15		or restitution.
16	Subdivision (d)(i)	Reprimand, fine, probation,
17	or (d)(ii)	community service, denial,
18		or restitution.
19	Subdivision (e)(i)	Reprimand, fine, probation,
20		limitation, suspension, commu-
21		nity service, denial, or
22		restitution.
23	Subdivision (e)(ii)	Reprimand, probation,
24	or (h)	suspension, restitution, commu-
25		nity service, denial, or fine.
26	Subdivision (e)(iii)	Reprimand, fine, probation,

1 or (e)(iv) suspension, revocation,
2 limitation, community service,
3 denial, or restitution.
4 Subdivision (f) Reprimand or fine.
5 Subdivision (g) Reprimand, probation, denial,
6 suspension, revocation, limita-
7 tion, restitution, community
8 service, or fine.
9 Subdivision (i) Suspension or fine.
10 Subdivision (j) Reprimand or fine.
11 Subdivision (k) Reprimand, denial, or
12 limitation.
13 Subdivision (l) Denial, revocation, restitution,
14 probation, suspension, limita-
15 tion, reprimand, or fine.
16 SUBDIVISION (M) REVOCATION OR FINE.
17 (2) Determination of sanctions for violations under this
18 section shall be made by a disciplinary subcommittee. If, during
19 judicial review, the court of appeals determines that a final
20 decision or order of a disciplinary subcommittee prejudices sub-
21 stantial rights of the petitioner for any of the grounds listed
22 in section 106 of the administrative procedures act of 1969, ~~Act~~
23 ~~No. 306 of the Public Acts of 1969,~~ being section 24.306 of
24 Michigan Compiled Laws, and holds that the final decision or
25 order is unlawful and is to be set aside, the court shall state
26 on the record the reasons for the holding and may remand the case
27 to the disciplinary subcommittee for further consideration.

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

4 (4) A disciplinary subcommittee may require a licensee or
5 registrant or an applicant for licensure or registration who has
6 violated this article or article 7 or a rule promulgated under
7 this article or article 7 to satisfactorily complete an educa-
8 tional program, a training program, or a treatment program, a
9 mental, physical, or professional competence examination, or a
10 combination of those programs and examinations.

11 (5) A BOARD MAY IMPOSE A FINE OF NOT LESS THAN \$10,000.00
12 FOR A VIOLATION OF SECTION 16269.

13 SEC. 16269. (1) AS USED IN THIS SECTION, "LICENSEE" MEANS A
14 PERSON LICENSED UNDER THIS ARTICLE.

15 (2) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SEC-
16 TION, A LICENSEE WHO MAY COME INTO CONTACT WITH THE BODY FLUIDS
17 OF ANOTHER PERSON DURING PERFORMANCE BY THIS ARTICLE SHALL DO
18 EACH OF THE FOLLOWING:

19 (A) AT 6-MONTH INTERVALS, SUBMIT TO AN HIV TEST AND A HEPAT-
20 ITIS B VIRUS TEST CONSIDERED RELIABLE BY THE FEDERAL CENTERS FOR
21 DISEASE CONTROL AND APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH.

22 (B) IF THE RESULT OF A TEST ADMINISTERED UNDER SUBDIVISION
23 (A) IS POSITIVE, IMMEDIATELY PROVIDE THE DEPARTMENT OF PUBLIC
24 HEALTH WITH NOTICE OF THAT TEST RESULT AND A LIST OF PATIENTS
25 UPON WHOM THE LICENSEE HAS PERFORMED A PROCEDURE DURING THE IMME-
26 DIATELY PRECEDING 24 MONTHS THAT IS GOVERNED BY THIS ARTICLE AND

1 THAT INVOLVES THE POSSIBLE EXPOSURE OF THAT PATIENT TO THE
2 LICENSEE'S BODY FLUIDS.

3 (C) IF THE RESULT OF A TEST ADMINISTERED UNDER SUBDIVISION
4 (A) IS POSITIVE, IMMEDIATELY REFRAIN FROM PERFORMING A PROCEDURE
5 GOVERNED BY THIS ARTICLE THAT REQUIRES DIRECT PHYSICAL CONTACT
6 WITH A PATIENT UNTIL THE DEPARTMENT OF PUBLIC HEALTH APPROVES THE
7 LICENSEE'S PERFORMANCE OF THAT PROCEDURE.

8 (D) BEFORE PERFORMING A PROCEDURE APPROVED BY THE DEPARTMENT
9 OF PUBLIC HEALTH PURSUANT TO SUBDIVISION (C), PROVIDE WRITTEN
10 NOTICE OF THE LICENSEE'S TEST RESULTS TO THE PATIENT UPON WHOM
11 THE PROCEDURE IS TO BE PERFORMED.

12 (E) ABSENT AN EMERGENCY, NOT PERFORM AN INVASIVE PROCEDURE
13 BENEATH THE SKIN OR SURGERY INSIDE THE MOUTH OF A PATIENT UNLESS
14 THAT PATIENT HAS UNDERGONE EACH TEST DESCRIBED IN SUBDIVISION
15 (A), AND THE LICENSEE HAS RECEIVED THE RESULTS OF THAT TEST.

16 (3) WITHIN 10 DAYS OF RECEIPT OF A LIST PROVIDED PURSUANT TO
17 SUBSECTION (2)(B), THE DEPARTMENT OF PUBLIC HEALTH SHALL PROVIDE
18 BY ORDINARY MAIL TO EACH PERSON IDENTIFIED IN THAT LIST A NOTICE
19 CONTAINING AT LEAST ALL OF THE FOLLOWING INFORMATION:

20 (A) A STATEMENT SPECIFYING THAT PERSON'S POSSIBLE EXPOSURE
21 TO THE IDENTIFIED VIRUS.

22 (B) THE AVAILABILITY OF A TEST, AT NO COST TO THE PERSON, TO
23 DETERMINE WHETHER THAT PERSON HAS BEEN INFECTED WITH A VIRUS TO
24 WHICH HE OR SHE HAS POSSIBLY BEEN EXPOSED.

25 (C) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON,
26 AGENCY, OR DEPARTMENT THAT CAN PROVIDE FURTHER INFORMATION AND
27 SCHEDULE A TEST OR TESTS.

1 (4) UPON REQUEST, THE DEPARTMENT OF PUBLIC HEALTH SHALL
2 PROVIDE TO A PERSON IDENTIFIED IN A LIST CREATED PURSUANT TO SUB-
3 SECTION (2)(B) THE APPLICABLE TEST DESCRIBED IN SUBSECTION
4 (2)(A). THE TEST SHALL BE WITHOUT COST TO THE PERSON BEING
5 TESTED.

6 Section 2. This amendatory act shall not take effect unless
7 Senate Bill No. _____ or House Bill No. _____ (request
8 no. 02054'95) of the 88th Legislature is enacted into law.