



HOUSE BILL No. 4391

February 14, 1995, Introduced by Reps. Bennane, Jersevic, DeMars, Baird, Stallworth, Yokich, Parks and Pitoniak 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 16441, 16612, 17017, 17517, and 18013.

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 16441, 16612, 17017,
5 17517, and 18013 are added to read as follows:

6 Sec. 16221. The department may investigate activities
7 related to the practice of a health profession by a licensee, a

1 registrant, or an applicant for licensure or registration. The
2 department may hold hearings, administer oaths, and order rele-
3 vant testimony to be taken and shall report its findings to the
4 appropriate disciplinary subcommittee. The disciplinary subcom-
5 mittee shall proceed under section 16226 if it finds that ~~any~~ 1
6 OR MORE of the following grounds exist:

7 (a) A violation of general duty, consisting of negligence or
8 failure to exercise due care, including negligent delegation to
9 or supervision of employees or other individuals, whether or not
10 injury results, or any conduct, practice, or condition which
11 impairs, or may impair, the ability to safely and skillfully
12 practice the health profession.

13 (b) Personal disqualifications, consisting of any of the
14 following:

15 (i) Incompetence.

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

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

21 (iv) Declaration of mental incompetence by a court of compe-
22 tent jurisdiction.

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

1 (vi) Lack of good moral character.

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

7 (viii) Conviction of a violation of section 492a of the
8 Michigan penal code, Act No. 328 of the Public Acts of 1931,
9 being section 750.492a of the Michigan Compiled Laws. A certi-
10 fied copy of the court record is conclusive evidence of the
11 conviction.

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

16 (x) Final adverse administrative action by a licensure, reg-
17 istration, disciplinary, or certification board involving the
18 holder of, or an applicant for, a license or registration regu-
19 lated by another state or a territory of the United States. A
20 certified copy of the record of the board is conclusive evidence
21 of the final action.

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

1 (c) Prohibited acts, consisting of any of the 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 pos-
8 sess a controlled substance as defined in section 7104 or a drug
9 as defined in section 7105 without lawful authority; or selling,
10 prescribing, giving away, or administering drugs for other than
11 lawful diagnostic or therapeutic purposes.

12 (d) Unethical business practices, consisting of any of the
13 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 medica-
17 tions 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 any of the
21 following:

22 (i) Misrepresentation to a consumer or patient or in obtain-
23 ing or attempting to obtain third party reimbursement in the
24 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.

1 (iv) Directing or requiring an individual to purchase or
2 secure a drug, device, treatment, procedure, or service from
3 another person, place, facility, or business in which the
4 licensee has a financial interest.

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

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

9 (h) 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 confer-
12 ence or an administrative hearing, or failure to report under
13 section 16222 or 16223.

14 (i) Failure to pay an installment of an assessment levied
15 pursuant to section 2504 of the insurance code of 1956, Act
16 No. 218 of the Public Acts of 1956, as amended, being section
17 500.2504 of the Michigan Compiled Laws, within 60 days after
18 notice by the appropriate board.

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

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

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

23 (M) A VIOLATION OF SECTION 16441, 16612, 17017, 17517, OR
24 18013.

25 Sec. 16226. (1) After finding the existence of 1 or more of
26 the grounds for disciplinary subcommittee action listed in

1 section 16221, a disciplinary subcommittee shall impose 1 or more
2 of the following sanctions for each violation:

3 <u>Violations of Section 16221</u>	<u>Sanctions</u>
4 Subdivision (a), (b)(ii), 5 (b)(iv), (b)(vi), or 6 (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
8 Subdivision (b)(viii)	Revocation or denial.
9 Subdivision (b)(i), 10 (b)(iii), (b)(v), 11 (b)(ix), 12 (b)(x), or (b)(xi)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
13 Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, commu- nity service, or fine.
16 Subdivision (c)(ii)	Denial, suspension, revocation, restitution, community service, or fine.
19 Subdivision (c)(iii)	Probation, denial, suspension, revocation, restitution, commu- nity service, or fine.
22 Subdivision (c)(iv) 23 or (d)(iii)	Fine, probation, denial, suspension, revocation, commu- nity 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, commu-
6		nity service, denial, or
7		restitution.
8	Subdivision (e)(ii)	Reprimand, probation,
9	or (h)	suspension, restitution, commu-
10		nity service, denial, or fine.
11	Subdivision (e)(iii)	Reprimand, fine, probation,
12	or (e)(iv)	suspension, revocation, limita-
13		tion, community service,
14		denial, or restitution.
15	Subdivision (f)	Reprimand or fine.
16	Subdivision (g)	Reprimand, probation, denial,
17		suspension, revocation, limita-
18		tion, restitution, community
19		service, or fine.
20	Subdivision (i)	Suspension or fine.
21	Subdivision (j)	Reprimand or fine.
22	Subdivision (k)	Reprimand, denial, or
23		limitation.
24	Subdivision (l) OR (M)	Denial, revocation, restitution,
25		probation, suspension, limita-
26		tion, reprimand, or fine.

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 sub-
5 stantial rights of the petitioner for any of the grounds listed
6 in section 106 of the administrative procedures act of 1969, Act
7 No. 306 of the Public Acts of 1969, being section 24.306 of
8 Michigan Compiled Laws, and holds that the final decision or
9 order is unlawful and is to be set aside, the court shall state
10 on the record the reasons for the holding and may remand the case
11 to the disciplinary subcommittee for further consideration.

12 (3) A disciplinary subcommittee may impose a fine of up to,
13 but not exceeding, \$250,000.00 for a violation of
14 section 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 educa-
19 tional program, a training program, or a treatment program, a
20 mental, physical, or professional competence examination, or a
21 combination of those programs and examinations.

22 SEC. 16441. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF
23 THIS SECTION, EACH LICENSEE LICENSED ON OR BEFORE THE EFFECTIVE
24 DATE OF THIS SECTION SHALL OBTAIN PROFESSIONAL LIABILITY INSUR-
25 ANCE COVERAGE WITH LIMITS OF NOT LESS THAN \$200,000.00 PER CLAIM
26 AND NOT LESS THAN \$600,000.00 IN THE AGGREGATE AND FILE WITH THE
27 BOARD EVIDENCE OF THAT COVERAGE THAT IS ACCEPTABLE TO THE BOARD.

1 WITHIN 180 DAYS AFTER THE ISSUANCE OF HIS OR HER LICENSE, A
2 LICENSEE LICENSED AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL
3 OBTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE WITH LIMITS OF
4 NOT LESS THAN \$200,000.00 PER CLAIM AND NOT LESS THAN \$600,000.00
5 IN THE AGGREGATE AND FILE WITH THE BOARD EVIDENCE OF THAT COVER-
6 AGE THAT IS ACCEPTABLE TO THE BOARD. AFTER THE INITIAL FILING,
7 EACH LICENSEE ANNUALLY SHALL FILE WITH THE BOARD THE EVIDENCE OF
8 PROFESSIONAL LIABILITY INSURANCE COVERAGE REQUIRED UNDER THIS
9 SUBSECTION.

10 (2) A LICENSEE SHALL MAINTAIN THE PROFESSIONAL LIABILITY
11 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1) IN EFFECT AT ALL
12 TIMES. IF THERE IS A PAYOUT UNDER THE PROFESSIONAL LIABILITY
13 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1), THE LICENSEE
14 IMMEDIATELY SHALL REPLACE OR RENEW THE PROFESSIONAL LIABILITY
15 INSURANCE COVERAGE AND NOTIFY THE BOARD IN WRITING OF THE
16 REPLACEMENT OR RENEWAL.

17 SEC. 16612. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF
18 THIS SECTION, EACH DENTIST LICENSED ON OR BEFORE THE EFFECTIVE
19 DATE OF THIS SECTION SHALL OBTAIN PROFESSIONAL LIABILITY INSUR-
20 ANCE COVERAGE WITH LIMITS OF NOT LESS THAN \$200,000.00 PER CLAIM
21 AND NOT LESS THAN \$600,000.00 IN THE AGGREGATE AND FILE WITH THE
22 BOARD EVIDENCE OF THAT COVERAGE THAT IS ACCEPTABLE TO THE BOARD.
23 WITHIN 180 DAYS AFTER THE ISSUANCE OF HIS OR HER LICENSE, A DEN-
24 TIST LICENSED AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL
25 OBTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE WITH LIMITS OF
26 NOT LESS THAN \$200,000.00 PER CLAIM AND NOT LESS THAN \$600,000.00
27 IN THE AGGREGATE AND FILE WITH THE BOARD EVIDENCE OF THAT

1 COVERAGE THAT IS ACCEPTABLE TO THE BOARD. AFTER THE INITIAL
2 FILING, EACH DENTIST ANNUALLY SHALL FILE WITH THE BOARD THE EVI-
3 DENCE OF PROFESSIONAL LIABILITY INSURANCE COVERAGE REQUIRED UNDER
4 THIS SUBSECTION.

5 (2) A DENTIST SHALL MAINTAIN THE PROFESSIONAL LIABILITY
6 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1) IN EFFECT AT ALL
7 TIMES. IF THERE IS A PAYOUT UNDER THE PROFESSIONAL LIABILITY
8 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1), THE DENTIST
9 IMMEDIATELY SHALL REPLACE OR RENEW THE PROFESSIONAL LIABILITY
10 INSURANCE COVERAGE AND NOTIFY THE BOARD IN WRITING OF THE
11 REPLACEMENT OR RENEWAL.

12 SEC. 17017. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF
13 THIS SECTION, EACH PHYSICIAN LICENSED ON OR BEFORE THE EFFECTIVE
14 DATE OF THIS SECTION SHALL OBTAIN PROFESSIONAL LIABILITY INSUR-
15 ANCE COVERAGE WITH LIMITS OF NOT LESS THAN \$200,000.00 PER CLAIM
16 AND NOT LESS THAN \$600,000.00 IN THE AGGREGATE AND FILE WITH THE
17 BOARD EVIDENCE OF THAT COVERAGE THAT IS ACCEPTABLE TO THE BOARD.
18 WITHIN 180 DAYS AFTER THE ISSUANCE OF HIS OR HER LICENSE, A PHY-
19 SICIAN LICENSED AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL
20 OBTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE WITH LIMITS OF
21 NOT LESS THAN \$200,000.00 PER CLAIM AND NOT LESS THAN \$600,000.00
22 IN THE AGGREGATE AND FILE WITH THE BOARD EVIDENCE OF THAT COVER-
23 AGE THAT IS ACCEPTABLE TO THE BOARD. AFTER THE INITIAL FILING,
24 EACH PHYSICIAN ANNUALLY SHALL FILE WITH THE BOARD THE EVIDENCE OF
25 PROFESSIONAL LIABILITY INSURANCE COVERAGE REQUIRED UNDER THIS
26 SUBSECTION.

1 (2) A PHYSICIAN SHALL MAINTAIN THE PROFESSIONAL LIABILITY
2 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1) IN EFFECT AT ALL
3 TIMES. IF THERE IS A PAYOUT UNDER THE PROFESSIONAL LIABILITY
4 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1), THE PHYSICIAN
5 IMMEDIATELY SHALL REPLACE OR RENEW THE PROFESSIONAL LIABILITY
6 INSURANCE COVERAGE AND NOTIFY THE BOARD IN WRITING OF THE
7 REPLACEMENT OR RENEWAL.

8 SEC. 17517. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF
9 THIS SECTION, EACH PHYSICIAN LICENSED ON OR BEFORE THE EFFECTIVE
10 DATE OF THIS SECTION SHALL OBTAIN PROFESSIONAL LIABILITY INSUR-
11 ANCE COVERAGE WITH LIMITS OF NOT LESS THAN \$200,000.00 PER CLAIM
12 AND NOT LESS THAN \$600,000.00 IN THE AGGREGATE AND FILE WITH THE
13 BOARD EVIDENCE OF THAT COVERAGE THAT IS ACCEPTABLE TO THE BOARD.
14 WITHIN 180 DAYS AFTER THE ISSUANCE OF HIS OR HER LICENSE, A PHY-
15 SICIAN LICENSED AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL
16 OBTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE WITH LIMITS OF
17 NOT LESS THAN \$200,000.00 PER CLAIM AND NOT LESS THAN \$600,000.00
18 IN THE AGGREGATE AND FILE WITH THE BOARD EVIDENCE OF THAT COVER-
19 AGE THAT IS ACCEPTABLE TO THE BOARD. AFTER THE INITIAL FILING,
20 EACH PHYSICIAN ANNUALLY SHALL FILE WITH THE BOARD THE EVIDENCE OF
21 PROFESSIONAL LIABILITY INSURANCE COVERAGE REQUIRED UNDER THIS
22 SUBSECTION.

23 (2) A PHYSICIAN SHALL MAINTAIN THE PROFESSIONAL LIABILITY
24 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1) IN EFFECT AT ALL
25 TIMES. IF THERE IS A PAYOUT UNDER THE PROFESSIONAL LIABILITY
26 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1), THE PHYSICIAN
27 IMMEDIATELY SHALL REPLACE OR RENEW THE PROFESSIONAL LIABILITY

1 INSURANCE COVERAGE AND NOTIFY THE BOARD IN WRITING OF THE
2 REPLACEMENT OR RENEWAL.

3 SEC. 18013. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF
4 THIS SECTION, EACH LICENSEE LICENSED ON OR BEFORE THE EFFECTIVE
5 DATE OF THIS SECTION SHALL OBTAIN PROFESSIONAL LIABILITY INSUR-
6 ANCE COVERAGE WITH LIMITS OF NOT LESS THAN \$200,000.00 PER CLAIM
7 AND NOT LESS THAN \$600,000.00 IN THE AGGREGATE AND FILE WITH THE
8 BOARD EVIDENCE OF THAT COVERAGE THAT IS ACCEPTABLE TO THE BOARD.
9 WITHIN 180 DAYS AFTER THE ISSUANCE OF HIS OR HER LICENSE, A
10 LICENSEE LICENSED AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL
11 OBTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE WITH LIMITS OF
12 NOT LESS THAN \$200,000.00 PER CLAIM AND NOT LESS THAN \$600,000.00
13 IN THE AGGREGATE AND FILE WITH THE BOARD EVIDENCE OF THAT COVER-
14 AGE THAT IS ACCEPTABLE TO THE BOARD. AFTER THE INITIAL FILING,
15 EACH LICENSEE ANNUALLY SHALL FILE WITH THE BOARD THE EVIDENCE OF
16 THE PROFESSIONAL LIABILITY INSURANCE COVERAGE REQUIRED UNDER THIS
17 SUBSECTION.

18 (2) A LICENSEE SHALL MAINTAIN THE PROFESSIONAL LIABILITY
19 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1) IN EFFECT AT ALL
20 TIMES. IF THERE IS A PAYOUT UNDER THE PROFESSIONAL LIABILITY
21 INSURANCE COVERAGE REQUIRED UNDER SUBSECTION (1), THE LICENSEE
22 IMMEDIATELY SHALL REPLACE OR RENEW THE PROFESSIONAL LIABILITY
23 INSURANCE COVERAGE AND NOTIFY THE BOARD IN WRITING OF THE
24 REPLACEMENT OR RENEWAL.