

SENATE BILL No. 487

May 14, 2003, Introduced by Senator JACOBS 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 2002 PA 402 and section 16226 as amended by 2002 PA 643, and by adding part 186.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16221. The department may investigate activities
2 related to the practice of a health profession by a licensee, a
3 registrant, or an applicant for licensure or registration. The
4 department may hold hearings, administer oaths, and order
5 relevant testimony to be taken and shall report its findings to
6 the appropriate disciplinary subcommittee. The disciplinary
7 subcommittee shall proceed under section 16226 if it finds that 1
8 or more of the following grounds exist:

9 (a) A violation of general duty, consisting of negligence or

1 failure to exercise due care, including negligent delegation to
2 or supervision of employees or other individuals, whether or not
3 injury results, or any conduct, practice, or condition that
4 impairs, or may impair, the ability to safely and skillfully
5 practice the health profession.

6 (b) Personal disqualifications, consisting of 1 or more of
7 the following:

8 (i) Incompetence.

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

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

14 (iv) Declaration of mental incompetence by a court of
15 competent jurisdiction.

16 (v) Conviction of a misdemeanor punishable by imprisonment
17 for a maximum term of 2 years; a misdemeanor involving the
18 illegal delivery, possession, or use of a controlled substance;
19 or a felony. A certified copy of the court record is conclusive
20 evidence of the conviction.

21 (vi) Lack of good moral character.

22 (vii) Conviction of a criminal offense under sections 520a to
23 ~~520l~~ **520g** of the Michigan penal code, 1931 PA 328, MCL 750.520a
24 to ~~750.520l~~ **750.520g**. A certified copy of the court record is
25 conclusive evidence of the conviction.

26 (viii) Conviction of a violation of section 492a of the
27 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy

1 of the court record is conclusive evidence of the conviction.

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

6 (x) Final adverse administrative action by a licensure,
7 registration, disciplinary, or certification board involving the
8 holder of, or an applicant for, a license or registration
9 regulated by another state or a territory of the United States,
10 by the United States military, by the federal government, or by
11 another country. A certified copy of the record of the board is
12 conclusive evidence of the final action.

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

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

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

21 (ii) Permitting the 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
25 possess a controlled substance as defined in section 7104 or a
26 drug as defined in section 7105 without lawful authority; or
27 selling, prescribing, giving away, or administering drugs for

1 other than lawful diagnostic or therapeutic purposes.

2 (d) Unethical business practices, consisting of 1 or more of
3 the following:

4 (i) False or misleading advertising.

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

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

10 (e) Unprofessional conduct, consisting of 1 or more of the
11 following:

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

15 (ii) Betrayal of a professional confidence.

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

18 (iv) Either of the following:

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

23 (B) A referral by a physician for a designated health service
24 that violates section 1877 of part D of title XVIII of the social
25 security act, 42 U.S.C. 1395nn, or a regulation promulgated under
26 that section. Section 1877 of part D of title XVIII of the
27 social security act, 42 U.S.C. 1395nn, and the regulations

1 promulgated under that section, as they exist on ~~the effective~~
2 ~~date of the amendatory act that added this sentence~~ **June 3,**
3 **2002**, are incorporated by reference for purposes of this
4 subparagraph. A disciplinary subcommittee shall apply
5 section 1877 of part D of title XVIII of the social security act,
6 42 U.S.C. 1395nn, and the regulations promulgated under that
7 section regardless of the source of payment for the designated
8 health service referred and rendered. If section 1877 of part D
9 of title XVIII of the social security act, 42 U.S.C. 1395nn, or a
10 regulation promulgated under that section is revised after ~~the~~
11 ~~effective date of the amendatory act that added this sentence~~
12 **June 3, 2002**, the department shall officially take notice of the
13 revision. Within 30 days after taking notice of the revision,
14 the department shall decide whether or not the revision pertains
15 to referral by physicians for designated health services and
16 continues to protect the public from inappropriate referrals by
17 physicians. If the department decides that the revision does
18 both of those things, the department may promulgate rules to
19 incorporate the revision by reference. If the department does
20 promulgate rules to incorporate the revision by reference, the
21 department shall not make any changes to the revision. As used
22 in this subparagraph, "designated health service" means that term
23 as defined in section 1877 of part D of title XVIII of the social
24 security act, 42 U.S.C. 1395nn, and the regulations promulgated
25 under that section and "physician" means that term as defined in
26 sections 17001 and 17501.

27 (v) For a physician who makes referrals pursuant to section

1 1877 of part D of title XVIII of the social security act, 42
2 U.S.C. 1395nn, or a regulation promulgated under that section,
3 refusing to accept a reasonable proportion of patients eligible
4 for medicaid and refusing to accept payment from medicaid or
5 medicare as payment in full for a treatment, procedure, or
6 service for which the physician refers the individual and in
7 which the physician has a financial interest. A physician who
8 owns all or part of a facility in which he or she provides
9 surgical services is not subject to this subparagraph if a
10 referred surgical procedure he or she performs in the facility is
11 not reimbursed at a minimum of the appropriate medicaid or
12 medicare outpatient fee schedule, including the combined
13 technical and professional components.

14 (f) Beginning ~~1 year after the effective date of this act~~
15 **June 3, 2003**, the department of consumer and industry services
16 shall prepare the first of 3 annual reports on the effect of this
17 amendatory act on access to care for the uninsured and medicaid
18 patients. The department shall report on the number of referrals
19 by licensees of uninsured and medicaid patients to purchase or
20 secure a drug, device, treatment, procedure, or service from
21 another person, place, facility, or business in which the
22 licensee has a financial interest.

23 (g) Failure to report a change of name or mailing address
24 within 30 days after the change occurs.

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

27 (i) Failure to comply with a subpoena issued pursuant to this

1 part, failure to respond to a complaint issued under this article
2 or article 7, failure to appear at a compliance conference or an
3 administrative hearing, or failure to report under section 16222
4 or 16223.

5 (j) Failure to pay an installment of an assessment levied
6 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
7 to 500.8302, within 60 days after notice by the appropriate
8 board.

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

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

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

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

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

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

16 (q) A violation of section 16274.

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

18 **(s) A violation of part 186.**

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

23 Violations of Section 16221

Sanctions

24 Subdivision (a), (b)(ii), Probation, limitation, denial,

1 (b)(iv), (b)(vi), or suspension, revocation,
 2 (b)(vii) restitution, community service,
 3 or fine.
 4 Subdivision (b)(viii) Revocation or denial.

5 Subdivision (b)(i), Limitation, suspension,
 6 (b)(iii), (b)(v), revocation, denial,
 7 (b)(ix), (b)(x), probation, restitution,
 8 or (b)(xi) community service, or fine.

9 Subdivision (c)(i) Denial, revocation, suspension,
 10 probation, limitation, community
 11 service, or fine.

12 Subdivision (c)(ii) Denial, suspension, revocation,
 13 restitution, community service,
 14 or fine.

15 Subdivision (c)(iii) Probation, denial, suspension,
 16 revocation, restitution,
 17 community service, or fine.

18 Subdivision (c)(iv) or
 19 (d)(iii) Fine, probation, denial,
 20 suspension, revocation, community
 21 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, community
6 service, denial, or restitution.
- 7 Subdivision (e)(ii) Reprimand, probation,
8 or (i) suspension, restitution,
9 community service, denial, or
10 fine.
- 11 Subdivision (e)(iii), Reprimand, fine, probation,
12 (e)(iv), or (e)(v) suspension, revocation,
13 limitation, community service,
14 denial, or restitution.
- 15 Subdivision (g) Reprimand or fine.
- 16 Subdivision (h) Reprimand, probation, denial,
17 suspension, revocation,
18 limitation, restitution,
19 community service, or fine.
- 20 Subdivision (j) Suspension or fine.
- 21 Subdivision (k), (p), or

1 (r) Reprimand or fine.

2 Subdivision (l) Reprimand, denial, or
3 limitation.

4 Subdivision (m), ~~or~~
5 (o), **or (s)** Denial, revocation, restitution,
6 probation, suspension,
7 limitation, reprimand, or fine.

8 Subdivision (n) Revocation or denial.

9 Subdivision (q) Revocation.

10 (2) Determination of sanctions for violations under this
11 section shall be made by a disciplinary subcommittee. If, during
12 judicial review, the court of appeals determines that a final
13 decision or order of a disciplinary subcommittee prejudices
14 substantial rights of the petitioner for 1 or more of the grounds
15 listed in section 106 of the administrative procedures act of
16 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
17 or order is unlawful and is to be set aside, the court shall
18 state on the record the reasons for the holding and may remand
19 the case to the disciplinary subcommittee for further
20 consideration.

21 (3) A disciplinary subcommittee may impose ~~a~~ **an**
22 **administrative** fine of ~~up to, but not exceeding,~~ **not more than**
23 \$250,000.00 for a violation of section 16221(a) or (b). **A**
24 **disciplinary subcommittee or, if there is no disciplinary**

1 subcommittee, the department may impose an administrative fine of
2 not more than \$10,000.00 for a violation of part 186.

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

10 **PART 186. CONTACT LENS PROVIDERS**

11 **Sec. 18601. (1) As used in this part:**

12 (a) "Business hours" means 8 a.m. to 5 p.m. Monday through
13 Friday, excluding legal holidays.

14 (b) "Contact lens prescription" means a written, signed, and
15 dated order, as described in section 18605, by a physician or
16 optometrist describing optical and physical characteristics of
17 contact lenses to be dispensed.

18 (c) "Contact lens provider" means a person, whether located
19 within or outside of Michigan, who dispenses, sells, or provides
20 contact lenses to a Michigan resident.

21 (2) In addition to the definitions in this part, article 1
22 contains general definitions and principles of construction
23 applicable to all articles in this code and part 161 contains
24 definitions applicable to this part.

25 **Sec. 18603. (1) Except as otherwise provided in**
26 **subsection (2), a contact lens provider shall not dispense, sell,**
27 **or provide contact lenses to a state resident unless the contact**

1 lens provider registers with the department on a form prescribed
2 by the department. The registration form shall contain all of
3 the following:

4 (a) The name of the contact lens provider.

5 (b) The principal address of the contact lens provider and
6 the address of all other offices of the contact lens provider in
7 this state. If the contact lens provider does not maintain a
8 principal office in this state, the registration form shall
9 contain the name and address of the person having custody of its
10 records.

11 (c) The telephone number of the contact lens provider.

12 (d) If the contact lens provider is not located in this
13 state, the name of a resident agent in this state for acceptance
14 of service of process.

15 (e) A declaration that the contact lens provider will comply
16 with all applicable laws and regulations in the conduct of its
17 business in Michigan.

18 (2) A physician or optometrist is not required to register
19 under subsection (1) until his or her next license renewal date
20 that immediately follows the effective date of this section.

21 (3) The department shall register a contact lens provider
22 upon proper application under subsection (1) and payment of a
23 \$20.00 application processing fee and a \$30.00 license fee.

24 (4) A contact lens provider registration shall be renewed
25 every 2 years upon application to the department and payment of a
26 \$30.00 renewal fee.

27 (5) Fees collected under this section shall be deposited in

1 the health professions regulatory fund established under section
2 16315.

3 Sec. 18605. (1) A contact lens provider shall not dispense,
4 sell, or provide contact lenses to a state resident except
5 pursuant to an unexpired contact lens prescription. The contact
6 lens prescription shall include at a minimum all of the
7 following:

8 (a) For soft hydrophilic contact lenses:

9 (i) Manufacturer's name and product brand name. A house
10 brand, co-brand, or private label name alone does not satisfy
11 this subparagraph.

12 (ii) Quantity of lenses to be dispensed.

13 (iii) If applicable, special features.

14 (b) For rigid gas permeable contact lenses:

15 (i) Peripheral curve or curves, including curvature and
16 width.

17 (ii) Optical zone diameter.

18 (iii) Center thickness.

19 (iv) Lens material.

20 (v) If applicable, special features.

21 (c) For both subdivisions (a) and (b) lenses:

22 (i) Dioptric power.

23 (ii) Base curve or inside radius of curvature.

24 (iii) Diameter.

25 (iv) Color or tint.

26 (v) Lens wearing schedule.

27 (vi) Typed or commercially printed name, office address, and

1 telephone number of prescribing physician or optometrist.

2 (vii) Date of issuance.

3 (viii) Patient's name.

4 (ix) Signature of prescribing physician or optometrist.

5 (x) Prescription expiration date which shall be a minimum of
6 1 year from the date of issuance, unless the patient's history or
7 current circumstances establish a reasonable probability of
8 changes in the patient's vision of sufficient magnitude to
9 necessitate reexamination earlier than 1 year.

10 (2) A contact lens prescription shall be based upon a
11 comprehensive vision and eye health examination, a diagnostic
12 trial contact lens evaluation, and a follow-up evaluation of the
13 contact lens on the patient's eye by the prescribing physician or
14 optometrist. The contact lens evaluation shall be presumed
15 completed if there is no contact lens related appointment
16 scheduled within 30 days after the most recent visit by the
17 patient to the prescribing physician or optometrist.

18 (3) A patient's health record is not a contact lens
19 prescription.

20 Sec. 18607. (1) A contact lens provider shall not refill a
21 contact lens prescription that is within 60 days of its
22 expiration date with more than the quantity of replacement soft
23 contact lenses needed through the prescribed expiration date
24 based on the prescribed wearing schedule.

25 (2) If the original written contact lens prescription or a
26 facsimile or other electronic transmission of the original
27 written contact lens prescription is not available to a contact

1 lens provider, the contact lens provider shall confirm the
2 specifics of the contact lens prescription with the prescriber or
3 his or her agent, prior to dispensing, selling, or otherwise
4 providing any contact lenses and shall maintain a written record
5 of that communication. The prescriber or his or her agent shall
6 confirm the specifics of the prescription with the contact lens
7 provider within 10 of the prescriber's business hours after a
8 request is made and shall mail, fax, or electronically transmit a
9 copy of the original written contact lens prescription to the
10 contact lens provider. A contact lens provider shall not require
11 a prescriber or his or her agent to confirm the specifics of a
12 prescription within less than the 10 business hours.

13 Sec. 18609. A physician or optometrist shall release a
14 contact lens prescription to a patient or as directed by the
15 patient unless any of the following apply:

16 (a) The contact lens prescription is expired.

17 (b) The patient has not paid the physician or optometrist for
18 goods or services previously rendered to the patient by the
19 physician or optometrist.

20 (c) The physician or optometrist makes a good faith
21 determination that giving the patient a copy of the contact lens
22 prescription may jeopardize the patient's ocular health. The
23 reason for a denial under this subdivision shall be explained to
24 the patient or the patient's representative, shall be recorded in
25 the patient's record, and shall be provided to the patient in
26 writing.

27 Sec. 18611. If a physician or optometrist gives a patient a

1 contact lens prescription and the patient has the contact lens
2 prescription filled by a person other than the physician or
3 optometrist, or a person employed by or under contract to the
4 physician or optometrist, the physician or optometrist is not
5 liable in a civil action for damages for an injury to the patient
6 caused directly or indirectly by the manufacturing, packaging, or
7 dispensing of the contact lenses.

8 Sec. 18613. A contact lens provider shall do all of the
9 following:

10 (a) Fill all contact lens prescriptions accurately and
11 according to the specific orders of the written prescription.

12 (b) Maintain records for contact lenses shipped, mailed, or
13 otherwise delivered or provided to state residents for 5 years
14 and make them available upon request to the department.

15 (c) Provide a telephone number for responding to questions
16 and complaints. The telephone number shall be included with each
17 supply of contact lenses.

18 (d) Provide with each supply of contact lenses a written
19 notice which shall be in substantially the following form:

20 "Warning: If you experience any unexplained eye
21 discomfort, watering, vision changes, or redness, remove
22 your contact lenses immediately and consult your eye care
23 practitioner before wearing your contact lenses again."

24 (e) Disclose in any price advertisement any required
25 membership fees, enrollment fees, and, if applicable, shipping
26 fees.