

Act No. 249
Public Acts of 2017
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017**

Introduced by Senator Schuitmaker

ENROLLED SENATE BILL No. 167

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 7303a, 16221, 16226, and 16231 (MCL 333.7303a, 333.16221, 333.16226, and 333.16231), section 7303a as amended by 2016 PA 379, section 16221 as amended by 2017 PA 75, section 16226 as amended by 2017 PA 81, and section 16231 as amended by 2014 PA 95, and by adding section 16221b.

The People of the State of Michigan enact:

Sec. 7303a. (1) A prescriber who holds a controlled substances license may administer or dispense a controlled substance listed in schedules 2 to 5 without a separate controlled substances license for those activities.

(2) Except as otherwise provided in rules promulgated under section 16204e, beginning March 31, 2018, a licensed prescriber shall not prescribe a controlled substance listed in schedules 2 to 5 unless the prescriber is in a bona fide prescriber-patient relationship with the patient for whom the controlled substance is being prescribed. Except as otherwise provided in this subsection, if a licensed prescriber prescribes a controlled substance under this subsection, the prescriber shall provide follow-up care to the patient to monitor the efficacy of the use of the controlled substance as a treatment of the patient’s medical condition. If the licensed prescriber is unable to provide follow-up care, he or she shall refer the patient to the patient’s primary care provider for follow-up care or, if the patient does not have a primary care provider, he or she shall refer the patient to another licensed prescriber who is geographically accessible to the patient for follow-up care.

(3) Before prescribing or dispensing a controlled substance to a patient, a licensed prescriber shall ask the patient about other controlled substances the patient may be using. The prescriber shall record the patient’s response in the patient’s medical or clinical record.

(4) Beginning June 1, 2018, before prescribing or dispensing to a patient a controlled substance in a quantity that exceeds a 3-day supply, a licensed prescriber shall obtain and review a report concerning that patient from the electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances established under section 7333a. This subsection does not apply under any of the following circumstances:

(a) If the dispensing occurs in a hospital or freestanding surgical outpatient facility licensed under article 17 and the controlled substance is administered to the patient in that hospital or facility.

(b) If the patient is an animal as that term is defined in section 18802, the dispensing occurs in a veterinary hospital or clinic and the controlled substance is administered to the patient in that hospital or clinic.

(c) If the controlled substance is prescribed by a licensed prescriber who is a veterinarian and the controlled substance will be dispensed by a pharmacist.

(5) Beginning June 1, 2018, before prescribing or dispensing a controlled substance to a patient, a licensed prescriber shall register with the electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances established under section 7333a.

(6) A licensed prescriber who dispenses controlled substances shall maintain all of the following records separately from other prescription records:

(a) All invoices and other acquisition records for each controlled substance acquired by the prescriber for not less than 5 years after the date the prescriber acquires the controlled substance.

(b) A log of all controlled substances dispensed by the prescriber for not less than 5 years after the date the controlled substance is dispensed.

(c) Records of all other dispositions of controlled substances under the licensee's control for not less than 5 years after the date of the disposition.

(7) The requirement under section 7303 for a license is waived in the following circumstances:

(a) When a controlled substance listed in schedules 2 to 5 is administered on the order of a licensed prescriber by an individual who is licensed under article 15 as a practical nurse or a registered professional nurse.

(b) When methadone or a methadone congener is dispensed on the order of a licensed prescriber in a methadone treatment program licensed under article 6 or when a controlled substance listed in schedules 2 to 5 is dispensed on the order of a licensed prescriber in a hospice rendering emergency care services in a patient's home as described in section 17746 by a registered professional nurse licensed under article 15.

(8) As used in this section:

(a) "Bona fide prescriber-patient relationship" means a treatment or counseling relationship between a prescriber and a patient in which both of the following are present:

(i) The prescriber has reviewed the patient's relevant medical or clinical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient conducted in person or via telehealth.

(ii) The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

(b) "Telehealth" means that term as defined in section 16283.

Sec. 16221. Subject to section 16221b, the department shall investigate any allegation that 1 or more of the grounds for disciplinary subcommittee action under this section exist, and may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, the department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

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

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

(i) Incompetence.

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

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

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

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

(vi) Lack of good moral character.

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

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

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

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

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

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

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

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

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

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

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

(iii) Practice outside the scope of a license.

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

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

(i) False or misleading advertising.

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

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

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

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

(ii) Betrayal of a professional confidence.

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

(iv) Either of the following:

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

(B) A referral by a physician for a designated health service that violates 42 USC 1395nn or a regulation promulgated under that section. For purposes of this subdivision, 42 USC 1395nn and the regulations promulgated under that section as they exist on June 3, 2002 are incorporated by reference. A disciplinary subcommittee shall apply 42 USC 1395nn and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If 42 USC 1395nn or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services

and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, “designated health service” means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and “physician” means that term as defined in sections 17001 and 17501.

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

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

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

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

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

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

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

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

(k) A violation of section 17013 or 17513.

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

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

(n) A violation of section 17016 or 17516.

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

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

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

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

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

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

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

(x) A violation of section 7303b.

Sec. 16221b. If the department has a reasonable basis to believe that a licensee has violated section 7303a(4) or (5), the department is not required to investigate under section 16221 or 16231 and may issue a letter to the licensee notifying the licensee that he or she may be in violation of section 7303a(4) or (5). A letter that is issued under this section is not considered discipline.

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

Violations of Section 16221

Subdivision (a), (b)(i), (b)(ii), (b)(iii), (b)(iv), (b)(v), (b)(vi), (b)(vii), (b)(ix), (b)(x), (b)(xi), or (b)(xii)

Subdivision (b)(viii)

Sanctions

Probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine.

Revocation, permanent revocation, or denial.

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| Subdivision (b)(<i>xiii</i>) | Permanent revocation for a violation described in subsection (5); otherwise, probation, limitation, denial, suspension, revocation, restitution, or fine. |
| Subdivision (b)(<i>xiv</i>) | Permanent revocation. |
| Subdivision (c)(<i>i</i>) | Denial, revocation, suspension, probation, limitation, or fine. |
| Subdivision (c)(<i>ii</i>) | Denial, suspension, revocation, restitution, or fine. |
| Subdivision (c)(<i>iii</i>) | Probation, denial, suspension, revocation, restitution, or fine. |
| Subdivision (c)(<i>iv</i>) or (d)(<i>iii</i>) | Fine, probation, denial, suspension, revocation, permanent revocation, or restitution. |
| Subdivision (d)(<i>i</i>) or (d)(<i>ii</i>) | Reprimand, fine, probation, denial, or restitution. |
| Subdivision (e)(<i>i</i>), (e)(<i>iii</i>), (e)(<i>iv</i>), (e)(<i>v</i>), (h), or (s) | Reprimand, fine, probation, limitation, suspension, revocation, permanent revocation, denial, or restitution. |
| Subdivision (e)(<i>ii</i>) or (i) | Reprimand, probation, suspension, revocation, permanent revocation, restitution, denial, or fine. |
| Subdivision (e)(<i>vi</i>) or (e)(<i>vii</i>) | Probation, suspension, revocation, limitation, denial, restitution, or fine. |
| Subdivision (f) | Reprimand, denial, limitation, probation, or fine. |
| Subdivision (g) | Reprimand or fine. |
| Subdivision (j) | Suspension or fine. |
| Subdivision (k), (p), or (r) | Reprimand, probation, suspension, revocation, permanent revocation, or fine. |
| Subdivision (l) | Reprimand, denial, or limitation. |
| Subdivision (m) or (o) | Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine. |
| Subdivision (n) | Revocation or denial. |
| Subdivision (q) | Revocation. |
| Subdivision (t) | Revocation, permanent revocation, fine, or restitution. |
| Subdivision (u) | Denial, revocation, probation, suspension, limitation, reprimand, or fine. |
| Subdivision (v) or (x) | Probation, limitation, denial, fine, suspension, revocation, or permanent revocation. |
| Subdivision (w) | Denial, fine, reprimand, probation, limitation, suspension, revocation, or permanent revocation. |

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

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

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

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

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

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

Sec. 16231. (1) A person or governmental entity that believes that a violation of this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 exists may submit an allegation of that fact to the department in writing.

(2) Subject to subsection (3) and section 16221b, if the department determines after reviewing an application or an allegation or a licensee's or registrant's file under section 16211(4) that there is a reasonable basis to believe that a violation of this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 exists, 1 of the following applies:

(a) Unless subdivision (b) applies, subject to subsection (10), with the authorization of a panel of at least 3 board members that includes the chair and at least 2 other members of the appropriate board or task force designated by the chair, the department shall investigate the alleged violation. Subject to subsection (10), if the panel fails to grant or deny authorization within 7 days after the board or task force receives a request for authorization, the department shall investigate. If the department believes that immediate jeopardy exists, the director or his or her designee shall authorize an investigation and notify the board chair of that investigation within 2 business days.

(b) If it reviews an allegation in writing under subsection (1) that concerns a licensee or registrant whose record created under section 16211 includes 1 substantiated allegation, or 2 or more written investigated allegations, from 2 or more different individuals or entities, received in the preceding 4 years, the department shall investigate the alleged violation. Authorization by a panel described in subdivision (a) is not required for an investigation by the department under this subdivision.

(3) If a person or governmental entity submits a written allegation under subsection (1) more than 4 years after the date of the incident or activity that is the basis of the alleged violation, the department may investigate the alleged violation in the manner described in subsection (2)(a) or (b), as applicable, but is not required to conduct an investigation under subsection (2)(a) or (b).

(4) If it receives information reported under section 16243(2) that indicates 3 or more malpractice settlements, awards, or judgments against a licensee in a period of 5 consecutive years or 1 or more malpractice settlements, awards, or judgments against a licensee totaling more than \$200,000.00 in a period of 5 consecutive years, whether or not a judgment or award is stayed pending appeal, the department shall investigate.

(5) At any time during an investigation or following the issuance of a complaint, the department may schedule a compliance conference under section 92 of the administrative procedures act of 1969, MCL 24.292. The conference may include the applicant, licensee, registrant, or individual, the applicant's, licensee's, registrant's, or individual's attorney, 1 member of the department's staff, and any other individuals approved by the department. One member of the appropriate board or task force who is not a member of the disciplinary subcommittee with jurisdiction over the matter may attend the conference and provide any assistance that is needed. At the compliance conference, the department shall attempt to reach agreement. If an agreement is reached, the department shall submit a written statement outlining the terms of the agreement, or a stipulation and final order, if applicable, or a request for dismissal to the appropriate disciplinary subcommittee for approval. If the agreement or stipulation and final order or request for dismissal is rejected by the disciplinary subcommittee, or if no agreement is reached, the department shall schedule a hearing before an administrative law judge. A party shall not make a transcript of the compliance conference. All records and documents of a compliance conference held before a complaint is issued are subject to section 16238.

(6) Within 90 days after an investigation is initiated under subsection (2), (3), or (4), the department shall do 1 or more of the following:

(a) Issue a formal complaint.

(b) Conduct a compliance conference under subsection (5).

(c) Issue a summary suspension.

(d) Issue a cease and desist order.

(e) Dismiss the allegation.

(f) Place in the complaint file not more than 1 written extension of not more than 30 days to take action under this subsection.

(7) Unless the person submitting an allegation under subsection (1) otherwise agrees in writing, the department shall keep the identity of a person that submitted the allegation confidential until disciplinary proceedings under this part are initiated against the subject of the allegation and the person that made the allegation is required to testify in the proceedings.

(8) The department shall serve a complaint under section 16192. The department shall include in the complaint a notice that the applicant, licensee, registrant, or individual who is the subject of the complaint has 30 days from the date of receipt to respond in writing to the complaint.

(9) The department shall treat the failure of an applicant, licensee, registrant, or individual to respond to a complaint within the 30-day period set forth in subsection (8) as an admission of the allegations contained in the complaint. The department shall notify the appropriate disciplinary subcommittee of the individual's failure to respond and shall forward a copy of the complaint to that disciplinary subcommittee. The disciplinary subcommittee may then impose an appropriate sanction under this article, article 7, or article 8.

(10) All of the following apply for purposes of subsection (2)(a):

(a) If the chair of the board or task force has a conflict of interest, he or she shall appoint another member of the board or task force as his or her designee and shall not participate in the panel's decision to grant or deny authorization to the department to investigate an individual.

(b) A member of the board or task force shall not participate in the panel's decision to grant or deny authorization to the department to investigate an individual if that member has a conflict of interest. If the chair of the board or task force is notified that a member of the panel has a conflict of interest, the chair shall remove him or her from the panel and appoint another member of the board or task force to serve on the panel.

(c) A member of the board or task force who participates in or is requested to participate in the panel's decision to grant or deny authorization to the department to investigate an individual shall disclose to the department, to the chair of the board or task force, and to the other member of the panel a potential conflict of interest before those participants make that decision.

(11) As used in subsection (10), "conflict of interest" means any of the following:

(a) Has a personal or financial interest in the outcome of the investigation of or the imposition of disciplinary sanctions on the licensee, registrant, or applicant for licensure or registration.

(b) Had a past or has a present business or professional relationship with the individual that the department is investigating or requesting authorization to investigate.

(c) Has given expert testimony in a medical malpractice action against or on behalf of the individual that the department is seeking authorization to investigate.

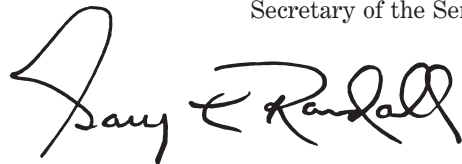
(d) Any other interest or relationship designated as a conflict of interest in a rule promulgated or order issued under this act.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 166 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor