

that the term "rule," as used in Article IV, Section 37 of the 1963 Michigan Constitution includes procedural and legislative rules but does not include interpretive rules.

FRANK J. KELLEY,
Attorney General.

671025.2

EMPLOYMENT: Wages – Discrimination based upon sex.

Insurance coverage can be considered for purpose of determining "wages" within meaning of § 556, Act 328, P.A. 1931, as amended.

No. 4168

October 25, 1967.

Mr. Thomas Roumell, Director
Department of Labor
Lewis Cass Building
Lansing, Michigan

The opinion is addressed to the following question:

"Could the term 'wages' as used in section 556 of Act 328 of the Public Acts of 1931¹ be construed to include a group insurance policy conferring lesser benefits of coverage for females than for males similarly employed where the insurance policy was part of a 'package' settlement in lieu of a specified number of cents per hour as a result of collective bargaining?"

Section 556, referred to above, provides in pertinent part as follows:

"Any employer of labor in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes who are similarly employed, shall be guilty of a misdemeanor. * * *. Any difference in wage rates based upon a factor other than sex shall not violate this section."

The term "wages" in the general sense is defined as compensation for labor or services.²

Wages may be in the form of money or other value given, such as board, lodging or clothing. *Pacific American Fisheries, Inc. v. United States*, 138 F 2d 464 (9th Cir. 1943). They may also be in the form of group insurance. *W. W. Cross & Co. v. NLRB*, 174 F 2d 875 (1st Cir. 1949).

In Michigan it has been held that benefits such as retirement pensions and insurance premium payments can be considered as part of an employee's compensation for purposes of determining whether such employee is receiving "like compensation" as other employees not receiving such benefits. *Kane v. City of Flint*, 342 Mich. 74 (1955).

The scope of section 556 is broad. It prohibits wage discrimination "in any way." I am, therefore, persuaded by the above authorities and the

¹ Section 556 was amended by Act 37, PA 1962 (MSA 1965 Cum. Supp. § 28.824).

² 92 C.J.S., p. 1035, et seq; Words and Phrases, Vol. 44A, p. 57, et seq.

language of the statute to conclude that the term "wages" in section 556 includes benefits receivable by or on behalf of the worker under a group insurance policy.

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671026.1

MEDICAL PRACTICE ACT: License Revocation.

Grounds for refusal to continue a certificate or license are limited to those offenses listed under "unprofessional and dishonest conduct" in Section 3, Sixth, of the Medical Practice Act.

No. 4423

October 26, 1967.

Mr. Lenton G. Sculthorp, Director
Department of Licensing and Regulation
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Lansing, Michigan

Your office has asked for an opinion on the following question:

"Is the Board of Registration in Medicine limited in responsibility to those offenses listed under unprofessional and dishonest conduct, Section 3, Sixth of the Medical Practice Act, to the exclusion of other forms of unprofessional conduct such as unnecessary surgery which does not constitute a criminal assault nor cause harm to the patient."

Basically this question relates to the problem of whether the phrase "unprofessional and dishonest conduct" as used in the Medical Practice Act can be invoked as a separate and independent ground for disciplinary action or whether such action may be taken against an individual by the Board of Registration in Medicine only with respect to the specific kinds of misconduct listed in Section 3, Sixth, of the Act.

Section 3, Paragraph Sixth, of the Medical Practice Act (Act 237, P.A. 1899, as amended; M.S.A. 1965 Cum. Supp. § 14.533; C.L.S. 1961 § 338.53) provides in pertinent part as follows:

"The board of registration in medicine may refuse to issue or continue a certificate of registration or license provided for in this section to any person guilty of grossly unprofessional and dishonest conduct. The words 'unprofessional and dishonest conduct,' as used in this act, are hereby declared to mean:

[then follow 10 subdivisions which are denoted (a) through (j), inclusive, setting forth certain specific improper acts such as —

"(a) The procuring, aiding or abetting in procuring a criminal abortion;

"* * *

"(c) The wilfully betraying of a professional secret;

"* * *