

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4846**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, and 16245 (MCL 333.16221, 333.16226, and 333.16245), sections 16221 and 16226 as amended by 1996 PA 594 and section 16245 as amended by 1993 PA 87, and by adding section 16275.

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 rele-
5 vant testimony to be taken and shall report its findings to the
6 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:

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1 (a) A violation of general duty, consisting of negligence or
2 failure to exercise due care, including negligent delegation to
3 or supervision of employees or other individuals, whether or not
4 injury results, or any conduct, practice, or condition which
5 impairs, or may impair, the ability to safely and skillfully
6 practice the health profession.

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

9 (i) Incompetence.

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

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

15 (iv) Declaration of mental incompetence by a court of compe-
16 tent jurisdiction.

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

22 (vi) Lack of good moral character.

23 (vii) Conviction of a criminal offense under sections 520a
24 to 520l of the Michigan penal code, ~~Act No. 328 of the Public~~
25 ~~Acts of 1931, being sections 750.520a to 750.520l of the Michigan~~
26 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520A TO 750.520L. A

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1 certified copy of the court record is conclusive evidence of the
2 conviction.

3 (viii) Conviction of a violation of section 492a of the
4 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
5 ~~being section 750.492a of the Michigan Compiled Laws~~ 1931 PA
6 328, MCL 750.492A. A certified copy of the court record is con-
7 clusive evidence of the conviction.

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

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

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

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

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

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

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

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

7 (d) Unethical business practices, consisting of 1 or more of
8 the following:

9 (i) False or misleading advertising.

10 (ii) Dividing fees for referral of patients or accepting
11 kickbacks on medical or surgical services, appliances, or medica-
12 tions purchased by or in behalf of patients.

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

15 (e) Unprofessional conduct, consisting of 1 or more of the
16 following:

17 (i) Misrepresentation to a consumer or patient or in obtain-
18 ing or attempting to obtain third party reimbursement in the
19 course of professional practice.

20 (ii) Betrayal of a professional confidence.

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

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

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

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

5 (h) Failure to comply with a subpoena issued pursuant to
6 this part, failure to respond to a complaint issued under this
7 article or article 7, failure to appear at a compliance confer-
8 ence or an administrative hearing, or failure to report under
9 section 16222 or 16223.

10 (i) Failure to pay an installment of an assessment levied
11 pursuant to section 2504 of the insurance code of 1956, ~~Act~~
12 ~~No. 218 of the Public Acts of 1956, being section 500.2504 of the~~
13 ~~Michigan Compiled Laws~~ 1956 PA 218, MCL 500.2504, within 60 days
14 after notice by the appropriate board.

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

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

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

19 (m) A violation of section 17016 or 17516.

20 (N) FAILURE TO COMPLY WITH SECTION 9206(3).

21 (O) ~~(n)~~ A violation of section 5654 or 5655.

22 (P) A VIOLATION OF SECTION 16274.

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

1

2 Violations of Section 16221

Sanctions

3 Subdivision (a), (b)(ii),

Probation, limitation, denial,

4 (b)(iv), (b)(vi), or

suspension, revocation,

5 (b)(vii)

restitution, community service,

6

or fine.

7 Subdivision (b)(viii)

Revocation or denial.

8 Subdivision (b)(i),

Limitation, suspension,

9 (b)(iii), (b)(v),

revocation, denial,

10 (b)(ix),

probation, restitution,

11 (b)(x), or (b)(xi)

community service, or fine.

12 Subdivision (c)(i)

Denial, revocation, suspension,

13

probation, limitation, commu-

14

nity service, or fine.

15 Subdivision (c)(ii)

Denial, suspension, revocation,

16

restitution, community service,

17

or fine.

18 Subdivision (c)(iii)

Probation, denial, suspension,

19

revocation, restitution, commu-

20

nity service, or fine.

21 Subdivision (c)(iv)

Fine, probation, denial,

22 or (d)(iii)

suspension, revocation, commu-

23

nity service,

24

or restitution.

25 Subdivision (d)(i)

Reprimand, fine, probation,

26 or (d)(ii)

community service, denial,

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1		or restitution.
2	Subdivision (e)(i)	Reprimand, fine, probation,
3		limitation, suspension, commu-
4		nity service, denial, or
5		restitution.
6	Subdivision (e)(ii)	Reprimand, probation,
7	or (h)	suspension, restitution, commu-
8		nity service, denial, or fine.
9	Subdivision (e)(iii)	Reprimand, fine, probation,
10	or (e)(iv)	suspension, revocation, limita-
11		tion, community service,
12		denial, or restitution.
13	Subdivision (f)	Reprimand or fine.
14	Subdivision (g)	Reprimand, probation, denial,
15		suspension, revocation, limita-
16		tion, restitution, community
17		service, or fine.
18	Subdivision (i)	Suspension or fine.
19	Subdivision (j) or (n)	
20	(o)	Reprimand or fine.
21	Subdivision (k)	Reprimand, denial, or
22		limitation.
23	Subdivision (l) OR (N)	Denial, revocation, restitution,
24		probation, suspension, limita-
25		tion, reprimand, or fine.
26	Subdivision (m)	Revocation or denial.

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1 SUBDIVISION (P) REVOCATION.

2 (2) Determination of sanctions for violations under this
3 section shall be made by a disciplinary subcommittee. If, during
4 judicial review, the court of appeals determines that a final
5 decision or order of a disciplinary subcommittee prejudices sub-
6 stantial rights of the petitioner for 1 or more of the grounds
7 listed in section 106 of the administrative procedures act of
8 1969, ~~being section 24.306 of Michigan Compiled Laws~~ 1969 PA
9 306, MCL 24.306, and holds that the final decision or order is
10 unlawful and is to be set aside, the court shall state on the
11 record the reasons for the holding and may remand the case to the
12 disciplinary subcommittee for further consideration.

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

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

23 Sec. 16245. (1) An individual whose license is limited,
24 suspended, or revoked under this part may apply to his or her
25 board or task force for a reinstatement of a revoked or suspended
26 license or reclassification of a limited license pursuant to
27 section 16247 or 16249.

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1 (2) An individual whose registration is suspended or revoked
2 under this part may apply to his or her board for a reinstatement
3 of a suspended or revoked registration pursuant to section
4 16248.

5 (3) A board or task force shall reinstate a license or reg-
6 istration suspended for grounds stated in section 16221(i) upon
7 payment of the installment.

8 (4) Except as otherwise provided in this subsection, in case
9 of a revoked license or registration, an applicant shall not
10 apply for reinstatement before the expiration of 3 years after
11 the effective date of the revocation. In THE case of a license
12 or registration that was revoked for a violation of section
13 16221(b)(vii), a violation of section 16221(c)(iv) consisting of
14 a felony conviction, ~~or~~ any other felony conviction involving a
15 controlled substance, OR A VIOLATION OF SECTION 16221(P), an
16 applicant shall not apply for reinstatement before the expiration
17 of 5 years after the effective date of the revocation. The
18 department shall return an application for reinstatement received
19 before the expiration of the applicable time period under this
20 subsection.

21 (5) The department shall provide an opportunity for a hear-
22 ing before final rejection of an application for reinstatement.

23 (6) Based upon the recommendation of the disciplinary sub-
24 committee for each health profession, the department shall adopt
25 guidelines to establish specific criteria to be met by an appli-
26 cant for reinstatement under this article or article 7. The
27 criteria may include corrective measures or remedial education as

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1 a condition of reinstatement. If a board or task force, in
2 reinstating a license or registration, deviates from the guide-
3 lines adopted under this subsection, the board or task force
4 shall state the reason for the deviation on the record.

5 (7) An individual who seeks reinstatement or reclassifica-
6 tion of a license or registration pursuant to this section shall
7 pay the application processing fee as a reinstatement or reclas-
8 sification fee. If approved for reinstatement or reclassifica-
9 tion, the individual shall pay the per year license or registra-
10 tion fee for the applicable license or registration period.

11 SEC. 16275. (1) A LICENSEE OR REGISTRANT OR OTHER INDIVID-
12 UAL SHALL NOT ENGAGE IN OR ATTEMPT TO ENGAGE IN HUMAN CLONING.

13 (2) SUBSECTION (1) DOES NOT PROHIBIT SCIENTIFIC RESEARCH OR
14 CELL-BASED THERAPIES NOT SPECIFICALLY PROHIBITED BY THAT
15 SUBSECTION.

16 (3) A LICENSEE OR REGISTRANT OR OTHER INDIVIDUAL WHO VIO-
17 LATES SUBSECTION (1) IS SUBJECT TO A CIVIL PENALTY OF
18 \$10,000,000.00. A FINE COLLECTED UNDER THIS SUBSECTION SHALL BE
19 DISTRIBUTED IN THE SAME MANNER AS PENAL FINES ARE DISTRIBUTED IN
20 THIS STATE.

21 (4) THIS SECTION DOES NOT GIVE A PERSON A PRIVATE RIGHT OF
22 ACTION.

23 (5) AS USED IN THIS SECTION, "HUMAN CLONING" MEANS THAT TERM
24 AS DEFINED IN SECTION 16274.

25 Enacting section 1. This amendatory act does not take
26 effect unless all of the following bills of the 89th Legislature
27 are enacted into law:

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- 1 (a) House Bill No. 4962.
- 2 (b) House Bill No. 5475.
- 3 (c) Senate Bill No. 864.