

# HOUSE BILL No. 4846

May 28, 1997, Introduced by Reps. Profit, Palamara, Griffin, Brater, Schroer, Goschka, Horton, Cropsey, Walberg, Law, Green, Kukuk, Lowe, Raczkowski, Voorhees, McManus, Rocca, DeVuyst, Rhead, Hammerstrom, Cassis, Owen, Dobronski, Mathieu, Birkholz, Richner, Crissman, Gubow, Freeman, Mans, Callahan, Brown, Hanley, Hale, Schauer, Brewer, Scott, Agee, DeHart, Vaughn, Cherry, Prusi, Harder, Perricone, Ciaramitaro and Olshove and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, 16245, 16247, and 16248 (MCL 333.16221, 333.16226, 333.16245, 333.16247, and 333.16248), sections 16221 and 16226 as amended by 1996 PA 594, section 16245 as amended by 1993 PA 87, and sections 16247 and 16248 as amended by 1993 PA 79, and by adding section 16274.

**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

1 subcommittee shall proceed under section 16226 if it finds that 1  
2 or more of the following grounds exist:

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

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

11 (i) Incompetence.

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

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

17 (iv) Declaration of mental incompetence by a court of compe-  
18 tent jurisdiction.

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

24 (vi) Lack of good moral character.

25 (vii) Conviction of a criminal offense under sections 520a  
26 to 520l of the Michigan penal code, ~~Act No. 328 of the Public~~  
27 ~~Acts of 1931, being sections 750.520a to 750.520l of the Michigan~~

1 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520A TO 750.520I. A  
2 certified copy of the court record is conclusive evidence of the  
3 conviction.

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

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

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

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

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

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

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

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

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

9       (d) Unethical business practices, consisting of 1 or more of  
10 the following:

11       (i) False or misleading advertising.

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

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

17       (e) Unprofessional conduct, consisting of 1 or more of the  
18 following:

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

22       (ii) Betrayal of a professional confidence.

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

25       (iv) Directing or requiring an individual to purchase or  
26 secure a drug, device, treatment, procedure, or service from

1 another person, place, facility, or business in which the  
2 licensee has a financial interest.

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

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

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

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

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

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

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

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

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

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

24 (P) A VIOLATION OF SECTION 16274.

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

4 Violations of Section 16221

Sanctions

5 Subdivision (a), (b)(ii),	Probation, limitation, denial,
6 (b)(iv), (b)(vi), or	suspension, revocation,
7 (b)(vii)	restitution, community service,
8	or fine.
9 Subdivision (b)(viii)	Revocation or denial.
10 Subdivision (b)(i),	Limitation, suspension,
11 (b)(iii), (b)(v),	revocation, denial,
12 (b)(ix),	probation, restitution,
13 (b)(x), or (b)(xi)	community service, or fine.
14 Subdivision (c)(i)	Denial, revocation, suspension,
15	probation, limitation, commu-
16	nity service, or fine.
17 Subdivision (c)(ii)	Denial, suspension, revocation,
18	restitution, community service,
19	or fine.
20 Subdivision (c)(iii)	Probation, denial, suspension,
21	revocation, restitution, commu-
22	nity service, or fine.
23 Subdivision (c)(iv)	Fine, probation, denial,
24 or (d)(iii)	suspension, revocation, commu-
25	nity service,
26	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) or <del>(n)</del>	
22	(O)	Reprimand or fine.
23	Subdivision (k)	Reprimand, denial, or
24		limitation.
25	Subdivision (l) OR (N)	Denial, revocation, restitution,
26		probation, suspension,

1 limitation, reprimand, or  
2 fine.

3 Subdivision (m) Revocation or denial.

4 SUBDIVISION (P) PERMANENT REVOCATION.

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

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

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

26 Sec. 16245. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS  
27 SECTION, AN individual whose license is limited, suspended, or



1 revoked under this part may apply to his or her board or task  
2 force for a reinstatement of a revoked or suspended license or  
3 reclassification of a limited license pursuant to section 16247  
4 or 16249.

5 (2) An individual whose registration is suspended or revoked  
6 under this part may apply to his or her board for a reinstatement  
7 of a suspended or revoked registration pursuant to section  
8 16248.

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

12 (4) Except as otherwise provided in this subsection, in case  
13 of a revoked license or registration, an applicant shall not  
14 apply for reinstatement before the expiration of 3 years after  
15 the effective date of the revocation. In THE case of a license  
16 or registration that was revoked for a violation of section  
17 16221(b)(vii), a violation of section 16221(c)(iv) consisting of  
18 a felony conviction, or any other felony conviction involving a  
19 controlled substance, an applicant shall not apply for reinstatement  
20 before the expiration of 5 years after the effective date of  
21 the revocation. IN THE CASE OF A LICENSE OR REGISTRATION THAT  
22 WAS REVOKED FOR A VIOLATION OF SECTION 16221(P), THE APPLICANT  
23 CANNOT APPLY FOR REINSTATEMENT. The department shall return an  
24 application for reinstatement received before the expiration of  
25 the applicable time period under this subsection AND AN APPLICA-  
26 TION FOR REINSTATEMENT FROM AN INDIVIDUAL WHOSE LICENSE OR  
27 REGISTRATION WAS REVOKED FOR A VIOLATION OF SECTION 16221(P).

1 (5) The department shall provide an opportunity for a  
2 hearing before final rejection of an application for reinstatement  
3 EXCEPT AN APPLICATION FOR REINSTATEMENT OF A LICENSE OR REG-  
4 ISTRATION THAT WAS REVOKED FOR A VIOLATION OF SECTION 16221(P).

5 (6) Based upon the recommendation of the disciplinary sub-  
6 committee for each health profession, the department shall adopt  
7 guidelines to establish specific criteria to be met by an appli-  
8 cant for reinstatement under this article or article 7. The cri-  
9 teria may include corrective measures or remedial education as a  
10 condition of reinstatement. If a board or task force, in rein-  
11 stating a license or registration, deviates from the guidelines  
12 adopted under this subsection, the board or task force shall  
13 state the reason for the deviation on the record.

14 (7) An individual who seeks reinstatement or reclassifica-  
15 tion of a license or registration pursuant to this section shall  
16 pay the application processing fee as a reinstatement or reclass-  
17 sification fee. If approved for reinstatement or reclassifica-  
18 tion, the individual shall pay the per year license or registra-  
19 tion fee for the applicable license or registration period.

20 Sec. 16247. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-  
21 TION (2), A board or task force may reinstate a license or issue  
22 a limited license to an individual whose license has been sus-  
23 pended or revoked under this part if after a hearing the board or  
24 task force is satisfied by clear and convincing evidence that the  
25 applicant is of good moral character, is able to practice the  
26 profession with reasonable skill and safety to patients, has met  
27 the criteria in the rules promulgated under section 16245(6), and

1 should be permitted in the public interest to resume practice.  
2 Pursuant to the rules promulgated under section 16245(6), as a  
3 condition of reinstatement, a disciplinary subcommittee, upon the  
4 recommendation of a board or task force, may impose a disci-  
5 plinary or corrective measure authorized under this part and  
6 require that the licensee attend a school or program selected by  
7 the board or task force to take designated courses or training to  
8 become competent or proficient in those areas of practice in  
9 which the board or task force finds the licensee to be  
10 deficient. The board or task force may require a statement on a  
11 form approved by it from the chief administrator of the school or  
12 program attended or the person responsible for the training cer-  
13 tifying that the licensee has achieved the required competency or  
14 proficiency.

15 (2) A BOARD OR TASK FORCE SHALL NOT REINSTATE THE LICENSE OF  
16 AN INDIVIDUAL WHOSE LICENSE WAS REVOKED FOR A VIOLATION OF SEC-  
17 TION 16221(P).

18 (3) ~~(2)~~ As a condition of reinstatement, a board or task  
19 force shall place the licensee on probation for 1 year under con-  
20 ditions set by the board or task force. If a licensee whose  
21 license has been revoked cannot apply for reinstatement for 5  
22 years after the date of revocation, then, as a condition of rein-  
23 statement, the board or task force shall require the licensee to  
24 take and pass the current licensure examination.

25 (4) ~~(3)~~ A board or task force shall not reinstate a  
26 license suspended or revoked for grounds stated in section  
27 16221(b)(i), (iii), or (iv) until it finds that the licensee is

1 mentally or physically able to practice with reasonable skill and  
2 safety to patients. The board or task force may require further  
3 examination of the licensee, at the licensee's expense, necessary  
4 to verify that the licensee is mentally or physically able. A  
5 licensee affected by this section shall be afforded the opportu-  
6 nity at reasonable intervals to demonstrate that he or she can  
7 resume competent practice in accordance with standards of accept-  
8 able and prevailing practice.

9       Sec. 16248. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-  
10 TION (2), A registration board may reinstate a registration  
11 revoked or suspended under this part if, after a hearing, the  
12 board is satisfied by clear and convincing evidence that the  
13 individual is of good moral character, has the education and  
14 experience as required in this article, has met the criteria in  
15 the rules promulgated under section 16245(6), and will use the  
16 title lawfully and act in accordance with this article.

17       (2) A REGISTRATION BOARD SHALL NOT REINSTATE THE REGISTRA-  
18 TION OF AN INDIVIDUAL WHOSE REGISTRATION WAS REVOKED FOR A VIOLA-  
19 TION OF SECTION 16221(P).

20       SEC. 16274. (1) A LICENSEE OR REGISTRANT OR OTHER INDIVID-  
21 UAL SHALL NOT CLONE OR ATTEMPT TO CLONE A HUMAN BEING. THIS SUB-  
22 SECTION DOES NOT PROHIBIT A LICENSEE OR REGISTRANT OR OTHER INDI-  
23 VIDUAL FROM ENGAGING IN ASSISTED REPRODUCTIVE TECHNOLOGY.

24       (2) A LICENSEE OR REGISTRANT WHO VIOLATES SUBSECTION (1) IS  
25 SUBJECT TO THE CIVIL PENALTY PRESCRIBED IN SUBSECTION (3) AND TO  
26 THE ADMINISTRATIVE PENALTIES PRESCRIBED IN SECTIONS 16221 AND  
27 16226.

1 (3) A LICENSEE OR REGISTRANT OR OTHER INDIVIDUAL WHO  
2 VIOLATES SUBSECTION (1) IS SUBJECT TO A CIVIL PENALTY OF NOT MORE  
3 THAN \$10,000,000.00.

4 (4) AS USED IN THIS SECTION:

5 (A) "ASSISTED REPRODUCTIVE TECHNOLOGY" MEANS A TREATMENT OR  
6 PROCEDURE TO ENHANCE HUMAN REPRODUCTIVE CAPABILITY THROUGH THE  
7 MANIPULATION OF HUMAN OOCYTES OR EMBRYOS, AND INCLUDES ALL OF THE  
8 FOLLOWING, BUT DOES NOT INCLUDE THE CLONING OF A HUMAN EMBRYO:

9 (i) IN VITRO FERTILIZATION.

10 (ii) GAMETE INTRAFALLOPIAN TRANSFER.

11 (iii) ZYGOTE INTRAFALLOPIAN TRANSFER.

12 (B) "CLONE" OR "CLONING" MEANS THE ASEXUAL GROWING OF A  
13 GENETICALLY IDENTICAL HUMAN BEING FROM A SINGLE SOMATIC CELL OF  
14 AN INDIVIDUAL.