

Act No. 382
Public Acts of 2010
Approved by the Governor
December 22, 2010
Filed with the Secretary of State
December 22, 2010
EFFECTIVE DATE: December 22, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Roy Schmidt

ENROLLED HOUSE BILL No. 5614

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 16231 and 16233 (MCL 333.16231 and 333.16233), section 16231 as amended by 1993 PA 79 and section 16233 as amended by 1995 PA 196, and by adding sections 9122 and 17819; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 9122. (1) An individual who is at least 17 years of age may donate blood in a voluntary and noncompensatory blood program without obtaining his or her parent's or legal guardian's permission or authorization.

(2) An individual who is at least 16 but less than 17 years of age may donate blood in a voluntary and noncompensatory blood program with his or her parent's or legal guardian's permission or authorization.

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

(2) If, upon reviewing an application or an allegation or a licensee's file under section 16211(4), the department determines there is a reasonable basis to believe the existence of a violation of this article or article 7 or a rule promulgated under this article or article 7, the department, with the authorization of the chair of the appropriate board or task force or his or her designee, shall investigate. If the chair or his or her designee fails to grant or deny authorization within 7 days after receipt of a request for authorization, the department shall investigate.

(3) Upon the receipt of information reported pursuant to 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.

(4) At any time during an investigation or following the issuance of a complaint, the department may schedule a compliance conference pursuant to 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 such assistance as 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, a hearing before a hearings examiner shall be scheduled. 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.

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

(a) Issue a formal complaint.

(b) Conduct a compliance conference under subsection (4).

(c) Issue a summary suspension.

(d) Issue a cease and desist order.

(e) Dismiss the complaint.

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

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

(7) The department shall serve a complaint pursuant to 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.

(8) The department shall treat the failure of the applicant, licensee, registrant, or individual to respond to the complaint within the 30-day period set forth in subsection (7) 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 or article 7.

Sec. 16233. (1) The department may conduct an investigation necessary to administer and enforce this article. Investigations may include written, oral, or practical tests of a licensee's or registrant's competency. The department may establish a special paralegal unit to assist the department.

(2) The department may order an individual to cease and desist from a violation of this article or article 7 or a rule promulgated under this article or article 7.

(3) An individual ordered to cease and desist under subsection (2) is entitled to a hearing before a hearings examiner if the individual files a written request for a hearing within 30 days after the effective date of the cease and desist order. The department shall subsequently present the notice, if any, of the individual's failure to respond to a complaint, or attend or be represented at a hearing as described in sections 16231 and 16231a, or the recommended findings of fact and conclusions of law to the appropriate disciplinary subcommittee to determine whether the order is to remain in effect or be dissolved.

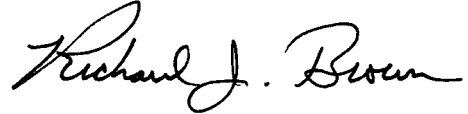
(4) Upon a violation of a cease and desist order issued under subsection (2), the department of attorney general may apply in the circuit court to restrain and enjoin, temporarily or permanently, an individual from further violating the cease and desist order.

(5) After consultation with the chair of the appropriate board or task force or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, MCL 24.292. If a licensee or registrant is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, the department shall find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, MCL 24.292, shall summarily suspend the licensee's license or the registrant's registration. If a licensee or registrant is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol that adversely affects the licensee's ability to practice in a safe and competent manner, the department may find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, MCL 24.292, may summarily suspend the licensee's license or the registrant's registration.

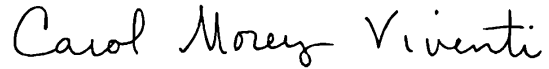
Sec. 17819. This part does not prohibit an individual licensed, registered, or otherwise authorized to engage in a health profession under any other part or any other act from performing activities that are considered the practice of physical therapy or the practice as a physical therapist assistant so long as those activities are within the individual's scope of practice and the individual does not use the words, titles, or letters protected under section 17820.

Enacting section 1. 1971 PA 22, MCL 722.41, is repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor