

# HOUSE BILL NO. 5043

September 26, 2023, Introduced by Reps. Rogers, Mueller, Brabec, Hope, Paiz, Puri, Koleszar, Steckloff, Price, Outman, Liberati, Skaggs, Andrews, Bezotte, Wozniak, Prestin, Rheingans, McFall, Morse, VanderWall and Farhat and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 2804, 2843, 2843b, 2844, and 16221 (MCL 333.2804, 333.2843, 333.2843b, 333.2844, and 333.16221), section 2804 as amended by 2012 PA 499, section 2843 as amended by 2013 PA 79, section 2843b as added by 1986 PA 185, and section 16221 as amended by 2023 PA 47.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 2804. (1) "Institution" means a public or private  
**2**   establishment that provides inpatient medical, surgical, or

1 diagnostic care or treatment or nursing, custodial, or domiciliary  
 2 care to 2 or more unrelated individuals, including an establishment  
 3 to which individuals are committed by law.

4 (2) "Law enforcement agency" means a police agency of a city,  
 5 village, or township; a sheriff's department; the department of  
 6 state police; and any other governmental law enforcement agency.

7 (3) "Live birth" means that term as defined in section 1 of  
 8 the born alive infant protection act, 2002 PA 687, MCL 333.1071.

9 (4) "Local registrar" means the county clerk or the clerk's  
 10 deputy, or in the case of a city having a population of 40,000 or  
 11 more, the city clerk or city department designated by the governing  
 12 body of the city; or a registrar appointed ~~pursuant to~~ **under**  
 13 section 2814. Population ~~shall~~ **must** be determined according to the  
 14 latest federal decennial census.

15 (5) "Miscarriage" means the spontaneous expulsion of a  
 16 nonviable fetus that has completed less than 20 weeks of gestation.

17 (6) **"Physician" means a physician licensed under part 170 or**  
 18 **part 175.**

19 (7) ~~(6)~~—"Registration" means the acceptance by the state  
 20 registrar and the incorporation of certificates provided for in  
 21 this part into the official vital records.

22 Sec. 2843. (1) A funeral director who first assumes custody of  
 23 a dead body, either personally or through ~~his or her~~ **the funeral**  
 24 **director's** authorized agent, shall report the death. For purposes  
 25 of this subsection, "dead body" includes, but is not limited to,  
 26 the body of an infant who survived an attempted abortion as  
 27 described in the born alive infant protection act, **2002 PA 687, MCL**  
 28 **333.1071 to 333.1073**, and who later died. The funeral director or  
 29 the authorized agent shall obtain the necessary personal data from

1 the next of kin or the best qualified individual or source  
 2 available and shall obtain medical certification as follows:

3 (a) ~~If Subject to subdivision (c), if~~ the death occurred  
 4 outside an institution, the medical certification portion of the  
 5 death record ~~shall~~**must** be completed and certified not later than  
 6 48 hours after death by **1 of the following:** ~~the attending~~  
 7 ~~physician; or in the absence of the attending physician, by a~~  
 8 ~~physician acting as the attending physician's authorized~~  
 9 ~~representative; or in the absence of an authorized representative,~~  
 10 ~~by the county medical examiner; or in the absence of the county~~  
 11 ~~medical examiner, by the county health officer or the deputy county~~  
 12 ~~medical examiner. If the death occurred in an institution, the~~  
 13 ~~medical certification shall be completed and signed not later than~~  
 14 ~~48 hours after death by the attending physician; or in the absence~~  
 15 ~~of the attending physician, by a physician acting as the attending~~  
 16 ~~physician's authorized representative; or in the absence of an~~  
 17 ~~authorized representative, by the chief medical officer of the~~  
 18 ~~institution in which death occurred, after reviewing pertinent~~  
 19 ~~records and making other investigation as considered necessary, or~~  
 20 ~~by a pathologist.~~

21 (b) ~~A physician described in subdivision (a), who for himself~~  
 22 ~~or herself or as an agent or employee of another individual~~  
 23 ~~neglects or refuses to certify a death record properly presented to~~  
 24 ~~him or her for certification by a funeral director or who refuses~~  
 25 ~~or neglects to furnish information in his or her possession, is~~  
 26 ~~guilty of a misdemeanor punishable by imprisonment for not more~~  
 27 ~~than 60 days, or a fine of not less than \$25.00 nor more than~~  
 28 ~~\$100.00, or both.~~

29 (2) ~~A physician described in subsection (1)(a) shall provide~~

1 ~~the medical certification described in subsection (1) (a) within 48~~  
2 ~~hours after the death.~~

3 (i) The physician who was in charge of the decedent's care for  
4 the illness or condition that resulted in the decedent's death.

5 (ii) In the absence of the physician under subparagraph (i), a  
6 physician acting as the authorized representative of the physician  
7 described under subparagraph (i).

8 (b) Subject to subdivision (c), if the death occurred in an  
9 institution, the medical certification portion of the death record  
10 must be completed and certified not later than 48 hours after death  
11 by 1 of the following:

12 (i) The attending physician.

13 (ii) In the absence of the attending physician described under  
14 subparagraph (i), any of the following:

15 (A) A physician acting as the authorized representative of the  
16 physician described in subparagraph (i).

17 (B) The chief medical officer of the institution in which the  
18 death occurred after the chief medical officer reviews pertinent  
19 records and makes other investigations considered necessary.

20 (C) A pathologist.

21 (c) Notwithstanding subdivisions (a) and (b), if an  
22 investigation is required under section 2 of 1953 PA 181, MCL  
23 52.202, the medical certification portion of the death record must  
24 be completed and certified by the county medical examiner as  
25 provided in section 2844.

26 (2) The report described in subsection (1) must be submitted  
27 using the web-based application system established by the  
28 department for the registration of deaths. Beginning 1 year after  
29 the effective date of the amendatory act that added this sentence,

1 the medical certification described in subsection (1) must be  
 2 submitted using the web-based application system established by the  
 3 department for the registration of deaths. An individual who  
 4 completes medical certifications under subsection (1) shall first  
 5 complete training provided by the department to use the web-based  
 6 application system for the registration of deaths.

7 (3) A death record ~~shall~~**must** be certified by a funeral  
 8 director who is licensed under article 18 of the occupational code,  
 9 1980 PA 299, MCL 339.1801 to 339.1812, or by an individual who  
 10 holds a courtesy license under section 1806a of ~~that act,~~**the**  
 11 **occupational code, 1980 PA 299**, MCL 339.1806a, and ~~shall~~**must** be  
 12 filed with the local registrar of the district where the death  
 13 occurred within 72 hours after the death.

14 (4) Except as otherwise provided in this subsection, the death  
 15 of an infant who was born alive following an attempted abortion and  
 16 was surrendered to an emergency service provider under the safe  
 17 delivery of newborns law, ~~sections 1 to 20 of~~ chapter XII of the  
 18 probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, and then  
 19 died ~~shall~~**must** be reported in the same manner as for any death.  
 20 However, the deceased infant ~~shall~~**must** be listed as "Baby Doe" and  
 21 no information that would directly identify the deceased infant or  
 22 the deceased infant's parents shall be reported, including, but not  
 23 limited to, the following information:

- 24 (a) The name of the mother or father.
- 25 (b) The address of the mother or father.
- 26 (c) The name of the informant.
- 27 (d) The address of the informant.

28 (5) **A physician who is described in subsection (1) (a) or (b)**  
 29 **and who is properly presented a medical certification by a funeral**

1 **director, shall not neglect or refuse to certify the death record**  
 2 **and shall not neglect or refuse to furnish information in the**  
 3 **physician's possession to the funeral director.**

4       Sec. 2843b. (1) If, at the time of death, ~~a physician~~**an**  
 5 **individual** who is required to complete the medical certification  
 6 under section ~~2843(1)(a)~~**2843(1)** has actual knowledge of the  
 7 presence in the deceased individual of an infectious agent,  
 8 including acquired immunodeficiency syndrome-related virus, the  
 9 ~~physician~~**individual who is required to complete the medical**  
 10 **certification** shall notify the funeral director or the funeral  
 11 director's authorized agent of the appropriate infection control  
 12 precautions to be taken. The notification required by this  
 13 subsection ~~shall~~**must** occur before the body is released to the  
 14 funeral director or the funeral director's authorized agent. A  
 15 funeral director or funeral director's authorized agent who  
 16 receives notification under this subsection shall not refuse to  
 17 render services as a result of having received the notification.  
 18 This subsection ~~shall take~~**takes** effect on the effective date of  
 19 the rules required by subsection (3).

20       (2) The information contained in the notification required by  
 21 subsection (1) ~~shall be~~**is** confidential. A person who receives  
 22 confidential information under this section shall disclose the  
 23 information to others only to the extent consistent with the  
 24 authorized purpose for which the information was obtained.

25       (3) ~~Within 30 days after the effective date of this~~  
 26 ~~subsection,~~**No later than August 6, 1986,** the department shall  
 27 submit for promulgation under section 48 of the administrative  
 28 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~  
 29 ~~being section 24.248 of the Michigan Compiled Laws,~~**MCL 24.248,**

1 rules ~~which~~**that** define the term "infectious agent" for purposes of  
2 this section.

3 (4) The department may promulgate rules to administer this  
4 section.

5 (5) A person who violates subsection (2) is guilty of a  
6 misdemeanor.

7 Sec. 2844. ~~(1) When death occurs more than 10 days after the~~  
8 ~~deceased was last seen by a physician, if the cause of death~~  
9 ~~appears to be other than the illness or condition for which the~~  
10 ~~deceased was being treated, or if the attending physician cannot~~  
11 ~~accurately determine the cause of death, the case shall be referred~~  
12 ~~to the county medical examiner for investigation to determine and~~  
13 ~~certify the cause of death. If the county medical examiner~~  
14 ~~determines that the case does not fall within his or her~~  
15 ~~jurisdiction, the county medical examiner shall refer the case back~~  
16 ~~to the deceased's physician within 24 hours for completion of the~~  
17 ~~medical certification.~~

18 **(1)** ~~(2) When~~ **If** an investigation is required under Act No. 181  
19 ~~of the Public Acts of 1953, as amended, being sections 1953 PA 181,~~  
20 **MCL** 52.201 to 52.216, ~~of the Michigan Compiled Laws,~~ the county  
21 medical examiner shall determine the cause of death and shall  
22 complete and sign the medical certification within 48 hours after  
23 taking charge of the case.

24 **(2)** ~~(3)~~ If the cause of death cannot be determined within 48  
25 hours after death, the medical certification may be completed as  
26 provided by the department. ~~The attending physician or county~~  
27 ~~medical examiner shall give the~~ **The** funeral director in custody of  
28 the body **must be given** notice of the reason for the delay ~~, by~~ and  
29 final disposition ~~shall~~ **must** not be made until authorized by ~~the~~ **1**

1 of the following individuals:

2 (a) The attending physician or **county** medical examiner.

3 (b) The attending physician's authorized representative.

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

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

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

25 (i) Incompetence.

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

29 (iii) Mental or physical inability reasonably related to and



1 adversely affecting the licensee's or registrant's ability to  
2 practice in a safe and competent manner.

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

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

11 (vi) Lack of good moral character.

12 (vii) Conviction of a criminal offense under section 520e or  
13 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and  
14 750.520g. A certified copy of the court record is conclusive  
15 evidence of the conviction.

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

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

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

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

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

8           (xiii) Conviction of a criminal offense under section 83, 84,  
9 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal  
10 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,  
11 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the  
12 court record is conclusive evidence of the conviction.

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

17           (xv) Conviction of a violation of section 90 of the Michigan  
18 penal code, 1931 PA 328, MCL 750.90, or a violation of a state or  
19 federal crime that is substantially similar to the violation  
20 described in this subparagraph. 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 following:

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

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

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

28           (iv) Obtaining, possessing, or attempting to obtain or possess  
29 a controlled substance or a drug as defined in section 7105 without

1 lawful authority; or selling, prescribing, giving away, or  
2 administering drugs for other than lawful diagnostic or therapeutic  
3 purposes.

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

7 (i) False or misleading advertising.

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

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

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

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

18 (ii) Betrayal of a professional confidence.

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

21 (iv) Either of the following:

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

27 (B) A referral by a physician for a designated health service  
28 that violates 42 USC 1395nn or a regulation promulgated under that  
29 section. For purposes of this subdivision, 42 USC 1395nn and the

1 regulations promulgated under that section as they exist on June 3,  
2 2002 are incorporated by reference. A disciplinary subcommittee  
3 shall apply 42 USC 1395nn and the regulations promulgated under  
4 that section regardless of the source of payment for the designated  
5 health service referred and rendered. If 42 USC 1395nn or a  
6 regulation promulgated under that section is revised after June 3,  
7 2002, the department shall officially take notice of the revision.  
8 Within 30 days after taking notice of the revision, the department  
9 shall decide whether or not the revision pertains to referral by  
10 physicians for designated health services and continues to protect  
11 the public from inappropriate referrals by physicians. If the  
12 department decides that the revision does both of those things, the  
13 department may promulgate rules to incorporate the revision by  
14 reference. If the department does promulgate rules to incorporate  
15 the revision by reference, the department shall not make any  
16 changes to the revision. As used in this sub-subparagraph,  
17 "designated health service" means that term as defined in 42 USC  
18 1395nn and the regulations promulgated under that section and  
19 "physician" means that term as defined in sections 17001 and 17501.

20 (v) For a physician who makes referrals under 42 USC 1395nn or  
21 a regulation promulgated under that section, refusing to accept a  
22 reasonable proportion of patients eligible for Medicaid and  
23 refusing to accept payment from Medicaid or Medicare as payment in  
24 full for a treatment, procedure, or service for which the physician  
25 refers the individual and in which the physician has a financial  
26 interest. A physician who owns all or part of a facility in which  
27 the physician provides surgical services is not subject to this  
28 subparagraph if a referred surgical procedure the physician  
29 performs in the facility is not reimbursed at a minimum of the

1 appropriate Medicaid or Medicare outpatient fee schedule, including  
2 the combined technical and professional components.

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

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

13 (viii) A violation of section 16655(4) by a dental therapist.

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

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

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

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

24 (j) Failure to pay an installment of an assessment levied  
25 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to  
26 500.8302, within 60 days after notice by the appropriate board.

27 (k) A violation of section 17013 or 17513.

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

- 1 (m) A violation of section 17015, 17015a, 17017, 17515, or  
2 17517.
- 3 (n) A violation of section 17016 or 17516.
- 4 (o) Failure to comply with section **2843(5)** or 9206(3).
- 5 (p) A violation of section 5654 or 5655.
- 6 (q) A violation of section 16274.
- 7 (r) A violation of section 17020 or 17520.
- 8 (s) A violation of the medical records access act, 2004 PA 47,  
9 MCL 333.26261 to 333.26271.
- 10 (t) A violation of section 17764(2).
- 11 (u) Failure to comply with the terms of a practice agreement  
12 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or  
13 18047(2)(a) or (b).
- 14 (v) A violation of section 7303a(2).
- 15 (w) A violation of section 7303a(4) or (5).
- 16 (x) A violation of section 7303b.
- 17 (y) A violation of section 17754a.
- 18 (z) Beginning January 1, 2021, a violation of section 24507 or  
19 24509.