

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 575

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16231 and 16232 (MCL 333.16231 and 333.16232),
as amended by 2013 PA 268, and by adding section 16216a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16216A. (1) A MEMBER OF A DISCIPLINARY SUBCOMMITTEE SHALL
2 NOT PARTICIPATE IN MAKING A DECISION OF THAT SUBCOMMITTEE THAT 1 OR
3 MORE OF THE GROUNDS LISTED IN SECTION 16221 EXIST, IN ANY
4 INVESTIGATION, OR IN THE IMPOSITION OF SANCTIONS UNDER SECTION
5 16226, CONCERNING A LICENSEE OR REGISTRANT IF THAT SUBCOMMITTEE
6 MEMBER HAS A CONFLICT OF INTEREST.

7 (2) A MEMBER OF A DISCIPLINARY SUBCOMMITTEE SHALL DISCLOSE A
8 POTENTIAL CONFLICT OF INTEREST DESCRIBED IN SUBSECTION (1) BEFORE
9 THAT SUBCOMMITTEE TAKES ANY ACTION DESCRIBED IN SUBSECTION (1).

(3) AS USED IN THIS SECTION, "CONFLICT OF INTEREST" MEANS ANY OF THE FOLLOWING:

(A) HAS A PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME OF THE INVESTIGATION OF OR THE IMPOSITION OF DISCIPLINARY SANCTIONS ON THE LICENSEE, REGISTRANT, OR APPLICANT FOR LICENSURE OR REGISTRATION.

(B) HAD A PAST OR HAS A PRESENT BUSINESS OR PROFESSIONAL RELATIONSHIP WITH THE INDIVIDUAL THAT THE DISCIPLINARY SUBCOMMITTEE IS INVESTIGATING OR AGAINST WHOM THE DISCIPLINARY SUBCOMMITTEE IS CONSIDERING SANCTIONS.

(C) HAS GIVEN EXPERT TESTIMONY IN A MEDICAL MALPRACTICE ACTION AGAINST OR ON BEHALF OF THE INDIVIDUAL THAT THE DISCIPLINARY SUBCOMMITTEE IS INVESTIGATING OR AGAINST WHOM THE DISCIPLINARY SUBCOMMITTEE IS CONSIDERING SANCTIONS.

(D) HAS OTHER INTEREST OR RELATIONSHIP DESIGNATED AS A CONFLICT OF INTEREST IN A RULE PROMULGATED OR ORDER ISSUED UNDER THIS ACT.

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

(2) ~~If, upon~~ SUBJECT TO SUBSECTION (3), IF THE DEPARTMENT DETERMINES AFTER reviewing an application or an allegation or a licensee's OR REGISTRANT'S file under section 16211(4) ~~, the~~ department ~~determines~~ THAT there is a reasonable basis to believe ~~the existence of~~ THAT a violation of this article or article 7 or a rule promulgated under this article or article 7 EXISTS, ~~the~~ department 1 OF THE FOLLOWING APPLIES:

1 (A) UNLESS SUBDIVISION (B) APPLIES, SUBJECT TO SUBSECTION
2 (10), with the authorization of A PANEL OF AT LEAST 3 BOARD MEMBERS
3 THAT INCLUDES the chair AND AT LEAST 2 OTHER MEMBERS of the
4 appropriate board or task force ~~or his or her designee, shall~~
5 DESIGNATED BY THE CHAIR, THE DEPARTMENT SHALL investigate THE
6 ALLEGED VIOLATION. ~~If SUBJECT TO SUBSECTION (10), IF the chair or~~
7 ~~his or her designee~~ PANEL fails to grant or deny authorization
8 within 7 days after ~~receipt of~~ THE BOARD OR TASK FORCE RECEIVES a
9 request for authorization, the department shall investigate. IF THE
10 DEPARTMENT BELIEVES THAT IMMEDIATE JEOPARDY EXISTS, THE DIRECTOR OR
11 HIS OR HER DESIGNEE SHALL AUTHORIZE AN INVESTIGATION AND NOTIFY THE
12 BOARD CHAIR OF THAT INVESTIGATION WITHIN 2 BUSINESS DAYS.

13 (B) IF IT REVIEWS AN ALLEGATION IN WRITING UNDER SUBSECTION
14 (1) THAT CONCERNS A LICENSEE OR REGISTRANT WHOSE RECORD CREATED
15 UNDER SECTION 16211 INCLUDES 1 SUBSTANTIATED ALLEGATION, OR 2 OR
16 MORE WRITTEN INVESTIGATED ALLEGATIONS, FROM 2 OR MORE DIFFERENT
17 INDIVIDUALS OR ENTITIES, RECEIVED IN THE PRECEDING 4 YEARS, THE
18 DEPARTMENT SHALL INVESTIGATE THE ALLEGED VIOLATION. AUTHORIZATION
19 BY A PANEL DESCRIBED IN SUBDIVISION (A) IS NOT REQUIRED FOR AN
20 INVESTIGATION BY THE DEPARTMENT UNDER THIS SUBDIVISION.

21 (3) IF A PERSON OR GOVERNMENTAL ENTITY SUBMITS A WRITTEN
22 ALLEGATION UNDER SUBSECTION (1) MORE THAN 4 YEARS AFTER THE DATE OF
23 THE INCIDENT OR ACTIVITY THAT IS THE BASIS OF THE ALLEGED
24 VIOLATION, THE DEPARTMENT MAY INVESTIGATE THE ALLEGED VIOLATION IN
25 THE MANNER DESCRIBED IN SUBSECTION (2) (A) OR (B), AS APPLICABLE,
26 BUT IS NOT REQUIRED TO CONDUCT AN INVESTIGATION UNDER SUBSECTION
27 (2) (A) OR (B).

1 (4) ~~(3) Upon the receipt of~~ **IF IT RECEIVES** information
2 reported ~~pursuant to~~ **UNDER** section 16243(2) that indicates 3 or
3 more malpractice settlements, awards, or judgments against a
4 licensee in a period of 5 consecutive years or 1 or more
5 malpractice settlements, awards, or judgments against a licensee
6 totaling more than \$200,000.00 in a period of 5 consecutive years,
7 whether or not a judgment or award is stayed pending appeal, the
8 department shall investigate.

9 (5) ~~(4) At any time during an investigation or following the~~
10 issuance of a complaint, the department may schedule a compliance
11 conference ~~pursuant to~~ **UNDER** section 92 of the administrative
12 procedures act of 1969, MCL 24.292. The conference may include the
13 applicant, licensee, registrant, or individual, the applicant's,
14 licensee's, registrant's, or individual's attorney, 1 member of the
15 department's staff, and any other individuals approved by the
16 department. One member of the appropriate board or task force who
17 is not a member of the disciplinary subcommittee with jurisdiction
18 over the matter may attend the conference and provide ~~such~~ **ANY**
19 assistance ~~as~~ **THAT IS** needed. At the compliance conference, the
20 department shall attempt to reach agreement. If an agreement is
21 reached, the department shall submit a written statement outlining
22 the terms of the agreement, or a stipulation and final order, if
23 applicable, or a request for dismissal to the appropriate
24 disciplinary subcommittee for approval. If the agreement or
25 stipulation and final order or request for dismissal is rejected by
26 the disciplinary subcommittee, or if no agreement is reached, **THE**
27 **DEPARTMENT SHALL SCHEDULE** a hearing before a ~~hearings examiner~~

1 ~~shall be scheduled.~~ **AN ADMINISTRATIVE LAW JUDGE.** A party shall not
 2 make a transcript of the compliance conference. All records and
 3 documents of a compliance conference held before a complaint is
 4 issued are subject to section 16238.

5 (6) ~~(5)~~ Within 90 days after an investigation is initiated
 6 under subsection (2), ~~or~~ (3), **OR (4)**, the department shall do 1 or
 7 more of the following:

8 (a) Issue a formal complaint.

9 (b) Conduct a compliance conference under subsection ~~(4)~~ **(5)**.

10 (c) Issue a summary suspension.

11 (d) Issue a cease and desist order.

12 (e) Dismiss the ~~complaint.~~ **ALLEGATION.**

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

16 (7) ~~(6)~~ Unless the person submitting the ~~an~~ **ALLEGATION** under
 17 subsection (1) otherwise agrees in writing, the department shall
 18 keep the identity of a person ~~submitting~~ **THAT SUBMITTED** the
 19 allegation confidential until disciplinary proceedings under this
 20 part are initiated against the subject of the allegation and the
 21 person ~~making~~ **THAT MADE** the allegation is required to testify in
 22 the proceedings.

23 (8) ~~(7)~~ The department shall serve a complaint ~~pursuant to~~
 24 **UNDER** section 16192. The department shall include in the complaint
 25 a notice that the applicant, licensee, registrant, or individual
 26 who is the subject of the complaint has 30 days from the date of
 27 receipt to respond in writing to the complaint.

1 (9) ~~(8)~~—The department shall treat the failure of ~~the~~^{AN}
2 applicant, licensee, registrant, or individual to respond to ~~the~~^A
3 complaint within the 30-day period set forth in subsection ~~(7)~~⁽⁸⁾
4 as an admission of the allegations contained in the complaint. The
5 department shall notify the appropriate disciplinary subcommittee
6 of the individual's failure to respond and shall forward a copy of
7 the complaint to that disciplinary subcommittee. The disciplinary
8 subcommittee may then impose an appropriate sanction under this
9 article or article 7.

10 (10) ALL OF THE FOLLOWING APPLY FOR PURPOSES OF SUBSECTION
11 (2) (A) :

12 (A) IF THE CHAIR OF THE BOARD OR TASK FORCE HAS A CONFLICT OF
13 INTEREST, HE OR SHE SHALL APPOINT ANOTHER MEMBER OF THE BOARD OR
14 TASK FORCE AS HIS OR HER DESIGNEE AND SHALL NOT PARTICIPATE IN THE
15 PANEL'S DECISION TO GRANT OR DENY AUTHORIZATION TO THE DEPARTMENT
16 TO INVESTIGATE AN INDIVIDUAL.

17 (B) A MEMBER OF THE BOARD OR TASK FORCE SHALL NOT PARTICIPATE
18 IN THE PANEL'S DECISION TO GRANT OR DENY AUTHORIZATION TO THE
19 DEPARTMENT TO INVESTIGATE AN INDIVIDUAL IF THAT MEMBER HAS A
20 CONFLICT OF INTEREST. IF THE CHAIR OF THE BOARD OR TASK FORCE IS
21 NOTIFIED THAT A MEMBER OF THE PANEL HAS A CONFLICT OF INTEREST, THE
22 CHAIR SHALL REMOVE HIM OR HER FROM THE PANEL AND APPOINT ANOTHER
23 MEMBER OF THE BOARD OR TASK FORCE TO SERVE ON THE PANEL.

24 (C) A MEMBER OF THE BOARD OR TASK FORCE WHO PARTICIPATES IN OR
25 IS REQUESTED TO PARTICIPATE IN THE PANEL'S DECISION TO GRANT OR
26 DENY AUTHORIZATION TO THE DEPARTMENT TO INVESTIGATE AN INDIVIDUAL
27 SHALL DISCLOSE TO THE DEPARTMENT, TO THE CHAIR OF THE BOARD OR TASK

1 FORCE, AND TO THE OTHER MEMBER OF THE PANEL A POTENTIAL CONFLICT OF
2 INTEREST BEFORE THOSE PARTICIPANTS MAKE THAT DECISION.

3 (11) AS USED IN SUBSECTION (10), "CONFLICT OF INTEREST" MEANS
4 ANY OF THE FOLLOWING:

5 (A) HAS A PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME OF THE
6 INVESTIGATION OF OR THE IMPOSITION OF DISCIPLINARY SANCTIONS ON THE
7 LICENSEE, REGISTRANT, OR APPLICANT FOR LICENSURE OR REGISTRATION.

8 (B) HAD A PAST OR HAS A PRESENT BUSINESS OR PROFESSIONAL
9 RELATIONSHIP WITH THE INDIVIDUAL THAT THE DEPARTMENT IS
10 INVESTIGATING OR REQUESTING AUTHORIZATION TO INVESTIGATE.

11 (C) HAS GIVEN EXPERT TESTIMONY IN A MEDICAL MALPRACTICE ACTION
12 AGAINST OR ON BEHALF OF THE INDIVIDUAL THAT THE DEPARTMENT IS
13 SEEKING AUTHORIZATION TO INVESTIGATE.

14 (D) ANY OTHER INTEREST OR RELATIONSHIP DESIGNATED AS A
15 CONFLICT OF INTEREST IN A RULE PROMULGATED OR ORDER ISSUED UNDER
16 THIS ACT.

17 Sec. 16232. (1) The department shall provide an opportunity
18 for a hearing in connection with the denial, reclassification,
19 limitation, reinstatement, suspension, or revocation of a license
20 or a proceeding to reprimand, fine, order ~~community service or~~
21 restitution, or place a licensee on probation.

22 (2) The department shall provide an opportunity for a hearing
23 in connection with the denial, limitation, suspension, revocation,
24 or reinstatement of a registration or a proceeding to reprimand,
25 fine, order ~~community service or~~ restitution, or place a registrant
26 on probation.

27 (3) A disciplinary subcommittee shall meet within 60 days

1 after receipt of the recommended findings of fact and conclusions
2 of law from a hearings examiner to impose a penalty.

3 (4) Only the department shall promulgate rules governing
4 hearings under this article or article 7 and related preliminary
5 proceedings.

6 Enacting section 1. This amendatory act takes effect July 1,
7 2014.