

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 167**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7303a, 16221, 16226, and 16231 (MCL 333.7303a,
333.16221, 333.16226, and 333.16231), section 7303a as amended by
2016 PA 379, section 16221 as amended by 2017 PA 75, section 16226
as amended by 2017 PA 81, and section 16231 as amended by 2014 PA
95, and by adding section 16221b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7303a. (1) A prescriber who holds a controlled substances
2 license may administer or dispense a controlled substance listed in
3 schedules 2 to 5 without a separate controlled substances license
4 for those activities.

5 **(2) EXCEPT AS OTHERWISE PROVIDED IN RULES PROMULGATED UNDER**

1 SECTION 16204E, BEGINNING MARCH 31, 2018, A LICENSED PRESCRIBER
2 SHALL NOT PRESCRIBE A CONTROLLED SUBSTANCE LISTED IN SCHEDULES 2 TO
3 5 UNLESS THE PRESCRIBER IS IN A BONA FIDE PRESCRIBER-PATIENT
4 RELATIONSHIP WITH THE PATIENT FOR WHOM THE CONTROLLED SUBSTANCE IS
5 BEING PRESCRIBED. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
6 IF A LICENSED PRESCRIBER PRESCRIBES A CONTROLLED SUBSTANCE UNDER
7 THIS SUBSECTION, THE PRESCRIBER SHALL PROVIDE FOLLOW-UP CARE TO THE
8 PATIENT TO MONITOR THE EFFICACY OF THE USE OF THE CONTROLLED
9 SUBSTANCE AS A TREATMENT OF THE PATIENT'S MEDICAL CONDITION. IF THE
10 LICENSED PRESCRIBER IS UNABLE TO PROVIDE FOLLOW-UP CARE, HE OR SHE
11 SHALL REFER THE PATIENT TO THE PATIENT'S PRIMARY CARE PROVIDER FOR
12 FOLLOW-UP CARE OR, IF THE PATIENT DOES NOT HAVE A PRIMARY CARE
13 PROVIDER, HE OR SHE SHALL REFER THE PATIENT TO ANOTHER LICENSED
14 PRESCRIBER WHO IS GEOGRAPHICALLY ACCESSIBLE TO THE PATIENT FOR
15 FOLLOW-UP CARE.

16 (3) ~~(2)~~—Before prescribing or dispensing a controlled
17 substance to a patient, a licensed prescriber shall ask the patient
18 about other controlled substances the patient may be using. The
19 prescriber shall record the patient's response in the patient's
20 medical or clinical record.

21 (4) BEGINNING JUNE 1, 2018, BEFORE PRESCRIBING OR DISPENSING
22 TO A PATIENT A CONTROLLED SUBSTANCE IN A QUANTITY THAT EXCEEDS A 3-
23 DAY SUPPLY, A LICENSED PRESCRIBER SHALL OBTAIN AND REVIEW A REPORT
24 CONCERNING THAT PATIENT FROM THE ELECTRONIC SYSTEM FOR MONITORING
25 SCHEDULE 2, 3, 4, AND 5 CONTROLLED SUBSTANCES ESTABLISHED UNDER
26 SECTION 7333A. THIS SUBSECTION DOES NOT APPLY UNDER ANY OF THE
27 FOLLOWING CIRCUMSTANCES:

1 (A) IF THE DISPENSING OCCURS IN A HOSPITAL OR FREESTANDING
2 SURGICAL OUTPATIENT FACILITY LICENSED UNDER ARTICLE 17 AND THE
3 CONTROLLED SUBSTANCE IS ADMINISTERED TO THE PATIENT IN THAT
4 HOSPITAL OR FACILITY.

5 (B) IF THE PATIENT IS AN ANIMAL AS THAT TERM IS DEFINED IN
6 SECTION 18802, THE DISPENSING OCCURS IN A VETERINARY HOSPITAL OR
7 CLINIC AND THE CONTROLLED SUBSTANCE IS ADMINISTERED TO THE PATIENT
8 IN THAT HOSPITAL OR CLINIC.

9 (C) IF THE CONTROLLED SUBSTANCE IS PRESCRIBED BY A LICENSED
10 PRESCRIBER WHO IS A VETERINARIAN AND THE CONTROLLED SUBSTANCE WILL
11 BE DISPENSED BY A PHARMACIST.

12 (5) BEGINNING JUNE 1, 2018, BEFORE PRESCRIBING OR DISPENSING A
13 CONTROLLED SUBSTANCE TO A PATIENT, A LICENSED PRESCRIBER SHALL
14 REGISTER WITH THE ELECTRONIC SYSTEM FOR MONITORING SCHEDULE 2, 3,
15 4, AND 5 CONTROLLED SUBSTANCES ESTABLISHED UNDER SECTION 7333A.

16 (6) ~~(3)~~—A licensed prescriber who dispenses controlled
17 substances shall maintain all of the following records separately
18 from other prescription records:

19 (a) All invoices and other acquisition records for each
20 controlled substance acquired by the prescriber for not less than 5
21 years after the date the prescriber acquires the controlled
22 substance.

23 (b) A log of all controlled substances dispensed by the
24 prescriber for not less than 5 years after the date the controlled
25 substance is dispensed.

26 (c) Records of all other dispositions of controlled substances
27 under the licensee's control for not less than 5 years after the

1 date of the disposition.

2 **(7)** ~~(4)~~—The requirement under section 7303 for a license is
3 waived in the following circumstances:

4 (a) When a controlled substance listed in schedules 2 to 5 is
5 administered on the order of a licensed prescriber by an individual
6 who is licensed under article 15 as a practical nurse or a
7 registered professional nurse.

8 (b) When methadone or a methadone congener is dispensed on the
9 order of a licensed prescriber in a methadone treatment program
10 licensed under article 6 or when a controlled substance listed in
11 schedules 2 to 5 is dispensed on the order of a licensed prescriber
12 in a hospice rendering emergency care services in a patient's home
13 as described in section 17746 by a registered professional nurse
14 licensed under article 15.

15 **(8) AS USED IN THIS SECTION:**

16 **(A) "BONA FIDE PRESCRIBER-PATIENT RELATIONSHIP" MEANS A**
17 **TREATMENT OR COUNSELING RELATIONSHIP BETWEEN A PRESCRIBER AND A**
18 **PATIENT IN WHICH BOTH OF THE FOLLOWING ARE PRESENT:**

19 **(i) THE PRESCRIBER HAS REVIEWED THE PATIENT'S RELEVANT MEDICAL**
20 **OR CLINICAL RECORDS AND COMPLETED A FULL ASSESSMENT OF THE**
21 **PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING**
22 **A RELEVANT MEDICAL EVALUATION OF THE PATIENT CONDUCTED IN PERSON OR**
23 **VIA TELEHEALTH.**

24 **(ii) THE PRESCRIBER HAS CREATED AND MAINTAINED RECORDS OF THE**
25 **PATIENT'S CONDITION IN ACCORDANCE WITH MEDICALLY ACCEPTED**
26 **STANDARDS.**

27 **(B) "TELEHEALTH" MEANS THAT TERM AS DEFINED IN SECTION 16283.**

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

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

20 (b) Personal disqualifications, consisting of 1 or more of the
21 following:

22 (i) Incompetence.

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

26 (iii) Mental or physical inability reasonably related to and
27 adversely affecting the licensee's or registrant's ability to

1 practice in a safe and competent manner.

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

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

10 (vi) Lack of good moral character.

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

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

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

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

1 of the final action.

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

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

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

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

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

19 (i) Fraud or deceit in obtaining or renewing a license or
20 registration.

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

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

24 (iv) Obtaining, possessing, or attempting to obtain or possess
25 a controlled substance as defined in section 7104 or a drug as
26 defined in section 7105 without lawful authority; or selling,
27 prescribing, giving away, or administering drugs for other than

1 lawful diagnostic or therapeutic purposes.

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

5 (i) False or misleading advertising.

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

9 (iii) Fraud or deceit in obtaining or attempting to obtain
10 third party reimbursement.

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

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

16 (ii) Betrayal of a professional confidence.

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

19 (iv) Either of the following:

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

25 (B) A referral by a physician for a designated health service
26 that violates 42 USC 1395nn or a regulation promulgated under that
27 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 he or she provides surgical services is not subject to this

1 subparagraph if a referred surgical procedure he or she performs in
2 the facility is not reimbursed at a minimum of the appropriate
3 Medicaid or Medicare outpatient fee schedule, including the
4 combined technical and professional components.

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

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

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

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

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

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

25 (j) Failure to pay an installment of an assessment levied
26 under the insurance code of 1956, 1956 PA 218, MCL 500.100 to
27 500.8302, within 60 days after notice by the appropriate board.

- 1 (k) A violation of section 17013 or 17513.
- 2 (l) Failure to meet 1 or more of the requirements for
- 3 licensure or registration under section 16174.
- 4 (m) A violation of section 17015, 17015a, 17017, 17515, or
- 5 17517.
- 6 (n) A violation of section 17016 or 17516.
- 7 (o) Failure to comply with section 9206(3).
- 8 (p) A violation of section 5654 or 5655.
- 9 (q) A violation of section 16274.
- 10 (r) A violation of section 17020 or 17520.
- 11 (s) A violation of the medical records access act, 2004 PA 47,
- 12 MCL 333.26261 to 333.26271.
- 13 (t) A violation of section 17764(2).
- 14 (u) Failure to comply with the terms of a practice agreement
- 15 described in section 17047(2) (a) or (b), 17547(2) (a) or (b), or
- 16 18047(2) (a) or (b).
- 17 **(V) A VIOLATION OF SECTION 7303A(2) .**
- 18 **(W) A VIOLATION OF SECTION 7303A(4) OR (5) .**
- 19 **(X) A VIOLATION OF SECTION 7303B.**
- 20 **SEC. 16221B. IF THE DEPARTMENT HAS A REASONABLE BASIS TO**
- 21 **BELIEVE THAT A LICENSEE HAS VIOLATED SECTION 7303A(4) OR (5) , THE**
- 22 **DEPARTMENT IS NOT REQUIRED TO INVESTIGATE UNDER SECTION 16221 OR**
- 23 **16231 AND MAY ISSUE A LETTER TO THE LICENSEE NOTIFYING THE LICENSEE**
- 24 **THAT HE OR SHE MAY BE IN VIOLATION OF SECTION 7303A(4) OR (5) . A**
- 25 **LETTER THAT IS ISSUED UNDER THIS SECTION IS NOT CONSIDERED**
- 26 **DISCIPLINE.**
- 27 Sec. 16226. (1) After finding the existence of 1 or more of

1 the grounds for disciplinary subcommittee action listed in section
 2 16221, a disciplinary subcommittee shall impose 1 or more of the
 3 following sanctions for each violation:

4	<u>Violations of Section 16221</u>	<u>Sanctions</u>
5	Subdivision (a), (b) (i),	Probation, limitation, denial,
6	(b) (ii), (b) (iii), (b) (iv),	suspension, revocation,
7	(b) (v), (b) (vi), (b) (vii),	permanent revocation,
8	(b) (ix), (b) (x), (b) (xi),	restitution, or fine.
9	or (b) (xii)	
10		
11	Subdivision (b) (viii)	Revocation, permanent revocation,
12		or denial.
13		
14	Subdivision (b) (xiii)	Permanent revocation
15		for a violation described in
16		subsection (5); otherwise,
17		probation, limitation, denial,
18		suspension, revocation,
19		restitution, or fine.
20		
21	Subdivision (b) (xiv)	Permanent revocation.
22		
23	Subdivision (c) (i)	Denial, revocation, suspension,
24		probation, limitation, or fine.
25		
26	Subdivision (c) (ii)	Denial, suspension, revocation,
27		restitution, or fine.

1		
2	Subdivision (c) (iii)	Probation, denial, suspension,
3		revocation, restitution, or fine.
4		
5	Subdivision (c) (iv)	Fine, probation, denial,
6	or (d) (iii)	suspension, revocation, permanent
7		revocation, or restitution.
8		
9	Subdivision (d) (i)	Reprimand, fine, probation,
10	or (d) (ii)	denial, or restitution.
11		
12	Subdivision (e) (i) ,	Reprimand, fine, probation,
13	(e) (iii) , (e) (iv) , (e) (v) ,	limitation, suspension,
14	(h) , or (s)	revocation, permanent revocation,
15		denial, or restitution.
16		
17	Subdivision (e) (ii)	Reprimand, probation, suspension,
18	or (i)	revocation, permanent
19		revocation, restitution,
20		denial, or fine.
21		
22	Subdivision (e) (vi)	Probation, suspension, revocation,
23	or (e) (vii)	limitation, denial,
24		restitution, or fine.
25		
26	Subdivision (f)	Reprimand, denial, limitation,
27		probation, or fine.

1		
2	Subdivision (g)	Reprimand or fine.
3		
4	Subdivision (j)	Suspension or fine.
5		
6	Subdivision (k), (p),	Reprimand, probation, suspension,
7	or (r)	revocation, permanent revocation,
8		or fine.
9		
10	Subdivision (l)	Reprimand, denial, or
11		limitation.
12		
13	Subdivision (m) or (o)	Denial, revocation, restitution,
14		probation, suspension,
15		limitation, reprimand, or fine.
16		
17	Subdivision (n)	Revocation or denial.
18		
19	Subdivision (q)	Revocation.
20		
21	Subdivision (t)	Revocation, permanent revocation,
22		fine, or restitution.
23		
24	Subdivision (u)	Denial, revocation, probation,
25		suspension, limitation, reprimand,
26		or fine.
27		

1 SUBDIVISION (V) OR (X) PROBATION, LIMITATION, DENIAL,
 2 FINE, SUSPENSION, REVOCATION, OR
 3 PERMANENT REVOCATION.
 4

5 SUBDIVISION (W) DENIAL, FINE, REPRIMAND,
 6 PROBATION, LIMITATION,
 7 SUSPENSION, REVOCATION, OR
 8 PERMANENT REVOCATION.

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

19 (3) A disciplinary subcommittee may impose a fine in an amount
 20 that does not exceed \$250,000.00 for a violation of section
 21 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
 22 at least \$25,000.00 if the violation of section 16221(a) or (b)
 23 results in the death of 1 or more patients.

24 (4) A disciplinary subcommittee may require a licensee or
 25 registrant or an applicant for licensure or registration who has
 26 violated this article, article 7, or article 8 or a rule
 27 promulgated under this article, article 7, or article 8 to

1 satisfactorily complete an educational program, a training program,
2 or a treatment program, a mental, physical, or professional
3 competence examination, or a combination of those programs and
4 examinations.

5 (5) A disciplinary subcommittee shall impose the sanction of
6 permanent revocation for a violation of section 16221(b) (xiii) if
7 the violation occurred while the licensee or registrant was acting
8 within the health profession for which he or she was licensed or
9 registered.

10 (6) Except as otherwise provided in subsection (5) and this
11 subsection, a disciplinary subcommittee shall not impose the
12 sanction of permanent revocation under this section without a
13 finding that the licensee or registrant engaged in a pattern of
14 intentional acts of fraud or deceit resulting in personal financial
15 gain to the licensee or registrant and harm to the health of
16 patients under the licensee's or registrant's care. This subsection
17 does not apply if a disciplinary subcommittee finds that a licensee
18 or registrant has violated section 16221(b) (xiv) .

19 Sec. 16231. (1) A person or governmental entity that believes
20 that a violation of this article, article 7, or article 8 or a rule
21 promulgated under this article, article 7, or article 8 exists may
22 submit an allegation of that fact to the department in writing.

23 (2) Subject to subsection (3) **AND SECTION 16221B**, if the
24 department determines after reviewing an application or an
25 allegation or a licensee's or registrant's file under section
26 16211(4) that there is a reasonable basis to believe that a
27 violation of this article, article 7, or article 8 or a rule

1 promulgated under this article, article 7, or article 8 exists, 1
2 of the following applies:

3 (a) Unless subdivision (b) applies, subject to subsection
4 (10), with the authorization of a panel of at least 3 board members
5 that includes the chair and at least 2 other members of the
6 appropriate board or task force designated by the chair, the
7 department shall investigate the alleged violation. Subject to
8 subsection (10), if the panel fails to grant or deny authorization
9 within 7 days after the board or task force receives a request for
10 authorization, the department shall investigate. If the department
11 believes that immediate jeopardy exists, the director or his or her
12 designee shall authorize an investigation and notify the board
13 chair of that investigation within 2 business days.

14 (b) If it reviews an allegation in writing under subsection
15 (1) that concerns a licensee or registrant whose record created
16 under section 16211 includes 1 substantiated allegation, or 2 or
17 more written investigated allegations, from 2 or more different
18 individuals or entities, received in the preceding 4 years, the
19 department shall investigate the alleged violation. Authorization
20 by a panel described in subdivision (a) is not required for an
21 investigation by the department under this subdivision.

22 (3) If a person or governmental entity submits a written
23 allegation under subsection (1) more than 4 years after the date of
24 the incident or activity that is the basis of the alleged
25 violation, the department may investigate the alleged violation in
26 the manner described in subsection (2) (a) or (b), as applicable,
27 but is not required to conduct an investigation under subsection

1 (2) (a) or (b) .

2 (4) If it receives information reported under section 16243(2)
3 that indicates 3 or more malpractice settlements, awards, or
4 judgments against a licensee in a period of 5 consecutive years or
5 1 or more malpractice settlements, awards, or judgments against a
6 licensee totaling more than \$200,000.00 in a period of 5
7 consecutive years, whether or not a judgment or award is stayed
8 pending appeal, the department shall investigate.

9 (5) At any time during an investigation or following the
10 issuance of a complaint, the department may schedule a compliance
11 conference under section 92 of the administrative procedures act of
12 1969, MCL 24.292. The conference may include the applicant,
13 licensee, registrant, or individual, the applicant's, licensee's,
14 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 any
19 assistance 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 an administrative law

1 judge. A party shall not make a transcript of the compliance
2 conference. All records and documents of a compliance conference
3 held before a complaint is issued are subject to section 16238.

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

7 (a) Issue a formal complaint.

8 (b) Conduct a compliance conference under subsection (5).

9 (c) Issue a summary suspension.

10 (d) Issue a cease and desist order.

11 (e) Dismiss the allegation.

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

15 (7) Unless the person submitting an allegation under
16 subsection (1) otherwise agrees in writing, the department shall
17 keep the identity of a person that submitted the allegation
18 confidential until disciplinary proceedings under this part are
19 initiated against the subject of the allegation and the person that
20 made the allegation is required to testify in the proceedings.

21 (8) The department shall serve a complaint under section
22 16192. The department shall include in the complaint a notice that
23 the applicant, licensee, registrant, or individual who is the
24 subject of the complaint has 30 days from the date of receipt to
25 respond in writing to the complaint.

26 (9) The department shall treat the failure of an applicant,
27 licensee, registrant, or individual to respond to a complaint

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

8 (10) All of the following apply for purposes of subsection
9 (2) (a):

10 (a) If the chair of the board or task force has a conflict of
11 interest, he or she shall appoint another member of the board or
12 task force as his or her designee and shall not participate in the
13 panel's decision to grant or deny authorization to the department
14 to investigate an individual.

15 (b) A member of the board or task force shall not participate
16 in the panel's decision to grant or deny authorization to the
17 department to investigate an individual if that member has a
18 conflict of interest. If the chair of the board or task force is
19 notified that a member of the panel has a conflict of interest, the
20 chair shall remove him or her from the panel and appoint another
21 member of the board or task force to serve on the panel.

22 (c) A member of the board or task force who participates in or
23 is requested to participate in the panel's decision to grant or
24 deny authorization to the department to investigate an individual
25 shall disclose to the department, to the chair of the board or task
26 force, and to the other member of the panel a potential conflict of
27 interest before those participants make that decision.

1 (11) As used in subsection (10), "conflict of interest" means
2 any of the following:

3 (a) Has a personal or financial interest in the outcome of the
4 investigation of or the imposition of disciplinary sanctions on the
5 licensee, registrant, or applicant for licensure or registration.

6 (b) Had a past or has a present business or professional
7 relationship with the individual that the department is
8 investigating or requesting authorization to investigate.

9 (c) Has given expert testimony in a medical malpractice action
10 against or on behalf of the individual that the department is
11 seeking authorization to investigate.

12 (d) Any other interest or relationship designated as a
13 conflict of interest in a rule promulgated or order issued under
14 this act.

15 Enacting section 1. This amendatory act does not take effect
16 unless Senate Bill No. 166 of the 99th Legislature is enacted into
17 law.