

# HOUSE BILL No. 5291

October 24, 1991; Introduced by Reps. Gubow, Bennane, Hunter, Barns, Gire, DeMars and Emerson and referred to the Committee on Public Health.

A bill to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 16268, 16269, 20169a, and 20169b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 16221 and 16226 of Act No. 368 of the  
2 Public Acts of 1978, as amended by Act No. 15 of the Public Acts  
3 of 1989, being sections 333.16221 and 333.16226 of the Michigan  
4 Compiled Laws, are amended and sections 16268, 16269, 20169a, and  
5 20169b are added to read as follows:

6       Sec. 16221. The department may investigate activities  
7 related to the practice of a health profession by a licensee, a  
8 registrant, or an applicant for licensure or registration. The

1 department may hold hearings, administer oaths, and order  
 2 relevant testimony to be taken and shall report its findings to  
 3 the appropriate board or appropriate task force. ~~The~~ A board  
 4 shall proceed under section 16226 if the board finds that any of  
 5 the following grounds exist:

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

12 (b) Personal disqualifications, consisting of any of the  
 13 following:

14 (i) Incompetence.

15 (ii) Substance abuse as defined in section 6107.

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

19 (iv) Declaration of mental incompetence by a court of compe-  
 20 tent jurisdiction.

21 (v) Conviction of a misdemeanor or felony reasonably related  
 22 to and adversely affecting the licensee's ability to practice in  
 23 a safe and competent manner. A certified copy of the court  
 24 record ~~shall be~~ IS conclusive evidence of the conviction.

25 (vi) Lack of good moral character.

26 (vii) Conviction of a criminal offense under sections ~~520a~~  
 27 ~~to 520f~~ 520B TO 520G of the Michigan penal code, Act No. 328 of

1 the Public Acts of 1931, being sections ~~750.520a to 750.520d~~  
2 750.520B TO 750.520G of the Michigan Compiled Laws. A certified  
3 copy of the court record ~~shall be~~ IS conclusive evidence of the  
4 conviction.

5 (viii) Conviction of a violation of section 492a of the  
6 Michigan penal code, Act No. 328 of the Public Acts of 1931,  
7 being section 750.492a of the Michigan Compiled Laws. A certi-  
8 fied copy of the court record ~~shall be~~ IS conclusive evidence  
9 of the conviction.

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

14 (c) Prohibited acts, consisting of any of the following:

15 (i) Fraud or deceit in obtaining or renewing a license.

16 (ii) Permitting the license to be used by an unauthorized  
17 person.

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

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

24 (d) Unethical business practices, consisting of any of the  
25 following:

26 (i) False or misleading advertising.

1       (ii) Dividing fees for referral of patients or accepting  
2 kickbacks on medical or surgical services, appliances, or  
3 medications purchased by or ~~in~~ ON behalf of patients.

4       (iii) Fraud or deceit in obtaining or attempting to obtain  
5 third party reimbursement.

6       (e) Unprofessional conduct, consisting of any of the  
7 following:

8       (i) Misrepresentation to a consumer or patient or in obtain-  
9 ing or attempting to obtain third party reimbursement in the  
10 course of professional practice.

11       (ii) Betrayal of a professional confidence.

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

14       (iv) Directing or requiring an individual to purchase or  
15 secure a drug, device, treatment, procedure, or service from  
16 another person, place, facility, or business in which the  
17 licensee has a financial interest.

18       (f) Failure to report a change of name or address within 30  
19 days after the change occurs.

20       (g) A violation, or aiding or abetting in a violation, of  
21 this article or of rules promulgated under this article.

22       (h) Failure to comply with a subpoena issued pursuant to  
23 this part.

24       (i) Failure to pay an installment of an assessment levied  
25 pursuant to section 2504 of the insurance code of 1956, Act  
26 No. 218 of the Public Acts of 1956, as amended, being section

1 500.2504 of the Michigan Compiled Laws, within 60 days after  
2 notice by the appropriate board.

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

4 (K) A VIOLATION OF SECTION 16268.

5 (L) A VIOLATION OF SECTION 16269.

6 Sec. 16226. (1) After finding the existence of 1 or more of  
7 the grounds for board action listed in section 16221, a board  
8 shall impose 1 or more of the following sanctions for each  
9 violation:

10 Violations of Section 16221

Sanctions

11 Subdivision (a),	Probation, limitation, denial,
12 (b)(ii),	suspension, revocation,
13 (b)(iv),	restitution, or fine.
14 (b)(vi), or	
15 (b)(vii)	
16 Subdivision (b)(viii)	Revocation.
17 Subdivision (b)(i),	Limitation, suspension,
18 (b)(iii),	revocation, denial,
19 (b)(v), or (b)(ix)	probation, restitution, or
20	fine.
21 Subdivision (c)(i)	Denial, revocation, suspension,
22	probation, limitation, or
23	fine.
24 Subdivision (c)(ii)	Denial, suspension, revocation,
25	restitution, or fine.

1	Subdivision (c)(iii)	Probation, denial, suspension,
2		revocation, restitution, or
3		fine.
4	Subdivision (c)(iv)	Fine, probation, denial,
5	or (d)(iii)	suspension, revocation,
6		or restitution.
7	Subdivision (d)(i)	Reprimand, fine, probation,
8	or (d)(ii)	or restitution.
9	Subdivision (e)(i)	Reprimand, fine, probation,
10		limitation, suspension, or
11		restitution.
12	Subdivision (e)(ii)	Reprimand, probation,
13	or (h)	suspension, restitution, or
14		fine.
15	Subdivision (e)(iii)	Reprimand, fine, probation,
16	or (e)(iv)	suspension, revocation, limita-
17		tion, or restitution.
18	Subdivision (f)	Reprimand or fine.
19	Subdivision (g), (K), OR (L)	Reprimand, probation, denial,
20		suspension, revocation, limita-
21		tion, restitution, or fine.
22	Subdivision (i)	Suspension or fine.
23	Subdivision (j)	Reprimand or fine.
24	(2) Determination of sanctions for violations under THIS	
25	section <del>+6226</del> shall be made by a board. If, during judicial	
26	review, a court holds that a sanction is unlawful under section	
27	106 of the administrative procedures act of 1969, Act No. 306 of	

1 the Public Acts of 1969, being section 24.306 of the Michigan  
2 Compiled Laws, the court shall state on the record the reasons  
3 for the holding and may remand the case to the board for further  
4 consideration.

5 (3) A board created under part 170 or 175 may impose a fine  
6 of up to, but not exceeding, \$250,000.00 for a violation of  
7 section 16221(a) or (b).

8 SEC. 16268. (1) AS USED IN THIS SECTION:

9 (A) "HBV" MEANS HEPATITIS B VIRUS.

10 (B) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

11 (C) "PATHOGEN" MEANS A MICROORGANISM THAT PRODUCES DISEASE.

12 (D) "POTENTIALLY INFECTIOUS MATERIAL" MEANS ANY OF THE FOL-  
13 LOWING BODY FLUIDS FROM A LIVING OR DEAD HUMAN:

14 (i) SEMEN.

15 (ii) VAGINAL SECRETIONS.

16 (iii) VOMIT.

17 (iv) FECES.

18 (v) PURULENT DRAINAGE.

19 (vi) AMNIOTIC FLUID.

20 (vii) CEREBROSPINAL FLUID.

21 (viii) PERITONEAL FLUID.

22 (ix) PLEURAL FLUID.

23 (x) PERICARDIAL FLUID.

24 (xi) SYNOVIAL FLUID.

25 (xii) URINE.

26 (xiii) SALIVA.

1 (xiv) SPUTUM.

2 (xv) SECRETIONS AND FLUIDS OTHER THAN THOSE LISTED IN  
3 SUBPARAGRAPHS (i) TO (xiv) THAT ARE CONTAMINATED WITH BLOOD.

4 (E) "UNIVERSAL PRECAUTIONS" MEANS A METHOD OF INFECTION CON-  
5 TROL AS DEFINED BY RULE OF THE DEPARTMENT OF PUBLIC HEALTH UNDER  
6 SUBSECTION (2) THAT TREATS ALL HUMAN BLOOD AND POTENTIALLY INFEC-  
7 TIOUS MATERIAL AS CAPABLE OF TRANSMITTING HIV, HBV, OR OTHER  
8 BLOOD-BORNE PATHOGENS.

9 (2) WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,  
10 THE DEPARTMENT OF PUBLIC HEALTH SHALL SUBMIT FOR PUBLIC HEARING  
11 UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969 RULES DEFINING  
12 UNIVERSAL PRECAUTIONS FOR PURPOSES OF THIS SECTION. THE DEPART-  
13 MENT OF PUBLIC HEALTH MAY PROMULGATE OTHER RULES TO IMPLEMENT  
14 THIS SECTION.

15 (3) WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,  
16 THE DEPARTMENT OF PUBLIC HEALTH SHALL PROVIDE TO EACH LICENSEE  
17 WHO MAY COME INTO DIRECT CONTACT WITH HUMAN BLOOD OR OTHER POTEN-  
18 Tially INFECTIOUS MATERIAL DURING THE PRACTICE OF HIS OR HER  
19 HEALTH PROFESSION A FORM DEVELOPED BY THE DEPARTMENT OF PUBLIC  
20 HEALTH THAT IDENTIFIES THE PROCESS BY WHICH AN INDIVIDUAL MAY  
21 FILE A COMPLAINT WITH THAT DEPARTMENT OF PUBLIC HEALTH OR THE  
22 DEPARTMENT OF LABOR, OR BOTH, FOR A LICENSEE'S OR A HEALTH  
23 FACILITY'S OR AGENCY'S FAILURE TO EMPLOY UNIVERSAL PRECAUTIONS AS  
24 REQUIRED UNDER THIS SECTION. A LICENSEE ENGAGED IN PRIVATE PRAC-  
25 TICE SHALL MAKE THE FORM AVAILABLE TO HIS OR HER PATIENTS BY DIS-  
26 PLAYING COPIES OF THE FORM IN THE PATIENT WAITING AREA OF THE  
27 LICENSEE'S PRIVATE PRACTICE OFFICE.



1 (4) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THE RULES  
2 PROMULGATED UNDER SUBSECTION (2), A LICENSEE SHALL DO EACH OF THE  
3 FOLLOWING:

4 (A) EMPLOY UNIVERSAL PRECAUTIONS.

5 (B) PROVIDE TRAINING, AT LEAST ONCE ANNUALLY, IN APPLICABLE  
6 UNIVERSAL PRECAUTIONS PROCEDURES TO EACH EMPLOYEE OR AGENT OF THE  
7 LICENSEE WHO MAY COME INTO DIRECT CONTACT WITH HUMAN BLOOD OR  
8 OTHER POTENTIALLY INFECTIOUS MATERIAL.

9 (5) AN INDIVIDUAL MAY FILE A COMPLAINT WITH THE DEPARTMENT  
10 OF PUBLIC HEALTH OR THE DEPARTMENT OF LABOR FOR A LICENSEE'S  
11 FAILURE TO EMPLOY UNIVERSAL PRECAUTIONS. THE DEPARTMENT OF  
12 PUBLIC HEALTH OR THE DEPARTMENT OF LABOR SHALL INVESTIGATE EACH  
13 COMPLAINT IT RECEIVES UNDER THIS SECTION, AND SHALL REPORT ITS  
14 FINDINGS TO THE APPROPRIATE BOARD.

15 (6) IN ADDITION TO THE ADMINISTRATIVE PENALTIES DESCRIBED IN  
16 SECTION 16226, AN INDIVIDUAL WHO VIOLATES THIS SECTION IS SUBJECT  
17 TO SECTION 16299.

18 SEC. 16269. (1) AS USED IN THIS SECTION:

19 (A) "EXPOSURE PRONE INVASIVE SURGICAL PROCEDURE" MEANS A  
20 SURGICAL PROCEDURE THAT INVOLVES THE DIGITAL PALPITATION OF A  
21 NEEDLE TIP IN A BODY CAVITY OR THE SIMULTANEOUS PRESENCE OF A  
22 LICENSEE'S FINGERS AND A NEEDLE OR OTHER SHARP INSTRUMENT OR  
23 OBJECT IN A POORLY VISUALIZED OR HIGHLY CONFINED ANATOMIC SITE.

24 (B) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

25 (C) "HIV INFECTED" MEANS THAT TERM AS DEFINED IN  
26 SECTION 5101.

1 (2) A LICENSEE WHO KNOWS THAT HE OR SHE IS HIV INFECTED  
2 SHALL NOT PERFORM AN EXPOSURE PRONE INVASIVE SURGICAL PROCEDURE  
3 EXCEPT WITH THE APPROVAL OF THE DIRECTOR OF PUBLIC HEALTH, PURSU-  
4 ANT TO THIS SECTION.

5 (3) A LICENSEE WHO KNOWS THAT HE OR SHE IS HIV INFECTED AND  
6 DESIRES TO CONTINUE TO PERFORM EXPOSURE PRONE INVASIVE SURGICAL  
7 PROCEDURES IMMEDIATELY SHALL NOTIFY THE DIRECTOR OF PUBLIC HEALTH  
8 OF THAT FACT IN WRITING.

9 (4) WITHIN 15 DAYS OF RECEIPT OF NOTICE UNDER  
10 SUBSECTION (3), THE DIRECTOR OF PUBLIC HEALTH SHALL APPOINT AN  
11 EXPERT REVIEW PANEL. THE DIRECTOR OF PUBLIC HEALTH SHALL APPOINT  
12 ALL OF THE FOLLOWING TO THE EXPERT REVIEW PANEL:

13 (A) THE LICENSEE'S PERSONAL PHYSICIAN.

14 (B) AN INFECTIOUS DISEASE SPECIALIST WITH EXPERTISE IN THE  
15 EPIDEMIOLOGY OF HIV TRANSMISSION.

16 (C) ONE OR MORE HEALTH PROFESSIONALS WITH EXPERTISE IN THE  
17 EXPOSURE PRONE INVASIVE SURGICAL PROCEDURES PERFORMED BY THE  
18 LICENSEE.

19 (D) A STATE OR LOCAL PUBLIC HEALTH OFFICIAL.

20 (E) A REPRESENTATIVE OF THE LICENSEE'S PROFESSIONAL ASSOCIA-  
21 TION OR COLLECTIVE BARGAINING AGENT.

22 (5) AS SOON AS PRACTICABLE AFTER APPOINTMENT UNDER  
23 SUBSECTION (4), THE EXPERT REVIEW PANEL SHALL SCHEDULE A HEARING  
24 AND NOTIFY THE LICENSEE IN WRITING OF THE DATE, TIME, AND LOCA-  
25 TION OF THE HEARING. THE EXPERT REVIEW PANEL SHALL MAKE A FIND-  
26 ING AT THE HEARING AS TO WHETHER OR NOT THE LICENSEE COULD SAFELY  
27 PERFORM 1 OR MORE TYPES OF EXPOSURE PRONE INVASIVE SURGICAL

1 PROCEDURES. IF THE EXPERT REVIEW PANEL FINDS THAT THE LICENSEE  
2 COULD SAFELY PERFORM 1 OR MORE TYPES OF EXPOSURE PRONE INVASIVE  
3 SURGICAL PROCEDURES, THEN THE EXPERT REVIEW PANEL ALSO SHALL LIST  
4 THE SPECIFIC PROCEDURES ALLOWED AND DESCRIBE THE CIRCUMSTANCES  
5 UNDER WHICH THE LICENSEE IS TO PERFORM THOSE PROCEDURES. IF THE  
6 EXPERT REVIEW PANEL FINDS THAT THE LICENSEE CANNOT SAFELY PERFORM  
7 1 OR MORE EXPOSURE PRONE INVASIVE SURGICAL PROCEDURES, THE EXPERT  
8 REVIEW PANEL SHALL LIST THE SPECIFIC TYPES OF PROCEDURES  
9 PROHIBITED. THE EXPERT REVIEW PANEL SHALL TRANSMIT ITS FINDINGS  
10 TO THE DIRECTOR OF PUBLIC HEALTH AS A PROPOSED DECISION. THE  
11 DIRECTOR OF PUBLIC HEALTH MAY ACCEPT, REJECT, OR MODIFY, IN WHOLE  
12 OR IN PART, THE PROPOSED DECISION OF THE EXPERT REVIEW PANEL.  
13 THE DIRECTOR OF PUBLIC HEALTH SHALL MAKE THE FINAL DECISION UNDER  
14 THIS SUBSECTION.

15 (6) IF THE DIRECTOR OF PUBLIC HEALTH ALLOWS A LICENSEE TO  
16 PERFORM 1 OR MORE TYPES OF EXPOSURE PRONE INVASIVE SURGICAL PRO-  
17 CEDURES UNDER SUBSECTION (5), THE LICENSEE SHALL NOTIFY EACH  
18 PATIENT WHO CONSULTS THE LICENSEE REGARDING 1 OR MORE OF THE PRO-  
19 CEDURES, AT THE TIME OF INITIAL CONSULTATION, THAT THE LICENSEE  
20 IS HIV INFECTED.

21 (7) INFORMATION PERTAINING TO A LICENSEE'S HIV INFECTED  
22 STATUS OBTAINED BY AN EXPERT REVIEW PANEL DURING A HEARING HELD  
23 UNDER SUBSECTION (5) IS CONFIDENTIAL AND IS SUBJECT TO  
24 SECTION 5131. A HEARING HELD UNDER SUBSECTION (5) IS NOT OPEN TO  
25 THE PUBLIC.

26 (8) THE MEMBERS OF AN EXPERT REVIEW PANEL APPOINTED UNDER  
27 THIS SECTION SHALL SERVE ONLY UNTIL A PROPOSED DECISION IS MADE

1 UNDER SUBSECTION (5), SUBJECT TO A HEARING OR A REHEARING, IF  
2 ANY.

3 (9) THE DEPARTMENT MAY PROMULGATE RULES TO IMPLEMENT THIS  
4 SECTION.

5 (10) THE DIRECTOR OF PUBLIC HEALTH SHALL TRANSMIT A COPY OF  
6 THE PROPOSED DECISION TO THE APPROPRIATE BOARD.

7 SEC. 20169A. (1) AS USED IN THIS SECTION:

8 (A) "HBV" MEANS HEPATITIS B VIRUS.

9 (B) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

10 (C) "PATHOGEN" MEANS A MICROORGANISM THAT PRODUCES DISEASE.

11 (D) "POTENTIALLY INFECTIOUS MATERIAL" MEANS HUMAN SEMEN,  
12 VAGINAL SECRETIONS, BODY FLUIDS CONTAMINATED WITH BLOOD, AND  
13 OTHER MATERIAL IDENTIFIED AS POTENTIALLY INFECTIOUS BY RULE OF  
14 THE DEPARTMENT OF PUBLIC HEALTH.

15 (E) "UNIVERSAL PRECAUTIONS" MEANS A METHOD OF INFECTION CON-  
16 TROL AS DEFINED BY RULE OF THE DEPARTMENT PROMULGATED UNDER  
17 SECTION 16268 THAT TREATS ALL HUMAN BLOOD AND POTENTIALLY INFEC-  
18 TIOUS MATERIAL AS CAPABLE OF TRANSMITTING HIV, HBV, OR OTHER  
19 BLOOD-BORNE PATHOGENS.

20 (2) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THE RULES  
21 PROMULGATED UNDER SECTION 16268, A HEALTH FACILITY OR AGENCY  
22 LICENSED UNDER THIS ARTICLE SHALL DO EACH OF THE FOLLOWING:

23 (A) REQUIRE ITS EMPLOYEES AND AGENTS WHO MAY COME INTO  
24 DIRECT CONTACT WITH HUMAN BLOOD OR OTHER POTENTIALLY INFECTIOUS  
25 MATERIAL TO EMPLOY UNIVERSAL PRECAUTIONS.

26 (B) PROVIDE TRAINING, AT LEAST ONCE ANNUALLY, IN APPLICABLE  
27 UNIVERSAL PRECAUTIONS PROCEDURES TO EACH EMPLOYEE OR AGENT WHO

1 MAY COME INTO DIRECT CONTACT WITH HUMAN BLOOD OR OTHER  
2 POTENTIALLY INFECTIOUS MATERIAL.

3 (3) A PERSON MAY FILE A COMPLAINT WITH THE DEPARTMENT FOR A  
4 HEALTH FACILITY'S OR AGENCY'S FAILURE TO EMPLOY UNIVERSAL PRECAU-  
5 TIONS AS REQUIRED UNDER THIS SECTION.

6 (4) THE DEPARTMENT SHALL INVESTIGATE EACH COMPLAINT IT  
7 RECEIVES UNDER THIS SECTION. IN ADDITION TO IMPOSING 1 OR MORE  
8 SANCTIONS IDENTIFIED IN SECTION 20165 FOR A VIOLATION OF THIS  
9 ARTICLE, THE DEPARTMENT MAY IMPOSE A FINE FOR A VIOLATION OF THIS  
10 SECTION.

11 (5) THE DEPARTMENT MAY PROMULGATE RULES TO IMPLEMENT THIS  
12 SECTION.

13 SEC. 20169B. A HEALTH FACILITY OR AGENCY SHALL ACCOMMODATE  
14 AND PROVIDE OPPORTUNITIES TO CONTINUE APPROPRIATE PATIENT CARE  
15 ACTIVITIES TO HEALTHCARE WORKERS WHOSE PRACTICES ARE MODIFIED  
16 BECAUSE OF THEIR HIV OR HBV INFECTION STATUS PURSUANT TO THE  
17 AMERICANS WITH DISABILITIES ACT OF 1990, PUBLIC LAW NO. 101-336  
18 104 STAT. 327 AND THE MICHIGAN HANDICAPPER'S CIVIL RIGHTS ACT,  
19 ACT NO. 220 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 37.1101 TO  
20 37.1607 OF THE MICHIGAN COMPILED LAWS. A HEALTH FACILITY OR  
21 AGENCY SHALL ENSURE THAT CAREER COUNSELING AND JOB REASSIGNMENT  
22 PROVIDED TO AN HIV OR HBV INFECTED HEALTHCARE WORKER PROMOTES THE  
23 CONTINUED USE OF THE HEALTHCARE WORKER'S TALENTS, KNOWLEDGE, AND  
24 SKILLS. A HEALTH FACILITY OR AGENCY SHALL PERIODICALLY REEVALU-  
25 ATE EACH HEALTHCARE WORKER WHOSE PRACTICE IS MODIFIED BECAUSE OF  
26 HBV INFECTION TO DETERMINE WHETHER THE HEALTHCARE WORKER'S HBV

1 INFECTED STATUS CHANGES DUE TO RESOLUTION OF INFECTION OR AS A  
2 RESULT OF TREATMENT.