

# HOUSE BILL No. 5904

June 9, 1992, Introduced by Rep. DeBeaussaert and referred to the Committee on Social Services and Youth.

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.

## 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 to read as follows:

5       Sec. 16221. (1) The department may investigate activities  
6 related to the practice of a health profession by a licensee, a  
7 registrant, or an applicant for licensure or registration. The  
8 department may hold hearings, administer oaths, and order

1 relevant testimony to be taken and shall report its findings to  
2 the appropriate board or appropriate task force.

3 (2) The board shall proceed under section 16226 if the board  
4 finds that any of the following grounds exist:

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

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

13 (i) Incompetence.

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

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

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

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

24 (vi) Lack of good moral character.

25 (vii) Conviction of a criminal offense under sections ~~520a~~  
26 ~~to 520f~~ 520B, 520C, 520D, 520E, OR 520G of the Michigan penal  
27 code, Act No. 328 of the Public Acts of 1931, being sections

1 ~~750.520a to 750.520f~~ 750.520B, 750.520C, 750.520D, 750.520E,  
2 AND 750.520G of the Michigan Compiled Laws. A certified copy of  
3 the court record shall be conclusive evidence of the conviction.

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

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

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

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

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

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

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

23 (v) A FINDING OF SUPPORT ARREARAGE.

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

8 <u>Violations of Section 16221</u>	<u>Sanctions</u>
9 Subdivision (a),	Probation, limitation, denial,
10 (b)(ii),	suspension, revocation,
11 (b)(iv),	restitution, or fine.
12 (b)(vi), or	
13 (b)(vii)	
14 Subdivision (b)(viii)	Revocation.
15 Subdivision (b)(i),	Limitation, suspension,
16 (b)(iii),	revocation, denial,
17 (b)(v), or (b)(ix)	probation, restitution, or
18	fine.
19 Subdivision (c)(i)	Denial, revocation, suspension,
20	probation, limitation, or
21	fine.
22 Subdivision (c)(ii)	Denial, suspension, revocation,
23	restitution, or fine.
24 Subdivision (c)(iii)	Probation, denial, suspension,
25	revocation, restitution, or
26	fine.

1 Subdivision (c)(iv)	Fine, probation, denial,
2 or (d)(iii)	suspension, revocation,
3	or restitution.
4 SUBDIVISION (C)(v)	SUSPENSION.
5 Subdivision (d)(i)	Reprimand, fine, probation,
6 or (d)(ii)	or restitution.
7 Subdivision (e)(i)	Reprimand, fine, probation,
8	limitation, suspension, or
9	restitution.
10 Subdivision (e)(ii)	Reprimand, probation,
11 or (h)	suspension, restitution, or
12	fine.
13 Subdivision (e)(iii)	Reprimand, fine, probation,
14 or (e)(iv)	suspension, revocation, limita-
15	tion, or restitution.
16 Subdivision (f)	Reprimand or fine.
17 Subdivision (g)	Reprimand, probation, denial,
18	suspension, revocation, limita-
19	tion, restitution, or fine.
20 Subdivision (i)	Suspension or fine.
21 Subdivision (j)	Reprimand or fine.
22 (2) Determination of sanctions for violations under section	
23 16226 shall be made by a board. If, during judicial review, a	
24 court holds that a sanction is unlawful under section 106 of the	
25 administrative procedures act of 1969, Act No. 306 of the Public	
26 Acts of 1969, being section 24.306 of the Michigan Compiled Laws,	

1 the court shall state on the record the reasons for the holding  
2 and may remand the case to the board for further consideration.

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

6 (4) SUBJECT TO SUBSECTION (5), UPON RECEIPT OF A NOTICE FROM  
7 THE OFFICE OF THE FRIEND OF THE COURT STATING THAT AN INDIVIDUAL  
8 LICENSEE IS AT LEAST 6 MONTHS IN ARREARS OF SUPPORT, A BOARD  
9 SHALL SUSPEND THE LICENSE OR REGISTRATION OF AN INDIVIDUAL AFTER  
10 ALL OF THE FOLLOWING OCCUR:

11 (A) THE DEPARTMENT SENDS A NOTICE FOR A HEARING TO BE SCHED-  
12 ULED NOT LESS THAN 30 DAYS AFTER THE DATE THE NOTICE IS SENT TO  
13 THE INDIVIDUAL'S ADDRESS AS INDICATED IN THE DEPARTMENT'S  
14 RECORDS.

15 (B) THE LICENSEE FAILS TO PRESENT PROOF ACCEPTABLE TO THE  
16 BOARD THAT THE ARREARAGE HAS BEEN PAID.

17 (5) IF AT THE HEARING THE BOARD DETERMINES THAT EXTREME  
18 HARDSHIP TO THE INDIVIDUAL OR PERSONS THE INDIVIDUAL SERVES WOULD  
19 BE CREATED BY THE SUSPENSION, THE BOARD SHALL NOT SUSPEND THE  
20 LICENSE OR REGISTRATION AND SHALL CONDITION THE HOLDING OF THE  
21 LICENSE OR REGISTRATION UPON COMPLIANCE WITH THE SUPPORT ORDER.

22 (6) THE ONLY ISSUES TO BE CONSIDERED BY THE BOARD ARE  
23 WHETHER THE INDIVIDUAL IS THE HOLDER OF A LICENSE OR REGISTRATION  
24 AND WHETHER THE INDIVIDUAL HAS PRESENTED PROOF ACCEPTABLE TO THE  
25 BOARD THAT ARREARAGE HAS BEEN PAID.