

Act No. 87  
Public Acts of 1993  
Approved by the Governor  
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**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

**Introduced by Senators Ehlers, Pridnia, Geake, McManus, Koivisto, Hart, Kelly, Conroy, Vaughn,  
Stabenow, Miller and Gougeon**

# **ENROLLED SENATE BILL No. 343**

AN ACT to amend sections 16241, 16244, and 16245 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," section 16244 as amended by Act No. 174 of the Public Acts of 1986 and section 16245 as amended by Act No. 462 of the Public Acts of 1988, being sections 333.16241, 333.16244, and 333.16245 of the Michigan Compiled Laws; to add sections 16216, 16237, 16315; to repeal certain parts of the act; and to repeal certain acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 16241, 16244, and 16245 of Act No. 368 of the Public Acts of 1978, section 16244 as amended by Act No. 174 of the Public Acts of 1986 and section 16245 as amended by Act No. 462 of the Public Acts of 1988, being sections 333.16241, 333.16244, and 333.16245 of the Michigan Compiled Laws, are amended and sections 16216, 16237, and 16315 are added to read as follows:

Sec. 16216. (1) The chair of each board or task force shall appoint 1 or more disciplinary subcommittees for that board or task force. A disciplinary subcommittee for a board or task force shall consist of 2 public members and 3 professional members from the board or task force. The chair of a board or task force shall not serve as a member of a disciplinary subcommittee.

(2) A final decision of the disciplinary subcommittee finding a violation of this article or article 7 shall be by a majority vote of the members appointed and serving on the disciplinary subcommittee.

(3) A final decision of the disciplinary subcommittee imposing a sanction under this article or article 7 or a final decision of the disciplinary subcommittee other than a final decision described in subsection (2) requires a majority vote

of the members appointed and serving on the disciplinary subcommittee with an affirmative vote by at least 1 public member.

(4) The chairperson of each disciplinary subcommittee shall be a public member and shall be appointed by the chair of the board or task force.

Sec. 16237. (1) In imposing a penalty under section 16232(3), a disciplinary subcommittee shall review the recommended findings of fact and conclusions of law of the hearings examiner.

(2) The department of attorney general may assign an independent special assistant attorney general who is under contract to the department of attorney general and is not a member of the state classified civil service to advise the disciplinary subcommittees on matters of law and provide other legal assistance as necessary. A special assistant attorney general assigned to the disciplinary subcommittees under this subsection shall not be the same individual who represented the department before a hearings examiner under section 16231a(4).

(3) In reviewing the recommended findings of fact and conclusions of law of the hearings examiner and the record of the hearing, a disciplinary subcommittee may request the hearings examiner to take additional testimony or evidence on a specific issue or may revise the recommended findings of fact and conclusions of law as determined necessary by the disciplinary subcommittee, or both. A disciplinary subcommittee shall not conduct its own investigation or take its own additional testimony or evidence under this subsection.

(4) If a disciplinary subcommittee finds that a preponderance of the evidence supports the recommended findings of fact and conclusions of law of the hearings examiner indicating that grounds exist for disciplinary action, the disciplinary subcommittee shall impose an appropriate sanction under this article or article 7, or both. If the disciplinary subcommittee finds that a preponderance of the evidence does not support the findings of fact and conclusions of law of the hearings examiner indicating that grounds exist for disciplinary action, the disciplinary subcommittee shall dismiss the complaint. A disciplinary subcommittee shall report final action taken by it in writing to the appropriate board or task force.

(5) The compliance conference, the hearing before the hearings examiner, and final disciplinary subcommittee action shall be completed within 1 year after the department initiates an investigation under section 16231(2) or (3). The department shall note in its annual report any exceptions to the 1-year requirement.

(6) A final decision of a disciplinary subcommittee rendered after the effective date of the amendatory act that added this section but before January 1, 1995 may be appealed only in the manner provided in sections 103 to 106 of the administrative procedures act of 1969, being sections 24.303 to 24.306 of the Michigan Compiled Laws. A final decision of a disciplinary subcommittee rendered on or after January 1, 1995 may be appealed only to the court of appeals. An appeal filed under this subsection is by right.

Sec. 16241. (1) After administrative disciplinary action is final, the department of commerce shall publish a list of the names and addresses of disciplined individuals. The department of commerce shall indicate on the list that a final administrative disciplinary action is subject to judicial review. The department of commerce shall report disciplinary action to the department of public health, the commissioner of insurance, the state and federal agencies responsible for fiscal administration of federal health care programs, and the appropriate professional association.

(2) Once each calendar year, the department of commerce shall transmit to the library of Michigan sufficient copies of a compilation of the lists required under subsection (1) for the immediately preceding 3 calendar years. The library of Michigan shall distribute the compilation to each depository library in the state. The department of commerce also shall transmit the compilation to each county clerk in the state once each calendar year.

(3) The department of public health shall report the disciplinary actions to appropriate licensed health facilities and agencies. The commissioner of insurance shall report the disciplinary actions received from the department of commerce to insurance carriers providing professional liability insurance.

(4) In case of a summary suspension of a license under section 16233(5), the department of commerce shall report the name and address of the individual whose license has been suspended to the department of public health, the commissioner of insurance, the state and federal agencies responsible for fiscal administration of federal health care programs, and the appropriate professional association.

(5) A licensee or registrant whose license or registration is revoked or suspended under this article shall give notice of the revocation or suspension to each patient who contacts the licensee or registrant for professional services during the term of the revocation or suspension. The notice required under this subsection may be given orally and shall be given at the time of contact.

(6) A licensee or registrant whose license or registration is revoked or is suspended for more than 60 days under this article shall notify in writing each patient or client to whom the licensee or registrant rendered professional services in the licensee's or registrant's private practice during the 120 days immediately preceding the date of the final order imposing the revocation or suspension and to each individual who is already scheduled for professional services during the first 120 days after the date of the final order imposing the revocation or suspension. The notice shall be on

a form provided by the licensee's or registrant's board or task force and shall state, at a minimum, the name, address, and license or registration number of the licensee or registrant, the fact that his or her license or registration has been revoked or suspended, the effective date of the revocation or suspension, and the term of the revocation or suspension. Each board or task force shall develop a notice form that meets at least the minimum requirements of this subsection. The licensee or registrant shall send the notice to each patient or client to whom the licensee or registrant rendered professional services in the licensee's or registrant's private practice during the 120 days immediately preceding the date of the final order imposing the revocation or suspension within 30 days after the date of the final order imposing the revocation or suspension and shall simultaneously transmit a copy of the notice to the department. The licensee or registrant orally shall notify each individual who contacts the licensee or registrant for professional services during the first 120 days after the date of the final order imposing the revocation or suspension. The licensee or registrant shall also provide a copy of the notice within 10 days after the date of the final order imposing the revocation or suspension to his or her employer, if any, and to each hospital, if any, in which the licensee or registrant is admitted to practice.

(7) A licensee or registrant who is reprimanded, fined, placed on probation, or ordered to pay restitution under this article or an applicant whose application for licensure or registration is denied under this article shall notify his or her employer, if any, and each hospital, if any, in which he or she is admitted to practice, in the same manner as provided for notice of revocation or suspension to an employer or hospital under subsection (6), within 10 days after the date of the final order imposing the sanction.

(8) The department of commerce annually shall report to the legislature and to each board and task force on disciplinary actions taken under this article and article 7. The report shall contain, at a minimum, all of the following information:

(a) Investigations conducted, complaints issued, and settlements reached by the department of commerce, separated out by type of complaint and health profession.

(b) Investigations and complaints closed or dismissed.

(c) Actions taken by each disciplinary subcommittee, separated out by type of complaint, health profession, and final order issued.

(d) Recommendations by boards and task forces.

(e) The number of extensions and delays granted by the department that were in excess of the time limits required under this article for each phase of the disciplinary process, and the types of cases for which the extensions and delays were granted.

(9) Within 2 years after the effective date of the amendatory act that added this subsection, the department of commerce shall submit a public report to the legislature on the effectiveness of the amendatory act that added this subsection. The report shall include a review and evaluation of the disciplinary process and the reporting requirements of this article and article 17 and recommended administrative or statutory changes, if any.

Sec. 16244. (1) A person, including a state or county health professional organization, a committee of the organization, or an employee or officer of the organization furnishing information to, or on behalf of, the organization, acting in good faith who makes a report; assists in originating, investigating, or preparing a report; or assists a board or task force, a disciplinary subcommittee, a hearings examiner, the committee, or the department in carrying out its duties under this article is immune from civil or criminal liability including, but not limited to, liability in a civil action for damages that might otherwise be incurred thereby and is protected under the whistleblowers' protection act, Act No. 469 of the Public Acts of 1980, being sections 15.361 to 15.369 of the Michigan Compiled Laws. A person making or assisting in making a report, or assisting a board or task force, a hearings examiner, the committee, or the department, is presumed to have acted in good faith. The immunity from civil or criminal liability granted under this subsection extends only to acts done pursuant to this article or section 21513(e).

(2) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Michigan Compiled Laws, does not apply in an investigation or proceeding by a board or task force, a disciplinary subcommittee, a hearings examiner, the committee, or the department acting within the scope of its authorization. Unless expressly waived by the individual to whom the information pertains, the information obtained is confidential and shall not be disclosed except to the extent necessary for the proper functioning of a board or task force, a disciplinary subcommittee, the committee, or the department. Except as otherwise provided in this subsection, a person shall not use or disseminate the information except pursuant to a valid court order.

Sec. 16245. (1) An individual whose license is limited, suspended, or revoked under this part may apply to his or her board or task force for a reinstatement of a revoked or suspended license or reclassification of a limited license pursuant to section 16247 or 16249.

(2) An individual whose registration is suspended or revoked under this part may apply to his or her board for a reinstatement of a suspended or revoked registration pursuant to section 16248.

(3) A board or task force shall reinstate a license or registration suspended for grounds stated in section 16221(i) upon payment of the installment.

(4) Except as otherwise provided in this subsection, in case of a revoked license or registration, an applicant shall not apply for reinstatement before the expiration of 3 years after the effective date of the revocation. In case of a license or registration that was revoked for a violation of section 16221(b)(vii), a violation of section 16221(c)(iv) consisting of a felony conviction, or any other felony conviction involving a controlled substance, an applicant shall not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The department shall return an application for reinstatement received before the expiration of the applicable time period under this subsection.

(5) The department shall provide an opportunity for a hearing before final rejection of an application for reinstatement.

(6) Based upon the recommendation of the disciplinary subcommittee for each health profession, the department shall adopt guidelines to establish specific criteria to be met by an applicant for reinstatement under this article or article 7. The criteria may include corrective measures or remedial education as a condition of reinstatement. If a board or task force, in reinstating a license or registration, deviates from the guidelines adopted under this subsection, the board or task force shall state the reason for the deviation on the record.

(7) An individual who seeks reinstatement or reclassification of a license or registration pursuant to this section shall pay the application processing fee as a reinstatement or reclassification fee. If approved for reinstatement or reclassification, the individual shall pay the per year license or registration fee for the applicable license or registration period.

Sec. 16315. (1) The health professions regulatory fund is established in the state treasury. Except as otherwise provided in subsection (6), the state treasurer shall credit the fees collected under sections 16319 to 16349 to the health professions regulatory fund. The money in the health professions regulatory fund shall be expended only as provided in subsection (5).

(2) The state treasurer shall direct the investment of the health professions regulatory fund. Interest and earnings from health professions regulatory fund investment shall be credited to the health professions regulatory fund.

(3) The unencumbered balance in the health professions regulatory fund at the close of the fiscal year shall remain in the health professions regulatory fund and shall not revert to the general fund.

(4) The health professions regulatory fund may receive gifts and devises and other money as provided by law.

(5) The department of commerce shall use the health professions regulatory fund only to carry out its powers and duties under this article and article 7 including, but not limited to, reimbursing the department of attorney general for the reasonable cost of services provided to the department of commerce under this article and article 7.

(6) The nurse professional fund is established in the state treasury. Of the money that is attributable to per-year license fees collected under section 16327, the state treasurer shall credit \$2.00 of each individual annual license fee collected to the nurse professional fund. The money in the nurse professional fund shall be expended only as provided in subsection (9).

(7) The state treasurer shall direct the investment of the nurse professional fund, and shall credit interest and earnings from the investment to the nurse professional fund. The nurse professional fund may receive gifts and devises and other money as provided by law.

(8) The unencumbered balance in the nurse professional fund at the close of the fiscal year shall remain in the nurse professional fund and shall not revert to the general fund.

(9) The department shall use the nurse professional fund each fiscal year only as follows:

(a) The department may use not more than 1/3 of the nurse professional fund for the establishment and operation of a nurse continuing education program.

(b) The department may use not more than 1/3 of the nurse professional fund to perform research and development studies to promote and advance the nursing profession.

(c) The department shall use not less than 1/3 of the nurse professional fund to establish and operate a nursing scholarship program.

(10) Within 2 years after the effective date of this section, the department shall promulgate rules to implement subsection (9) including, but not limited to, rules governing the continuing education program and rules to establish eligibility criteria for participation in the nursing scholarship program, application procedures, and maximum amounts for individual scholarships.

Section 2. (1) Sections 16216 and 16237 of Act No. 368 of the Public Acts of 1978, as added by Enrolled House Bill No. 4295 of 1993, and section 16315 of Act No. 368 of the Public Acts of 1978, as added by Enrolled House Bill No. 4076 of 1993, are repealed.

(2) Sections 51, 53, 54, 55, 57, 59, 61, 63, 65, 67, 68, 69, 71, 73, 74, and 75 of Act No. 152 of the Public Acts of 1979, being sections 338.2251, 338.2253, 338.2254, 338.2255, 338.2257, 338.2259, 338.2261, 338.2263, 338.2265, 338.2267, 338.2268, 338.2269, 338.2271, 338.2273, 338.2274, and 338.2275 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) House Bill No. 4076.
- (b) House Bill No. 4295.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved -----

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Governor.