



# HOUSE BILL No. 4328

February 23, 1993, Introduced by Reps. Jondahl, Gubow, Gire, Pitoniak, Scott and Hollister and referred to the Committee on Mental 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.

## 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. 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. ~~The~~ A board  
3 shall proceed under section 16226 if the board finds that any of  
4 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 THAT 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~~ IS 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 TO 520G of the Michigan penal code, Act No. 328 of  
27 the Public Acts of 1931, being sections ~~750.520a to 750.520f~~

1 750.520B TO 750.520G of the Michigan Compiled Laws. A certified  
2 copy of the court record ~~shall be~~ IS conclusive evidence of the  
3 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~~ IS conclusive evidence  
8 of the 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~~ IS 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 (d) Unethical business practices, consisting of any of the  
24 following:

25 (i) False or misleading advertising.

26 (ii) Dividing fees for referral of patients or accepting  
27 kickbacks on medical or surgical services, appliances, or

1 medications OR PSYCHIATRIC OR OTHER MENTAL HEALTH SERVICES  
2 purchased by or ~~in~~ ON behalf of patients.

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

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

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

10 (ii) Betrayal of a professional confidence.

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

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

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

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

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

23 (i) Failure to pay an installment of an assessment levied  
24 pursuant to section 2504 of the insurance code of 1956, Act  
25 No. 218 of the Public Acts of 1956, as amended, being section  
26 500.2504 of the Michigan Compiled Laws, within 60 days after  
27 notice by the appropriate board.

(j) A violation of section 17013 or 17513.

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

<u>Violations of Section 16221</u>	<u>Sanctions</u>
Subdivision (a),	Probation, limitation, denial,
(b)(ii),	suspension, revocation,
(b)(iv),	restitution, or fine.
(b)(vi), or	
(b)(vii)	
Subdivision (b)(viii)	Revocation.
Subdivision (b)(i),	Limitation, suspension,
(b)(iii),	revocation, denial,
(b)(v), or (b)(ix)	probation, restitution, or
	fine.
Subdivision (c)(i)	Denial, revocation, suspension,
	probation, limitation, or
	fine.
Subdivision (c)(ii)	Denial, suspension, revocation,
	restitution, or fine.
Subdivision (c)(iii)	Probation, denial, suspension,
	revocation, restitution, or
	fine.

1 Subdivision (c)(iv)	Fine, probation, denial,
2 or (d)(iii)	suspension, revocation,
3	or restitution.
4 Subdivision (d)(i)	Reprimand, fine, probation,
5 or (d)(ii)	SUSPENSION, REVOCATION, or
6	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 THIS	
23 section <del>+6226</del> shall be made by a board. If, during judicial	
24 review, a court holds that a sanction is unlawful under section	
25 106 of the administrative procedures act of 1969, Act No. 306 of	
26 the Public Acts of 1969, being section 24.306 of the Michigan	
27 Compiled Laws, the court shall state on the record the reasons	

1 for the holding and may remand the case to the board for further  
2 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).