

Act No. 196  
Public Acts of 1995  
Approved by the Governor  
November 17, 1995  
Filed with the Secretary of State  
November 22, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Reps. Law, Jamian, Griffin, Bennane, Crissman, Rocca, McManus and Hammerstrom

# **ENROLLED HOUSE BILL No. 5091**

AN ACT to amend sections 16221 and 16233 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 provide for the imposition of a regulatory fee; 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 provide for sanctions for violations of this act and local ordinances; 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 16221 as amended by Act No. 133 of the Public Acts of 1993 and section 16233 as amended by Act No. 79 of the Public Acts of 1993, being sections 333.16221 and 333.16233 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 16221 and 16233 of Act No. 368 of the Public Acts of 1978, section 16221 as amended by Act No. 133 of the Public Acts of 1993 and section 16233 as amended by Act No. 79 of the Public Acts of 1993, being sections 333.16221 and 333.16233 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

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

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

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance abuse as defined in section 6107.

- (iii) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- (iv) Declaration of mental incompetence by a court of competent jurisdiction.
- (v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.
- (vi) Lack of good moral character.
- (vii) Conviction of a criminal offense under sections 520a to 520l of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520l of the Michigan Compiled Laws. A certified copy of the court record is conclusive evidence of the conviction.
- (viii) Conviction of a violation of section 492a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.492a of the Michigan Compiled Laws. A certified copy of the court record is conclusive evidence of the conviction.
- (ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.
- (x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States. A certified copy of the record of the board is conclusive evidence of the final action.
- (xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.
- (c) Prohibited acts, consisting of 1 or more of the following:
  - (i) Fraud or deceit in obtaining or renewing a license or registration.
  - (ii) Permitting the license or registration to be used by an unauthorized person.
  - (iii) Practice outside the scope of a license.
  - (iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.
- (d) Unethical business practices, consisting of 1 or more of the following:
  - (i) False or misleading advertising.
  - (ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.
  - (iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.
- (e) Unprofessional conduct, consisting of 1 or more of the following:
  - (i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.
  - (ii) Betrayal of a professional confidence.
  - (iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.
  - (iv) Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.
- (f) Failure to report a change of name or mailing address within 30 days after the change occurs.
- (g) A violation, or aiding or abetting in a violation, of this article or of rules promulgated under this article.
- (h) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 or 16223.
- (i) Failure to pay an installment of an assessment levied pursuant to section 2504 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.2504 of the Michigan Compiled Laws, within 60 days after notice by the appropriate board.
- (j) A violation of section 17013 or 17513.
- (k) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.
- (l) A violation of section 17015 or 17515.

Sec. 16233. (1) The department may conduct an investigation necessary to administer and enforce this article. Investigations may include written, oral, or practical tests of a licensee's or registrant's competency. The department may establish a special paralegal unit to assist the department.

(2) The department may order an individual to cease and desist from a violation of this article or article 7 or a rule promulgated under this article or article 7.

(3) An individual ordered to cease and desist under subsection (2) is entitled to a hearing before a hearings examiner if the individual files a written request for a hearing within 30 days after the effective date of the cease and desist order. The department shall subsequently present the notice, if any, of the applicant's, licensee's, or registrant's failure to respond to a complaint, or attend or be represented at a hearing as described in sections 16231 and 16231a, or the recommended findings of fact and conclusions of law to the appropriate disciplinary subcommittee to determine whether the order is to remain in effect or be dissolved.

(4) Upon a violation of a cease and desist order issued under subsection (2), the department of attorney general may apply in the circuit court to restrain and enjoin, temporarily or permanently, an individual from further violating the cease and desist order.

(5) After consultation with the chair of the appropriate board or task force or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, being section 24.292 of the Michigan Compiled Laws. If a licensee or registrant is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, the department shall find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, shall summarily suspend the licensee's license or the registrant's registration. If a licensee or registrant is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol that adversely affects the licensee's ability to practice in a safe and competent manner, the department may find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, may summarily suspend the licensee's license or the registrant's registration.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.