



# HOUSE BILL No. 5961

June 7, 1996, Introduced by Rep. Jaye and referred to the Committee on Health Policy.

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

section 16221 as amended by Act No. 196 of the Public Acts of 1995 and section 16226 as amended by Act No. 133 of the Public Acts of 1993, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 16170b, 16170c, 16170d, 16170e, 16170f, 16170g, 16170h, 16170i, 16170j, 16170k, 16170l, 16170m, and 16170n.

## 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, section 16221 as amended by Act No. 196 of  
3 the Public Acts of 1995 and section 16226 as amended by Act  
4 No. 133 of the Public Acts of 1993, being sections 333.16221 and  
5 333.16226 of the Michigan Compiled Laws, are amended and sections

1 16170b, 16170c, 16170d, 16170e, 16170f, 16170g, 16170h, 16170i,  
2 16170j, 16170k, 16170l, 16170m, and 16170n are added to read as  
3 follows:

4 SEC. 16170B. AS USED IN THIS SECTION AND SECTIONS 16170C TO  
5 16170N:

6 (A) "CLINICAL LABORATORY" MEANS A CLINICAL LABORATORY  
7 LICENSED UNDER ARTICLE 17 OR A CLINICAL LABORATORY LICENSED, REG-  
8 ISTERED, OR OTHERWISE AUTHORIZED BY ANOTHER STATE, IF THE LICENS-  
9 ING OR REGISTRATION REQUIREMENTS OF THAT STATE ARE SUBSTANTIALLY  
10 SIMILAR TO THE LICENSING REQUIREMENTS CONTAINED IN ARTICLE 17.

11 (B) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN  
12 SECTION 7104.

13 (C) "DRUG" MEANS THAT TERM AS DEFINED IN SECTION 7105, BUT  
14 DOES NOT INCLUDE A CONTROLLED SUBSTANCE.

15 (D) "DRUG DETECTION TEST" MEANS THE TAKING OR ANALYSIS, OR  
16 BOTH, OF A SAMPLE OF BODILY FLUID OR OTHER HUMAN SPECIMEN FOR THE  
17 PURPOSE OF INFERRING THE PRESENCE IN THE SAMPLE OF TRACE ELEMENTS  
18 OF A DRUG OR CONTROLLED SUBSTANCE.

19 (E) "RANDOM SELECTION BASIS" MEANS A MECHANISM FOR SELECTION  
20 OF LICENSEES AND REGISTRANTS THAT MEETS BOTH OF THE FOLLOWING  
21 CRITERIA:

22 (i) RESULTS IN AN EQUAL PROBABILITY THAT A LICENSEE OR REG-  
23 ISTRANT FROM A GROUP OF LICENSEES AND REGISTRANTS THAT IS SUBJECT  
24 TO THE SELECTION MECHANISM WILL BE SELECTED.

25 (ii) DOES NOT GIVE THE DEPARTMENT DISCRETION TO WAIVE THE  
26 SELECTION OF A LICENSEE OR REGISTRANT SELECTED UNDER THE  
27 MECHANISM.

1 (F) "REASONABLE SUSPICION" MEANS A BONA FIDE BELIEF OF THE  
2 DEPARTMENT THAT IS BASED ON FACTS.

3 (G) "SAFETY SENSITIVE POSITION" MEANS A FUNCTION OF A HEALTH  
4 PROFESSION IN WHICH AN IMPAIRMENT OF A LICENSEE OR REGISTRANT  
5 PERFORMING THAT FUNCTION CAUSED BY THE USE OF A DRUG OR CON-  
6 TROLLED SUBSTANCE WOULD THREATEN THE HEALTH OR SAFETY OF ANY  
7 PERSON.

8 SEC. 16170C. (1) THE DEPARTMENT MAY REQUIRE AS A CONDITION  
9 OF CONTINUED LICENSURE OR REGISTRATION THAT A LICENSEE OR REGIS-  
10 TRANT SUBMIT TO A DRUG DETECTION TEST IN COMPLIANCE WITH THIS  
11 SECTION AND SECTIONS 16170B TO 16170N AND AT THE DEPARTMENT'S  
12 EXPENSE, UNDER 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES:

13 (A) IF THE DEPARTMENT HAS A REASONABLE SUSPICION THAT AN  
14 INDIVIDUAL LICENSEE OR REGISTRANT HAS A DRUG OR CONTROLLED SUB-  
15 STANCE LISTED UNDER SECTION 16170D(B) IN HIS OR HER SYSTEM.

16 (B) IF THE DEPARTMENT REQUIRES ALL LICENSEES AND REGISTRANTS  
17 WORKING AT A SINGLE PHYSICAL LOCATION TO SUBMIT TO A DRUG DETEC-  
18 TION TEST. DRUG DETECTION TESTS ADMINISTERED UNDER THIS SUBDIVI-  
19 SION SHALL BE COMPLETED WITHIN 6 MONTHS AFTER THE FIRST LICENSEE  
20 OR REGISTRANT IS TESTED.

21 (C) IF THE DEPARTMENT REQUIRES THE LICENSEES AND REGISTRANTS  
22 WORKING AT A SINGLE PHYSICAL LOCATION TO SUBMIT TO DRUG DETECTION  
23 TESTING ON A RANDOM SELECTION BASIS.

24 (D) IF THE DEPARTMENT REQUIRES EACH LICENSEE OR REGISTRANT  
25 WHO WORKS IN A PARTICULAR SAFETY SENSITIVE POSITION TO SUBMIT TO  
26 A DRUG DETECTION TEST.

1 (E) IF THE DEPARTMENT REQUIRES ALL LICENSEES AND REGISTRANTS  
2 WHO WORK IN SAFETY SENSITIVE POSITIONS TO SUBMIT TO DRUG  
3 DETECTION TESTING ON A RANDOM SELECTION BASIS.

4 (2) THE DEPARTMENT MAY REQUIRE, AS A CONDITION OF INITIAL  
5 LICENSURE OR REGISTRATION, THAT AN APPLICANT FOR LICENSURE OR  
6 REGISTRATION SUBMIT TO A DRUG DETECTION TEST IN COMPLIANCE WITH  
7 SECTIONS 16170B TO 16170N.

8 SEC. 16170D. (1) IF THE DEPARTMENT REQUIRES A DRUG DETEC-  
9 TION TEST, THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

10 (A) PROVIDE ADVANCE NOTICE IN WRITING TO LICENSEES AND REG-  
11 ISTRANTS AND TO APPLICANTS FOR LICENSURE OR REGISTRATION OF THE  
12 DEPARTMENT'S DRUG TESTING POLICY. THE DEPARTMENT SHALL GIVE THE  
13 NOTICE REQUIRED UNDER THIS SUBDIVISION TO CURRENT LICENSEES AND  
14 REGISTRANTS NOT LESS THAN 90 DAYS BEFORE THE DATE THE FIRST DRUG  
15 DETECTION TEST IS TO BE ADMINISTERED AND TO APPLICANTS FOR LICEN-  
16 SURE OR REGISTRATION AT THE TIME OF APPLICATION.

17 (B) PROMULGATE AND DISTRIBUTE TO LICENSEES AND REGISTRANTS  
18 AND APPLICANTS FOR LICENSURE OR REGISTRATION RULES THAT PROVIDE A  
19 GENERAL DESCRIPTION OF THE DRUGS AND CONTROLLED SUBSTANCES OR  
20 CLASSES OF DRUGS AND CONTROLLED SUBSTANCES FOR WHICH THE DEPART-  
21 MENT IS TESTING.

22 (C) PROMULGATE RULES THAT ESTABLISH A SYSTEM OF RECORD KEEP-  
23 ING THAT, TO A REASONABLE DEGREE, PROVIDES A CHAIN OF CUSTODY AND  
24 CONFIDENTIALITY OF TEST RESULTS.

25 (2) THE DEPARTMENT MAY MODIFY BY RULE AT ANY TIME THE GEN-  
26 ERAL DESCRIPTION REQUIRED UNDER SUBSECTION (1)(B). IF THE  
27 DEPARTMENT MODIFIES THE GENERAL DESCRIPTION REQUIRED UNDER

1 SUBSECTION (1)(B), THE DEPARTMENT SHALL DISTRIBUTE THE RULES  
2 CONTAINING THE MODIFIED GENERAL DESCRIPTION TO ALL LICENSEES AND  
3 REGISTRANTS NOT LESS THAN 90 DAYS BEFORE A DRUG DETECTION TEST  
4 FOR A DRUG OR CONTROLLED SUBSTANCE OR CLASS OF DRUGS OR CON-  
5 TROLLED SUBSTANCES ADDED TO THE GENERAL DESCRIPTION IS  
6 CONDUCTED.

7 SEC. 16170E. (1) EACH DRUG DETECTION TEST CONDUCTED UNDER  
8 THIS ACT, NOT INCLUDING THE TAKING OR COLLECTING OF A SPECIMEN TO  
9 BE TESTED, SHALL BE CONDUCTED BY A CLINICAL LABORATORY OPERATED  
10 BY OR UNDER CONTRACT TO THE DEPARTMENT.

11 (2) ONE OR MORE OF THE FOLLOWING PERSONS MAY TAKE OR COLLECT  
12 A SPECIMEN FOR A DRUG DETECTION TEST:

13 (A) A PHYSICIAN, A PHYSICIAN'S ASSISTANT, A REGISTERED PRO-  
14 FESSIONAL NURSE, A LICENSED PRACTICAL NURSE, A NURSE PRACTITION-  
15 ER, OR A TRAINED ATTENDANT AS DEFINED IN ARTICLE 15 AND EMPLOYED  
16 BY OR UNDER CONTRACT TO THE DEPARTMENT.

17 (B) A QUALIFIED PERSON EMPLOYED BY A CLINICAL LABORATORY  
18 OPERATED BY OR UNDER CONTRACT TO THE DEPARTMENT.

19 (C) ANY OTHER PERSON CONSIDERED QUALIFIED BY THE  
20 DEPARTMENT.

21 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND  
22 SECTION 16170H(3), THE RESULTS OF A DRUG DETECTION TEST CONDUCTED  
23 UNDER SECTIONS 16170B TO 16170N ARE CONFIDENTIAL. ONLY THAT PART  
24 OF THE DRUG DETECTION TEST RESULTS RELATIVE TO THE PRESENCE IN A  
25 LICENSEE OR REGISTRANT OR AN APPLICANT FOR LICENSURE OR REGISTRA-  
26 TION OF TRACE ELEMENTS OF A DRUG OR CONTROLLED SUBSTANCE SHALL BE  
27 DISCLOSED.

1 SEC. 16170F. (1) AS PART OF ITS DRUG DETECTION TESTING  
2 POLICY, THE DEPARTMENT SHALL PROVIDE, AT A MINIMUM, INFORMATION  
3 REGARDING ALL OF THE FOLLOWING:

4 (A) THE PROCEDURES UNDER WHICH DRUG DETECTION TESTS WILL BE  
5 CONDUCTED.

6 (B) FOR DRUG DETECTION TESTS CONDUCTED UNDER  
7 SECTION 16170C(B) OR (D), THE FREQUENCY OF THE DRUG DETECTION  
8 TESTS.

9 (C) FOR DRUG DETECTION TESTS CONDUCTED UNDER  
10 SECTION 16170C(B), THE TIME PERIOD IN WHICH DRUG DETECTION TEST-  
11 ING WILL TAKE PLACE.

12 (2) IF A LICENSEE OR REGISTRANT IS REQUIRED TO SUBMIT TO A  
13 DRUG DETECTION TEST UNDER SECTION 16170C(A), THE BASIS FOR THE  
14 REASONABLE SUSPICION REFERRED TO IN THAT SECTION SHALL BE REDUCED  
15 TO WRITING AND RECORDED IN THE INDIVIDUAL'S PERSONAL HISTORICAL  
16 RECORD MAINTAINED UNDER SECTION 16211.

17 (3) BEFORE A DRUG DETECTION TEST IS ADMINISTERED TO A  
18 LICENSEE OR REGISTRANT OR AN APPLICANT FOR LICENSURE OR REGISTRA-  
19 TION, THE DEPARTMENT SHALL INFORM THE LICENSEE OR REGISTRANT OR  
20 APPLICANT THAT HE OR SHE MAY DECLINE TO ANSWER ANY QUESTION OR  
21 FURNISH ANY INFORMATION OTHER THAN MEDICAL INFORMATION NECESSARY  
22 FOR SAFELY CONDUCTING THE DRUG DETECTION TEST. THE DEPARTMENT IS  
23 IN COMPLIANCE WITH THIS SUBSECTION IF THE DEPARTMENT INCLUDES IN  
24 THE DEPARTMENT'S DRUG TESTING POLICY A STATEMENT OF THE  
25 LICENSEE'S OR REGISTRANT'S OR APPLICANT'S RIGHTS UNDER THIS  
26 SUBSECTION.

1 SEC. 16170G. (1) IF THE DEPARTMENT REQUIRES A DRUG  
2 DETECTION TEST PURSUANT TO SECTIONS 16170B TO 16170N, THE  
3 DEPARTMENT SHALL PROVIDE FOR AN INITIAL SCREENING TEST THAT HAS  
4 OBTAINED GENERAL ACCEPTANCE IN THE MEDICAL COMMUNITY.

5 (2) A PERSON WHO COLLECTS OR TAKES A SPECIMEN FOR A DRUG  
6 DETECTION TEST CONDUCTED UNDER SECTIONS 16170B TO 16170N SHALL  
7 COLLECT OR TAKE AN AMOUNT SUFFICIENT FOR 3 DRUG DETECTION TESTS.

8 (3) IF AN INITIAL SCREENING DRUG DETECTION TEST IS POSITIVE,  
9 THE DEPARTMENT SHALL PROVIDE THAT A CONFIRMATORY TEST BE CON-  
10 DUCTED AT THE DEPARTMENT'S EXPENSE ON A SECOND SAMPLE OF THE  
11 ORIGINAL SPECIMEN. EXCEPT AS OTHERWISE PROVIDED IN  
12 SUBSECTION (4), FOR PURPOSES OF SECTIONS 16170B TO 16170N, ONLY 1  
13 OR MORE OF THE FOLLOWING CONFIRMATORY TESTS SHALL BE USED:

14 (A) GAS CHROMATOGRAPHY/MASS SPECTROMETRY.

15 (B) HIGH PERFORMANCE LIQUID CHROMATOGRAPHY.

16 (C) INTERNALLY STANDARDIZED HEADSPACE GAS CHROMATOGRAPHY.

17 (4) THE DEPARTMENT MAY BY RULE ADD 1 OR MORE ADDITIONAL CON-  
18 FIRMATORY TESTS TO THOSE LISTED IN SUBSECTION (3), IF THE DEPART-  
19 MENT DETERMINES THAT THE ADDITIONAL CONFIRMATORY TEST IS AS ACCU-  
20 RATE OR MORE ACCURATE THAN THE CONFIRMATORY TESTS LISTED IN  
21 SUBSECTION (3).

22 (5) IF A CONFIRMATORY TEST IS NEGATIVE, THE POSITIVE RESULT  
23 OF THE ORIGINAL SCREENING TEST SHALL BE DESTROYED.

24 (6) IF A SCREENING AND CONFIRMATORY DRUG DETECTION TEST ARE  
25 BOTH POSITIVE, THE LICENSEE OR REGISTRANT OR APPLICANT FOR LICEN-  
26 SURE OR REGISTRATION IMMEDIATELY SHALL BE NOTIFIED OF THE RESULTS

1 BY THE DEPARTMENT. A LICENSEE OR REGISTRANT OR APPLICANT WHO IS  
2 NOTIFIED UNDER THIS SUBSECTION MAY DO EITHER OF THE FOLLOWING:

3 (A) SUBMIT TO THE DEPARTMENT A WRITTEN EXPLANATION OF THE  
4 POSITIVE DRUG DETECTION TEST RESULTS.

5 (B) HAVE A THIRD DRUG DETECTION TEST CONDUCTED ON A PORTION  
6 OF THE ORIGINAL SPECIMEN, AT HIS OR HER OWN EXPENSE, USING A CON-  
7 FIRMATORY TEST DESCRIBED IN SUBSECTION (3) OR (4) AND CONDUCTED  
8 AND ANALYZED AT A CLINICAL LABORATORY OF THE LICENSEE'S OR  
9 REGISTRANT'S OR APPLICANT'S CHOICE.

10 SEC. 16170H. (1) IF A LICENSEE OR REGISTRANT OR APPLICANT  
11 ELECTS TO SUBMIT A WRITTEN EXPLANATION OF THE POSITIVE DRUG  
12 DETECTION TEST RESULTS PURSUANT TO SECTION 16170G(6)(A), THE  
13 EXPLANATION SHALL BE SUBMITTED WITHIN 5 WORKING DAYS AFTER THE  
14 DATE THE LICENSEE OR REGISTRANT OR APPLICANT IS NOTIFIED. IF THE  
15 EXPLANATION IS SATISFACTORY TO THE DEPARTMENT, THE POSITIVE  
16 RESULTS MAY BE MADE PART OF THE LICENSEE'S OR REGISTRANT'S PER-  
17 MANENT HISTORICAL RECORD, BUT SHALL REMAIN CONFIDENTIAL, PURSUANT  
18 TO SUBSECTION (2).

19 (2) ALL INFORMATION REGARDING THE RESULTS OF A DRUG DETEC-  
20 TION TEST IS CONFIDENTIAL AND SHALL NOT BE RELEASED BY THE  
21 DEPARTMENT, EXCEPT IF THE RELEASE IS COMPELLED BY LEGAL PROCESS  
22 OR EXCEPT PURSUANT TO A WRITTEN CONSENT FORM SIGNED VOLUNTARILY  
23 BY THE LICENSEE OR REGISTRANT OR APPLICANT TESTED. THE WRITTEN  
24 CONSENT FORM SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION:

25 (A) THE NAME OF THE PERSON AUTHORIZED TO OBTAIN THE DRUG  
26 TEST DETECTION INFORMATION.

1 (B) THE PURPOSE OF THE DISCLOSURE.

2 (C) THE PRECISE INFORMATION TO BE DISCLOSED.

3 (D) THE DURATION OF THE CONSENT.

4 SEC. 16170I. FOR PURPOSES OF ARTICLE 2 OF THE MICHIGAN  
5 HANDICAPPERS' CIVIL RIGHTS ACT, ACT NO. 220 OF THE PUBLIC ACTS OF  
6 1976, BEING SECTIONS 37.1201 TO 37.1208 OF THE MICHIGAN COMPILED  
7 LAWS, IF A LICENSEE OR REGISTRANT OR AN APPLICANT FOR LICENSURE  
8 OR REGISTRATION IS SUBJECTED TO A DRUG DETECTION TEST IN COMPLI-  
9 ANCE WITH SECTIONS 16170B TO 16170N, AND IF BOTH THE INITIAL  
10 SCREENING AND CONFIRMATORY DRUG DETECTION TEST RESULTS ARE POSI-  
11 TIVE OR POSITIVE AND NOT SATISFACTORILY EXPLAINED, THE DRUG  
12 DETECTION TEST RESULTS SHALL BE CONSIDERED TO BE RELATED TO BOTH  
13 OF THE FOLLOWING:

14 (A) THE LICENSEE'S OR REGISTRANT'S OR APPLICANT'S ABILITY TO  
15 PERFORM THE DUTIES OF A PARTICULAR HEALTH PROFESSION.

16 (B) THE LICENSEE'S OR REGISTRANT'S OR APPLICANT'S QUALIFICA-  
17 TIONS FOR LICENSURE OR REGISTRATION.

18 SEC. 16170J. (1) SECTIONS 16170B TO 16170N DO NOT PROHIBIT  
19 THE DEPARTMENT OR ANOTHER AUTHORIZED GOVERNMENTAL AGENCY FROM  
20 CONDUCTING MEDICAL SCREENING REQUIRED BY ANY STATUTE, RULE, OR  
21 REGULATION FOR THE PURPOSE OF MONITORING EXPOSURE TO TOXIC OR  
22 OTHER UNHEALTHY SUBSTANCES IN THE WORKPLACE OR IN THE PERFORMANCE  
23 OF JOB RESPONSIBILITIES. SCREENINGS OR TESTS CONDUCTED UNDER  
24 THIS SECTION SHALL BE LIMITED TO THE SPECIFIC SUBSTANCES  
25 EXPRESSLY IDENTIFIED IN THE STATUTE, RULE, REGULATION, OR  
26 LICENSEE OR REGISTRANT OR APPLICANT CONSENT FORM, UNLESS WRITTEN

1 CONSENT OF THE LICENSEE OR REGISTRANT OR APPLICANT IS OBTAINED TO  
2 SCREEN OR TEST FOR OTHER SUBSTANCES.

3 (2) SECTIONS 16170B TO 16170N DO NOT PROHIBIT THE DEPARTMENT  
4 FROM CONDUCTING A PHYSICAL EXAMINATION PURSUANT TO SECTION  
5 16236.

6 SEC. 16170K. SECTIONS 16170B TO 16170N DO NOT RESTRICT THE  
7 DEPARTMENT'S ABILITY TO DISCIPLINE A LICENSEE OR REGISTRANT FOR  
8 VIOLATIONS OF SECTION 16221 INVOLVING DRUGS OR CONTROLLED  
9 SUBSTANCES.

10 SEC. 16170L. A PERSON ALLEGING A VIOLATION OF SECTIONS  
11 16170B TO 16170N MAY BRING AN ACTION FOR APPROPRIATE INJUNCTIVE  
12 RELIEF.

13 SEC. 16170M. EACH TIME A DRUG DETECTION TEST IS ADMINIS-  
14 TERED UNDER SECTIONS 16170B TO 16170N, THE DEPARTMENT SHALL PRO--  
15 VIDE THE LICENSEE OR REGISTRANT OR APPLICANT FOR LICENSURE OR  
16 REGISTRATION WITH NOTICE OF HIS OR HER RIGHTS AND THE  
17 DEPARTMENT'S OBLIGATIONS UNDER THIS SECTION AND SECTIONS 16170B  
18 TO 16170N. THE DEPARTMENT IS IN COMPLIANCE WITH THIS SECTION IF  
19 THE DEPARTMENT INCLUDES IN THE DEPARTMENT'S DRUG DETECTION TEST-  
20 ING POLICY A WRITTEN SUMMARY OF LICENSEE, REGISTRANT, AND APPLI-  
21 CANT RIGHTS AND DEPARTMENTAL OBLIGATIONS UNDER THIS SECTION AND  
22 SECTIONS 16170B TO 16170N.

23 SEC. 16170N. (1) THIS SECTION AND SECTIONS 16170B TO 16170M  
24 DO NOT ABROGATE THE RIGHT OF THE DEPARTMENT TO CONDUCT DRUG  
25 DETECTION TESTS AUTHORIZED UNDER THIS PART BEFORE THE EFFECTIVE  
26 DATE OF THIS ACT. A DRUG DETECTION TEST CONDUCTED BY THE

1 DEPARTMENT BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
2 ADDED THIS SECTION IS NOT SUBJECT TO SECTIONS 16170B TO 16170M.

3 (2) IF THE DEPARTMENT IS IN COMPLIANCE WITH SECTIONS 16170B  
4 TO 16170M INCLUDING, BUT NOT LIMITED TO, THE NOTICE REQUIREMENTS  
5 OF SECTION 16170D, THE DEPARTMENT MAY BEGIN TO CONDUCT DRUG  
6 DETECTION TESTS ON JANUARY 1, 1997.

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

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

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

23 (i) Incompetence.

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

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

4       (iv) Declaration of mental incompetence by a court of compe-  
5 tent jurisdiction.

6       (v) Conviction of a misdemeanor punishable by imprisonment  
7 for a maximum term of 2 years; a misdemeanor involving the ille-  
8 gal delivery, possession, or use of a controlled substance; or a  
9 felony. A certified copy of the court record is conclusive evi-  
10 dence of the conviction.

11       (vi) Lack of good moral character.

12       (vii) Conviction of a criminal offense under sections 520a  
13 to 520l of the Michigan penal code, Act No. 328 of the Public  
14 Acts of 1931, being sections 750.520a to 750.520l of the Michigan  
15 Compiled Laws. A certified copy of the court record is conclu-  
16 sive evidence of the conviction.

17       (viii) Conviction of a violation of section 492a of the  
18 Michigan penal code, Act No. 328 of the Public Acts of 1931,  
19 being section 750.492a of the Michigan Compiled Laws. A certi-  
20 fied copy of the court record is conclusive evidence of the  
21 conviction.

22       (ix) Conviction of a misdemeanor or felony involving fraud  
23 in obtaining or attempting to obtain fees related to the practice  
24 of a health profession. A certified copy of the court record is  
25 conclusive evidence of the conviction.

26       (x) Final adverse administrative action by a licensure,  
27 registration, disciplinary, or certification board involving the

1 holder of, or an applicant for, a license or registration  
2 regulated by another state or a territory of the United States.  
3 A certified copy of the record of the board is conclusive evi-  
4 dence of the final action.

5       (xi) Conviction of a misdemeanor that is reasonably related  
6 to or that adversely affects the licensee's ability to practice  
7 in a safe and competent manner. A certified copy of the court  
8 record is conclusive evidence of the conviction.

9       (xii) REFUSAL TO SUBMIT TO A DRUG DETECTION TEST CONDUCTED  
10 BY THE DEPARTMENT UNDER SECTIONS 16170B TO 16170N.

11       (xiii) BOTH THE INITIAL SCREENING AND CONFIRMATORY DRUG  
12 DETECTION TESTS CONDUCTED UNDER SECTIONS 16170B TO 16170N ARE  
13 POSITIVE OR POSITIVE AND NOT SATISFACTORILY EXPLAINED.

14       (c) Prohibited acts, consisting of 1 or more of the  
15 following:

16       (i) Fraud or deceit in obtaining or renewing a license or  
17 registration.

18       (ii) Permitting the license or registration to be used by an  
19 unauthorized person.

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

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

26       (d) Unethical business practices, consisting of 1 or more of  
27 the following:

1 (i) False or misleading advertising.

2 (ii) Dividing fees for referral of patients or accepting  
3 kickbacks on medical or surgical services, appliances, or medica-  
4 tions purchased by or in behalf of patients.

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

7 (e) Unprofessional conduct, consisting of 1 or more of the  
8 following:

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

12 (ii) Betrayal of a professional confidence.

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

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

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

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

23 (h) Failure to comply with a subpoena issued pursuant to  
24 this part, failure to respond to a complaint issued under this  
25 article or article 7, failure to appear at a compliance confer-  
26 ence or an administrative hearing, or failure to report under  
27 section 16222 or 16223.

1 (i) Failure to pay an installment of an assessment levied  
 2 pursuant to section 2504 of the insurance code of 1956, Act  
 3 No. 218 of the Public Acts of 1956, being section 500.2504 of the  
 4 Michigan Compiled Laws, within 60 days after notice by the appro-  
 5 priate board.

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

7 (k) Failure to meet 1 or more of the requirements for licen-  
 8 sure or registration under section 16174.

9 (l) A violation of section 17015 or 17515.

10 Sec. 16226. (1) After finding the existence of 1 or more of  
 11 the grounds for disciplinary subcommittee action listed in sec-  
 12 tion 16221, a disciplinary subcommittee shall impose 1 or more of  
 13 the following sanctions for each violation:

14

15 Violations of Section 16221

Sanctions

16 Subdivision (a), (b)(ii),	Probation, limitation, denial,
17 (b)(iv), (b)(vi), or	suspension, revocation,
18 (b)(vii)	restitution, community service,
19	or fine.
20 Subdivision (b)(viii)	Revocation or denial.
21 Subdivision (b)(i),	Limitation, suspension,
22 (b)(iii), (b)(v),	revocation, denial,
23 (b)(ix),	probation, restitution,
24 (b)(x), <del>or</del> (b)(xi)	community service, or fine.
25 (B)(xii), OR (B)(xiii)	

1	Subdivision (c)(i)	Denial, revocation, suspension,
2		probation, limitation,
3		community service, or fine.
4	Subdivision (c)(ii)	Denial, suspension, revocation,
5		restitution, community service,
6		or fine.
7	Subdivision (c)(iii)	Probation, denial, suspension,
8		revocation, restitution, commu-
9		nity service, or fine.
10	Subdivision (c)(iv)	Fine, probation, denial,
11	or (d)(iii)	suspension, revocation, commu-
12		nity service,
13		or restitution.
14	Subdivision (d)(i)	Reprimand, fine, probation,
15	or (d)(ii)	community service, denial,
16		or restitution.
17	Subdivision (e)(i)	Reprimand, fine, probation,
18		limitation, suspension, commu-
19		nity service, denial, or
20		restitution.
21	Subdivision (e)(ii)	Reprimand, probation,
22	or (h)	suspension, restitution, commu-
23		nity service, denial, or fine.
24	Subdivision (e)(iii)	Reprimand, fine, probation,
25	or (e)(iv)	suspension, revocation, limita-
26		tion, community service,
27		denial, or restitution.

- 1 Subdivision (f) Reprimand or fine.
- 2 Subdivision (g) Reprimand, probation, denial,  
 3 suspension, revocation, limita-  
 4 tion, restitution, community  
 5 service, or fine.
- 6 Subdivision (i) Suspension or fine.
- 7 Subdivision (j) Reprimand or fine.
- 8 Subdivision (k) Reprimand, denial, or  
 9 limitation.
- 10 Subdivision (l) Denial, revocation, restitution,  
 11 probation, suspension, limita-  
 12 tion, reprimand, or fine.
- 13 (2) Determination of sanctions for violations under this  
 14 section shall be made by a disciplinary subcommittee. If, during  
 15 judicial review, the court of appeals determines that a final  
 16 decision or order of a disciplinary subcommittee prejudices sub-  
 17 stantial rights of the petitioner for any of the grounds listed  
 18 in section 106 of the administrative procedures act of 1969, Act  
 19 No. 306 of the Public Acts of 1969, being section 24.306 of  
 20 Michigan Compiled Laws, and holds that the final decision or  
 21 order is unlawful and is to be set aside, the court shall state  
 22 on the record the reasons for the holding and may remand the case  
 23 to the disciplinary subcommittee for further consideration.
- 24 (3) A disciplinary subcommittee may impose a fine of up to,  
 25 but not exceeding, \$250,000.00 for a violation of  
 26 section 16221(a) or (b).

1       (4) A disciplinary subcommittee may require a licensee or  
2 registrant or an applicant for licensure or registration who has  
3 violated this article or article 7 or a rule promulgated under  
4 this article or article 7 to satisfactorily complete an educa-  
5 tional program, a training program, or a treatment program, a  
6 mental, physical, or professional competence examination, or a  
7 combination of those programs and examinations.

8       Section 2. This amendatory act shall take effect January 1,  
9 1997.