



HOUSE BILL No. 6152

September 25, 1996, Introduced by Rep. Law and referred to the Committee on Health Policy.

A bill to amend sections 16221, 16226, 16245, and 16247 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," sections 16221 and 16226 as amended by Act No. 273 of the Public Acts of 1996, section 16245 as amended by Act No. 87 of the Public Acts of 1993, and section 16247 as amended by Act No. 79 of the Public Acts of 1993, being sections 333.16221, 333.16226, 333.16245, and 333.16247 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16221, 16226, 16245, and 16247 of Act
2 No. 368 of the Public Acts of 1978, sections 16221 and 16226 as
3 amended by Act No. 273 of the Public Acts of 1996, section 16245
4 as amended by Act No. 87 of the Public Acts of 1993, and section
5 16247 as amended by Act No. 79 of the Public Acts of 1993, being

1 sections 333.16221, 333.16226, 333.16245, and 333.16247 of the
2 Michigan Compiled Laws, are amended to read as follows:

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

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

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

19 (i) Incompetence.

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

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

25 (iv) Declaration of mental incompetence by a court of compe-
26 tent jurisdiction.

1 (v) Conviction of a misdemeanor punishable by imprisonment
2 for a maximum term of 2 years; a misdemeanor involving the
3 illegal delivery, possession, or use of a controlled substance;
4 or a felony. A certified copy of the court record is conclusive
5 evidence of the conviction.

6 (vi) Lack of good moral character.

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

12 (viii) Conviction of a violation of section 492a of the
13 Michigan penal code, Act No. 328 of the Public Acts of 1931,
14 being section 750.492a of the Michigan Compiled Laws. A certi-
15 fied copy of the court record is conclusive evidence of the
16 conviction.

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

21 (x) Final adverse administrative action by a licensure, reg-
22 istration, disciplinary, or certification board involving the
23 holder of, or an applicant for, a license or registration regu-
24 lated by another state or a territory of the United States. A
25 certified copy of the record of the board is conclusive evidence
26 of the final action.

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

5 (c) Prohibited acts, consisting of 1 or more of the
6 following:

7 (i) Fraud or deceit in obtaining or renewing a license or
8 registration.

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

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

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

17 (d) Unethical business practices, consisting of 1 or more of
18 the following:

19 (i) False or misleading advertising.

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

23 (iii) Fraud or deceit in obtaining or attempting to obtain
24 third party reimbursement.

25 (e) Unprofessional conduct, consisting of 1 or more of the
26 following:

1 (i) Misrepresentation to a consumer or patient or in
2 obtaining or attempting to obtain third party reimbursement in
3 the course of professional practice.

4 (ii) Betrayal of a professional confidence.

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

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

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

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

15 (h) Failure to comply with a subpoena issued pursuant to
16 this part, failure to respond to a complaint issued under this
17 article or article 7, failure to appear at a compliance confer-
18 ence or an administrative hearing, or failure to report under
19 section 16222 or 16223.

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

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

26 (k) Failure to meet 1 or more of the requirements for
27 licensure or registration under section 16174.

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

2 (m) A violation of section 17016 or 17516.

3 (N) DEFAULTING ON OR OTHERWISE FAILING TO PAY AN EDUCATIONAL
4 LOAN TAKEN OUT BY THE LICENSEE, REGISTRANT, OR APPLICANT THAT IS
5 GUARANTEED BY THE STATE OR FEDERAL GOVERNMENT OR FAILING TO FUL-
6 FILL A SERVICE OBLIGATION UNDER PART 27.

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

11

12 Violations of Section 16221

Sanctions

13 Subdivision (a), (b)(ii),

Probation, limitation, denial,

14 (b)(iv), (b)(vi), or

suspension, revocation,

15 (b)(vii)

restitution, community service,

16

or fine.

17 Subdivision (b)(viii)

Revocation or denial.

18 Subdivision (b)(i),

Limitation, suspension,

19 (b)(iii), (b)(v),

revocation, denial,

20 (b)(ix),

probation, restitution,

21 (b)(x), or (b)(xi)

community service, or fine.

22 Subdivision (c)(i)

Denial, revocation, suspension,

23

probation, limitation, commu-

24

nity service, or fine.

25 Subdivision (c)(ii)

Denial, suspension, revocation,

26

restitution, community service,

27

or fine.

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

- 1 Subdivision (i) Suspension or fine.
 2 Subdivision (j) Reprimand or fine.
 3 Subdivision (k) Reprimand, denial, or
 4 limitation.
 5 Subdivision (l) Denial, revocation, restitution,
 6 probation, suspension, limita-
 7 tion, reprimand, or fine.
 8 Subdivision (m) Revocation or denial.
 9 SUBDIVISION (N) DENIAL OR SUSPENSION.

10 (2) Determination of sanctions for violations under this
 11 section shall be made by a disciplinary subcommittee. If, during
 12 judicial review, the court of appeals determines that a final
 13 decision or order of a disciplinary subcommittee prejudices sub-
 14 stantial rights of the petitioner for 1 or more of the grounds
 15 listed in section 106 of the administrative procedures act of
 16 1969, being section 24.306 of Michigan Compiled Laws, and holds
 17 that the final decision or order is unlawful and is to be set
 18 aside, the court shall state on the record the reasons for the
 19 holding and may remand the case to the disciplinary subcommittee
 20 for further consideration.

21 (3) A disciplinary subcommittee may impose a fine of up to,
 22 but not exceeding, \$250,000.00 for a violation of
 23 section 16221(a) or (b).

24 (4) A disciplinary subcommittee may require a licensee or
 25 registrant or an applicant for licensure or registration who has
 26 violated this article or article 7 or a rule promulgated under
 27 this article or article 7 to satisfactorily complete an

1 educational program, a training program, or a treatment program,
2 a mental, physical, or professional competence examination, or a
3 combination of those programs and examinations.

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

9 (2) An individual whose registration is suspended or revoked
10 under this part may apply to his or her board for a reinstatement
11 of a suspended or revoked registration pursuant to section
12 16248.

13 (3) A board or task force shall reinstate a license or reg-
14 istration suspended for grounds stated in section 16221(i) upon
15 payment of the installment.

16 (4) A BOARD OR TASK FORCE SHALL REINSTATE A LICENSE OR REG-
17 ISTRATION SUSPENDED FOR GROUNDS STATED IN SECTION 16221(M) UPON
18 RECEIPT OF 1 OF THE FOLLOWING:

19 (A) A WRITTEN RELEASE ISSUED BY THE LENDING AGENCY STATING
20 THAT THE LICENSEE, REGISTRANT, OR APPLICANT HAS PAID THE LOAN IN
21 FULL OR IS MAKING PAYMENTS ON THE LOAN IN ACCORDANCE WITH A
22 REPAYMENT AGREEMENT APPROVED BY THE LENDING AGENCY.

23 (B) NOTICE FROM THE DEPARTMENT OF COMMUNITY HEALTH THAT THE
24 LICENSEE HAS AGREED TO FULFILL HIS OR HER SERVICE OBLIGATION
25 UNDER PART 27, THAT THE CONTRACT CREATING THE SERVICE OBLIGATION
26 UNDER PART 27 IS VOID, THAT THE LICENSEE HAS REPAID THE GRANT FOR
27 WHICH THE SERVICE OBLIGATION WAS INCURRED, OR THAT THE DEPARTMENT

1 OF COMMUNITY HEALTH CONSIDERS THE SERVICE OBLIGATION UNDER PART
2 27 TO BE FULFILLED.

3 (5) ~~(4)~~ Except as otherwise provided in this subsection,
4 in case of a revoked license or registration, an applicant shall
5 not apply for reinstatement before the expiration of 3 years
6 after the effective date of the revocation. In case of a license
7 or registration that was revoked for a violation of section
8 16221(b)(vii), a violation of section 16221(c)(iv) consisting of
9 a felony conviction, or any other felony conviction involving a
10 controlled substance, an applicant shall not apply for reinstatement
11 before the expiration of 5 years after the effective date of
12 the revocation. The department shall return an application for
13 reinstatement received before the expiration of the applicable
14 time period under this subsection.

15 (6) ~~(5)~~ The department shall provide an opportunity for a
16 hearing before final rejection of an application for
17 reinstatement.

18 (7) ~~(6)~~ Based upon the recommendation of the disciplinary
19 subcommittee for each health profession, the department shall
20 adopt guidelines to establish specific criteria to be met by an
21 applicant for reinstatement under this article or article 7. The
22 criteria may include corrective measures or remedial education as
23 a condition of reinstatement. If a board or task force, in reinstating
24 a license or registration, deviates from the guidelines
25 adopted under this subsection, the board or task force shall
26 state the reason for the deviation on the record.

1 (8) ~~(7)~~ An individual who seeks reinstatement or
2 reclassification of a license or registration pursuant to this
3 section shall pay the application processing fee as a reinstatement
4 or reclassification fee. If approved for reinstatement or
5 reclassification, the individual shall pay the per year license
6 or registration fee for the applicable license or registration
7 period.

8 Sec. 16247. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION
9 16245(3) AND (4), A board or task force may reinstate a license
10 or issue a limited license to an individual whose license has
11 been suspended or revoked under this part if after a hearing the
12 board or task force is satisfied by clear and convincing evidence
13 that the applicant is of good moral character, is able to practice
14 the profession with reasonable skill and safety to patients,
15 has met the criteria in the ~~rules promulgated~~ GUIDELINES
16 ADOPTED under section ~~16245(6)~~ 16245(7), and should be permitted
17 in the public interest to resume practice. Pursuant to the
18 ~~rules promulgated~~ GUIDELINES ADOPTED under section ~~16245(6)~~
19 16245(7), as a condition of reinstatement, a disciplinary subcommittee,
20 upon the recommendation of a board or task force, may
21 impose a disciplinary or corrective measure authorized under this
22 part and require that the licensee attend a school or program
23 selected by the board or task force to take designated courses or
24 training to become competent or proficient in those areas of
25 practice in which the board or task force finds the licensee to
26 be deficient. The board or task force may require a statement on
27 a form approved by it from the chief administrator of the school

1 or program attended or the person responsible for the training
2 certifying that the licensee has achieved the required competency
3 or proficiency.

4 (2) ~~As~~ EXCEPT FOR A REINSTATEMENT UNDER SECTION 16245(3)
5 OR (4), AS a condition of reinstatement, a board or task force
6 shall place the licensee on probation for 1 year under conditions
7 set by the board or task force. If a licensee whose license has
8 been revoked cannot apply for reinstatement for 5 years after the
9 date of revocation, then, as a condition of reinstatement, the
10 board or task force shall require the licensee to take and pass
11 the current licensure examination.

12 (3) A board or task force shall not reinstate a license sus-
13 pended or revoked for grounds stated in section 16221(b)(i),
14 (iii), or (iv) until it finds that the licensee is mentally or
15 physically able to practice with reasonable skill and safety to
16 patients. The board or task force may require further examina-
17 tion of the licensee, at the licensee's expense, necessary to
18 verify that the licensee is mentally or physically able. A
19 licensee affected by this section shall be afforded the opportu-
20 nity at reasonable intervals to demonstrate that he or she can
21 resume competent practice in accordance with standards of accept-
22 able and prevailing practice.