

# HOUSE BILL No. 5894

April 16, 2002, Introduced by Rep. Callahan and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 16221 and 16226 (MCL 333.16221 and  
333.16226), as amended by 2000 PA 29.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

9       (a) A violation of general duty, consisting of negligence or  
10 failure to exercise due care, including negligent delegation to

1 or supervision of employees or other individuals, whether or not  
2 injury results, or any conduct, practice, or condition ~~which~~  
3 THAT impairs, or may impair, the ability to safely and skillfully  
4 practice the health profession.

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

7 (i) Incompetence.

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

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

13 (iv) Declaration of mental incompetence by a court of compe-  
14 tent jurisdiction.

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

20 (vi) Lack of good moral character.

21 (vii) Conviction of a criminal offense under sections 520a  
22 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to  
23 750.520l. A certified copy of the court record is conclusive  
24 evidence of the conviction.

25 (viii) Conviction of a violation of section 492a of the  
26 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy  
27 of the court record is conclusive evidence of the conviction.

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

5           (x) Final adverse administrative action by a licensure, reg-  
6 istration, disciplinary, or certification board involving the  
7 holder of, or an applicant for, a license or registration regu-  
8 lated by another state or a territory of the United States, by  
9 the United States military, by the federal government, or by  
10 another country. A certified copy of the record of the board is  
11 conclusive evidence of the final action.

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

16           (c) Prohibited acts, consisting of 1 or more of the  
17 following:

18           (i) Fraud or deceit in obtaining or renewing a license or  
19 registration.

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

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

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

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

3 (i) False or misleading advertising.

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

7 (iii) Fraud or deceit in obtaining or attempting to obtain  
8 third party reimbursement.

9 (e) Unprofessional conduct, consisting of 1 or more of the  
10 following:

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

14 (ii) Betrayal of a professional confidence.

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

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

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

23 (g) A violation, or aiding or abetting in a violation, of  
24 this article or of a rule promulgated under this article.

25 (h) Failure to comply with a subpoena issued pursuant to  
26 this part, failure to respond to a complaint issued under this  
27 article or article 7, failure to appear at a compliance

1 conference or an administrative hearing, or failure to report  
2 under section 16222 or 16223.

3 (i) Failure to pay an installment of an assessment levied  
4 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100  
5 to 500.8302, within 60 days after notice by the appropriate  
6 board.

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

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

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

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

12 (n) Failure to comply with section 9206(3).

13 (o) A violation of section 5654 or 5655.

14 (p) A violation of section 16274.

15 (q) A violation of section 17020 or 17520.

16 (R) DEFAULTING ON OR OTHERWISE FAILING TO PAY AN EDUCATIONAL  
17 LOAN TAKEN OUT BY THE LICENSEE, REGISTRANT, OR APPLICANT THAT IS  
18 GUARANTEED BY THE STATE OR FEDERAL GOVERNMENT OR FAILURE TO FUL-  
19 FILL A SERVICE OBLIGATION INCURRED UNDER PART 27. AS USED IN  
20 THIS SUBDIVISION, "SERVICE OBLIGATION" MEANS THAT TERM AS DEFINED  
21 IN SECTION 2701.

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

26

1 Violations of Section 16221Sanctions

2	Subdivision (a), (b)(ii),	Probation, limitation, denial,
3	(b)(iv), (b)(vi), or	suspension, revocation,
4	(b)(vii)	restitution, community service,
5		or fine.
6	Subdivision (b)(viii)	Revocation or denial.
7	Subdivision (b)(i),	Limitation, suspension,
8	(b)(iii), (b)(v),	revocation, denial,
9	(b)(ix),	probation, restitution,
10	(b)(x), or (b)(xi)	community service, or fine.
11	Subdivision (c)(i)	Denial, revocation, suspension,
12		probation, limitation, community
13		service, or fine.
14	Subdivision (c)(ii)	Denial, suspension, revocation,
15		restitution, community service,
16		or fine.
17	Subdivision (c)(iii)	Probation, denial, suspension,
18		revocation, restitution, commu-
19		nity service, or fine.

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

- 1 Subdivision (i) Suspension or fine.
- 2 Subdivision (j), (o), or  
3 (q) Reprimand or fine.
- 4 Subdivision (k) Reprimand, denial, or  
5 limitation.
- 6 Subdivision (l) or (n) Denial, revocation, restitution,  
7 probation, suspension, limita-  
8 tion, reprimand, or fine.
- 9 Subdivision (m) Revocation or denial.
- 10 Subdivision (p) Revocation.
- 11 SUBDIVISION (R) DENIAL.
- 12 (2) Determination of sanctions for violations under this  
13 section shall be made by a disciplinary subcommittee. If, during  
14 judicial review, the court of appeals determines that a final  
15 decision or order of a disciplinary subcommittee prejudices sub-  
16 stantial rights of the petitioner for 1 or more of the grounds  
17 listed in section 106 of the administrative procedures act of  
18 1969, 1969 PA 306, MCL 24.306, and holds that the final decision  
19 or order is unlawful and is to be set aside, the court shall  
20 state on the record the reasons for the holding and may remand



1 the case to the disciplinary subcommittee for further  
2 consideration.

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

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