

HOUSE BILL No. 4248

February 8, 2007, Introduced by Reps. Meadows, Alma Smith, Leland and Cushingberry and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16231 and 16237 (MCL 333.16231 and 333.16237),
section 16231 as amended by 1993 PA 79 and section 16237 as added
by 1993 PA 87.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16231. (1) A person or governmental entity who believes
2 that a violation of this article or article 7 or a rule promulgated
3 under this article or article 7 exists may make an allegation of
4 that fact to the department in writing.

5 (2) If, upon reviewing an application or an allegation or a
6 licensee's file under section 16211(4), the department determines
7 there is a reasonable basis to believe the existence of a violation

1 of this article or article 7 or a rule promulgated under this
2 article or article 7, the department, with the authorization of the
3 chair of the applicant's, licensee's, or registrant's board or task
4 force or his or her designee, shall investigate. If the chair or
5 his or her designee fails to grant or deny authorization within 7
6 days after receipt of a request for authorization, the department
7 shall investigate. **THE DEPARTMENT SHALL NOTIFY THE LICENSEE OF THE**
8 **RECEIPT OF AN ALLEGATION OR THE INITIATION OF AN INVESTIGATION**
9 **WITHIN 7 DAYS AFTER THE RECEIPT OR INITIATION, WHICHEVER FIRST**
10 **OCCURS.**

11 (3) Upon the receipt of information reported pursuant to
12 section 16243(2) that indicates 3 or more malpractice settlements,
13 awards, or judgments against a licensee in a period of 5
14 consecutive years or 1 or more malpractice settlements, awards, or
15 judgments against a licensee totaling more than \$200,000.00 in a
16 period of 5 consecutive years, whether or not a judgment or award
17 is stayed pending appeal, the department shall investigate. **THE**
18 **DEPARTMENT SHALL NOTIFY THE LICENSEE OF THE RECEIPT OF INFORMATION**
19 **OR THE INITIATION OF AN INVESTIGATION WITHIN 7 DAYS AFTER THE**
20 **RECEIPT OR INITIATION, WHICHEVER FIRST OCCURS.**

21 ~~(4) At any time during an investigation or following the~~
22 ~~issuance of~~ **IF a FORMAL complaint IS ISSUED**, the department may
23 schedule a compliance conference pursuant to section 92 of the
24 administrative procedures act of 1969, ~~being section 24.292 of the~~
25 ~~Michigan Compiled Laws~~ **MCL 24.292**. The conference may include the
26 applicant, licensee, or registrant, the applicant's, licensee's, or
27 registrant's attorney, 1 member of the department's staff, and any

1 other individuals approved by the department. One member of the
 2 appropriate board or task force who is not a member of the
 3 disciplinary subcommittee with jurisdiction over the matter may
 4 attend the conference and provide such assistance as needed. At the
 5 compliance conference, the department shall attempt to reach
 6 agreement. If an agreement is reached, the department shall submit
 7 a written statement outlining the terms of the agreement, or a
 8 stipulation and final order, if applicable, or a request for
 9 dismissal to the appropriate disciplinary subcommittee for
 10 approval. If the agreement or stipulation and final order or
 11 request for dismissal is rejected by the disciplinary subcommittee,
 12 or if no agreement is reached, a hearing before a hearings examiner
 13 shall be scheduled. A party shall not make a transcript of the
 14 compliance conference. ~~All records and documents of a compliance~~
 15 ~~conference held before a complaint is issued are subject to section~~
 16 ~~16238.~~

17 (5) Within 90 days after an investigation is initiated under
 18 subsection (2) or (3), the department shall do 1 or more of the
 19 following:

20 (a) Issue a formal complaint.

21 ~~— (b) Conduct a compliance conference under subsection (4).~~

22 (B) ~~(e)~~ Issue a summary suspension.

23 (C) ~~(d)~~ Issue a cease and desist order.

24 ~~— (e) Dismiss the complaint.~~

25 (D) ~~(f)~~ Place in the ~~complaint~~ **ALLEGATION** file not more than 1
 26 written extension of not more than 30 days to take action under
 27 this subsection.

1 (6) Unless the person submitting ~~the~~ **AN** allegation under
2 subsection (1) ~~otherwise~~ agrees in writing, the department shall
3 keep the identity of ~~a~~ **THE** person submitting ~~the~~ **AN** allegation
4 confidential until disciplinary proceedings under this part are
5 initiated. ~~against the subject of the allegation and the~~ **THE** person
6 making the allegation is required to testify in ~~the~~ **ANY**
7 **DISCIPLINARY** proceedings **RELATING TO THAT PERSON'S ALLEGATION.**

8 (7) **IF THE DEPARTMENT FAILS TO TAKE ACTION WITHIN THE TIME**
9 **PERIODS SET FORTH IN SUBSECTION (5), THE ALLEGATION IS DISMISSED**
10 **WITHOUT PREJUDICE. A PERSON OR THE DEPARTMENT MAY REFILE THE**
11 **ALLEGATION OR RECOMMENCE THE INVESTIGATION 1 TIME WITHIN 30 DAYS OF**
12 **THE DATE OF THE INITIAL DISMISSAL AND, IF THE ALLEGATION IS REFILED**
13 **OR THE INVESTIGATION IS RECOMMENCED, THE PERSON OR THE DEPARTMENT**
14 **SHALL COMPLY WITH THE PROCEDURES SET FORTH IN THIS SECTION.**

15 (8) **IF THE DEPARTMENT FAILS TO FILE A FORMAL COMPLAINT WITHIN**
16 **1 YEAR AFTER THE INITIAL RECEIPT OF AN ALLEGATION OR THE INITIATION**
17 **OF AN INVESTIGATION, WHICHEVER IS LATER, THE ALLEGATION IS**
18 **DISMISSED WITH PREJUDICE. THE FAILURE TO COMPLY WITH THIS TIME**
19 **LIMITATION IS JURISDICTIONAL.**

20 (9) ~~(7)~~ The department shall serve a complaint pursuant to
21 section 16192. The department shall include in the complaint a
22 notice that the applicant, licensee, or registrant who is the
23 subject of the complaint has 30 days from the date of receipt to
24 respond in writing to the complaint.

25 (10) ~~(8)~~ The department shall treat the failure of the
26 applicant, licensee, or registrant to respond to the complaint
27 within the 30-day period set forth in subsection ~~(7)~~ **(9)** as an

1 admission of the allegations contained in the complaint. The
2 department shall notify the appropriate disciplinary subcommittee
3 of the individual's failure to respond and shall forward a copy of
4 the complaint to that disciplinary subcommittee. The disciplinary
5 subcommittee may then impose an appropriate sanction under this
6 article or article 7.

7 Sec. 16237. (1) In imposing a penalty under section 16232(3),
8 a disciplinary subcommittee shall review the recommended findings
9 of fact and conclusions of law of the hearings examiner.

10 (2) The department of attorney general may assign an
11 independent special assistant attorney general who is under
12 contract to the department of attorney general and is not a member
13 of the state classified civil service to advise the disciplinary
14 subcommittees on matters of law and provide other legal assistance
15 as necessary. A special assistant attorney general assigned to the
16 disciplinary subcommittees under this subsection shall not be the
17 same individual who represented the department before a hearings
18 examiner under section 16231a(4).

19 (3) In reviewing the recommended findings of fact and
20 conclusions of law of the hearings examiner and the record of the
21 hearing, a disciplinary subcommittee may request the hearings
22 examiner to take additional testimony or evidence on a specific
23 issue or may revise the recommended findings of fact and
24 conclusions of law as determined necessary by the disciplinary
25 subcommittee, or both. A disciplinary subcommittee shall not
26 conduct its own investigation or take its own additional testimony
27 or evidence under this subsection.

1 (4) If a disciplinary subcommittee finds that a preponderance
2 of the evidence supports the recommended findings of fact and
3 conclusions of law of the hearings examiner indicating that grounds
4 exist for disciplinary action, the disciplinary subcommittee shall
5 impose an appropriate sanction under this article or article 7, or
6 both. If the disciplinary subcommittee finds that a preponderance
7 of the evidence does not support the findings of fact and
8 conclusions of law of the hearings examiner indicating that grounds
9 exist for disciplinary action, the disciplinary subcommittee shall
10 dismiss the complaint. A disciplinary subcommittee shall report
11 final action taken by it in writing to the appropriate board or
12 task force.

13 ~~(5) The compliance conference, the hearing before the hearings~~
14 ~~examiner, and final disciplinary subcommittee action shall be~~
15 ~~completed within 1 year after the department initiates an~~
16 ~~investigation under section 16231(2) or (3). The~~ **ON OR BEFORE MARCH**
17 **1 OF EACH YEAR, THE** department shall note in its annual report ~~any~~
18 ~~exceptions to the 1 year requirement~~ **TO THE LEGISLATURE THE NUMBER**
19 **OF ALLEGATIONS DISMISSED WITH PREJUDICE DURING THE PREVIOUS**
20 **CALENDAR YEAR DUE TO A FAILURE TO FILE A FORMAL COMPLAINT AS**
21 **PROVIDED FOR IN SECTION 16231(8).**

22 (6) A final decision of a disciplinary subcommittee rendered
23 ~~after the effective date of the amendatory act that added this~~
24 ~~section~~ **APRIL 1, 1994** but before January 1, 1995 may be appealed
25 only in the manner provided in sections 103 to 106 of the
26 administrative procedures act of 1969, ~~being sections 24.303 to~~
27 ~~24.306 of the Michigan Compiled Laws~~ **MCL 24.303 TO 24.306.** A final

1 decision of a disciplinary subcommittee rendered on or after
2 January 1, 1995 may be appealed only to the court of appeals. An
3 appeal filed under this subsection is by right.