

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5614

(As amended, December 3, 2010)

<<A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16231 and 16233 (MCL 333.16231 and 333.16233),
section 16231 as amended by 1993 PA 79 and section 16233 as amended
by 1995 PA 196, and by adding section 9122, and 17819; and to repeal
acts and parts of acts.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 9122. (1) AN INDIVIDUAL WHO IS AT LEAST 17 YEARS OF AGE
2 MAY DONATE BLOOD IN A VOLUNTARY AND NONCOMPENSATORY BLOOD PROGRAM
3 WITHOUT OBTAINING HIS OR HER PARENT'S OR LEGAL GUARDIAN'S
4 PERMISSION OR AUTHORIZATION.

5 (2) AN INDIVIDUAL WHO IS AT LEAST 16 BUT LESS THAN 17 YEARS OF
6 AGE MAY DONATE BLOOD IN A VOLUNTARY AND NONCOMPENSATORY BLOOD
7 PROGRAM WITH HIS OR HER PARENT'S OR LEGAL GUARDIAN'S PERMISSION OR

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1 **AUTHORIZATION.**

2 <<(3) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS "JENNA'S
3 LAW".>>

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

8 (2) If, upon reviewing an application or an allegation or a
9 licensee's file under section 16211(4), the department determines
10 there is a reasonable basis to believe the existence of a violation
11 of this article or article 7 or a rule promulgated under this
12 article or article 7, the department, with the authorization of the
13 chair of the ~~applicant's, licensee's, or registrant's~~ **APPROPRIATE**
14 board or task force or his or her designee, shall investigate. If
15 the chair or his or her designee fails to grant or deny
16 authorization within 7 days after receipt of a request for
17 authorization, the department shall investigate.

18 (3) Upon the receipt of information reported pursuant to
19 section 16243(2) that indicates 3 or more malpractice settlements,
20 awards, or judgments against a licensee in a period of 5
21 consecutive years or 1 or more malpractice settlements, awards, or
22 judgments against a licensee totaling more than \$200,000.00 in a
23 period of 5 consecutive years, whether or not a judgment or award
24 is stayed pending appeal, the department shall investigate.

25 (4) At any time during an investigation or following the
26 issuance of a complaint, the department may schedule a compliance
27 conference pursuant to section 92 of the administrative procedures
28 act of 1969, ~~being section MCL 24.292. of the Michigan Compiled~~
29 ~~Laws.~~ The conference may include the applicant, licensee, or

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

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

- 22 (a) Issue a formal complaint.
- 23 (b) Conduct a compliance conference under subsection (4).
- 24 (c) Issue a summary suspension.
- 25 (d) Issue a cease and desist order.
- 26 (e) Dismiss the complaint.
- 27 (f) Place in the complaint file not more than 1 written

1 extension of not more than 30 days to take action under this
2 subsection.

3 (6) Unless the person submitting the allegation under
4 subsection (1) otherwise agrees in writing, the department shall
5 keep the identity of a person submitting the allegation
6 confidential until disciplinary proceedings under this part are
7 initiated against the subject of the allegation and the person
8 making the allegation is required to testify in the proceedings.

9 (7) The department shall serve a complaint pursuant to section
10 16192. The department shall include in the complaint a notice that
11 the applicant, licensee, ~~or~~registrant, **OR INDIVIDUAL** who is the
12 subject of the complaint has 30 days from the date of receipt to
13 respond in writing to the complaint.

14 (8) The department shall treat the failure of the applicant,
15 licensee, ~~or~~registrant, **OR INDIVIDUAL** to respond to the complaint
16 within the 30-day period set forth in subsection (7) as an
17 admission of the allegations contained in the complaint. The
18 department shall notify the appropriate disciplinary subcommittee
19 of the individual's failure to respond and shall forward a copy of
20 the complaint to that disciplinary subcommittee. The disciplinary
21 subcommittee may then impose an appropriate sanction under this
22 article or article 7.

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

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

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

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

19 (5) After consultation with the chair of the appropriate board
20 or task force or his or her designee, the department may summarily
21 suspend a license or registration if the public health, safety, or
22 welfare requires emergency action in accordance with section 92 of
23 the administrative procedures act of 1969, ~~being section MCL~~
24 ~~24.292. of the Michigan Compiled Laws.~~ If a licensee or registrant
25 is convicted of a felony; a misdemeanor punishable by imprisonment
26 for a maximum term of 2 years; or a misdemeanor involving the
27 illegal delivery, possession, or use of a controlled substance, the

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1 department shall find that the public health, safety, or welfare
2 requires emergency action and, in accordance with section 92 of the
3 administrative procedures act of 1969, **MCL 24.292**, shall summarily
4 suspend the licensee's license or the registrant's registration. If
5 a licensee or registrant is convicted of a misdemeanor involving
6 the illegal delivery, possession, or use of alcohol that adversely
7 affects the licensee's ability to practice in a safe and competent
8 manner, the department may find that the public health, safety, or
9 welfare requires emergency action and, in accordance with section
10 92 of the administrative procedures act of 1969, **MCL 24.292**, may
11 summarily suspend the licensee's license or the registrant's
12 registration.

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**SEC. 17819. THIS PART DOES NOT PROHIBIT AN INDIVIDUAL LICENSED,
REGISTERED, OR OTHERWISE AUTHORIZED TO ENGAGE IN A HEALTH PROFESSION
UNDER ANY OTHER PART OR ANY OTHER ACT FROM PERFORMING ACTIVITIES THAT
ARE CONSIDERED THE PRACTICE OF PHYSICAL THERAPY OR THE PRACTICE AS A
PHYSICAL THERAPIST ASSISTANT SO LONG AS THOSE ACTIVITIES ARE WITHIN
THE INDIVIDUAL'S SCOPE OF PRACTICE AND THE INDIVIDUAL DOES NOT USE THE
WORDS, TITLES, OR LETTERS PROTECTED UNDER SECTION 17820.>>**

13 Enacting section 1. 1971 PA 22, MCL 722.41, is repealed.