

# HOUSE BILL No. 5614

December 1, 2009, Introduced by Rep. Roy Schmidt and referred to the Committee on Health Policy.

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.

## 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  
8       of this article or article 7 or a rule promulgated under this  
9       article or article 7, the department, with the authorization of the

1 chair of the applicant's, licensee's, or registrant's board or task  
2 force or his or her designee, shall investigate. If the chair or  
3 his or her designee fails to grant or deny authorization within 7  
4 days after receipt of a request for authorization, the department  
5 shall investigate.

6 (3) Upon the receipt of information reported pursuant to  
7 section 16243(2) that indicates 3 or more malpractice settlements,  
8 awards, or judgments against a licensee in a period of 5  
9 consecutive years or 1 or more malpractice settlements, awards, or  
10 judgments against a licensee totaling more than \$200,000.00 in a  
11 period of 5 consecutive years, whether or not a judgment or award  
12 is stayed pending appeal, the department shall investigate. **UPON**  
13 **THE RECEIPT OF INFORMATION THAT MAY CONSTITUTE A VIOLATION OF**  
14 **SECTION 16294, THE DEPARTMENT SHALL INVESTIGATE.**

15 (4) At any time during an investigation or following the  
16 issuance of a complaint, the department may schedule a compliance  
17 conference pursuant to section 92 of the administrative procedures  
18 act of 1969, ~~being section MCL 24.292. of the Michigan Compiled~~  
19 ~~Laws.~~ The conference may include the applicant, licensee, or  
20 registrant, the applicant's, licensee's, or registrant's attorney,  
21 1 member of the department's staff, and any other individuals  
22 approved by the department. One member of the appropriate board or  
23 task force who is not a member of the disciplinary subcommittee  
24 with jurisdiction over the matter may attend the conference and  
25 provide such assistance as needed. At the compliance conference,  
26 the department shall attempt to reach agreement. If an agreement is  
27 reached, the department shall submit a written statement outlining

1 the terms of the agreement, or a stipulation and final order, if  
2 applicable, or a request for dismissal to the appropriate  
3 disciplinary subcommittee for approval. If the agreement or  
4 stipulation and final order or request for dismissal is rejected by  
5 the disciplinary subcommittee, or if no agreement is reached, a  
6 hearing before a hearings examiner shall be scheduled. A party  
7 shall not make a transcript of the compliance conference. All  
8 records and documents of a compliance conference held before a  
9 complaint is issued are subject to section 16238.

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

13 (a) Issue a formal complaint.

14 (b) Conduct a compliance conference under subsection (4).

15 (c) Issue a summary suspension.

16 (d) Issue a cease and desist order.

17 (e) Dismiss the complaint.

18 (f) Place in the complaint file not more than 1 written  
19 extension of not more than 30 days to take action under this  
20 subsection.

21 (6) Unless the person submitting the allegation under  
22 subsection (1) otherwise agrees in writing, the department shall  
23 keep the identity of a person submitting the allegation  
24 confidential until disciplinary proceedings under this part are  
25 initiated against the subject of the allegation and the person  
26 making the allegation is required to testify in the proceedings.

27 (7) The department shall serve a complaint pursuant to section

1 16192. The department shall include in the complaint a notice that  
2 the applicant, licensee, or registrant who is the subject of the  
3 complaint has 30 days from the date of receipt to respond in  
4 writing to the complaint.

5 (8) The department shall treat the failure of the applicant,  
6 licensee, or registrant to respond to the complaint within the 30-  
7 day period set forth in subsection (7) as an admission of the  
8 allegations contained in the complaint. The department shall notify  
9 the appropriate disciplinary subcommittee of the individual's  
10 failure to respond and shall forward a copy of the complaint to  
11 that disciplinary subcommittee. The disciplinary subcommittee may  
12 then impose an appropriate sanction under this article or article  
13 7.

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

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

22 (3) An individual ordered to cease and desist under subsection  
23 (2) is entitled to a hearing before a hearings examiner if the  
24 individual files a written request for a hearing within 30 days  
25 after the effective date of the cease and desist order. The  
26 department shall subsequently present the notice, if any, of the  
27 ~~applicant's, licensee's, or registrant's~~ **INDIVIDUAL'S** failure to

1 respond to a complaint, or attend or be represented at a hearing as  
2 described in sections 16231 and 16231a, or the recommended findings  
3 of fact and conclusions of law to the appropriate disciplinary  
4 subcommittee to determine whether the order is to remain in effect  
5 or be dissolved.

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

10 (5) After consultation with the chair of the appropriate board  
11 or task force or his or her designee, the department may summarily  
12 suspend a license or registration if the public health, safety, or  
13 welfare requires emergency action in accordance with section 92 of  
14 the administrative procedures act of 1969, ~~being section MCL~~  
15 ~~24.292. of the Michigan Compiled Laws.~~ If a licensee or registrant  
16 is convicted of a felony; a misdemeanor punishable by imprisonment  
17 for a maximum term of 2 years; or a misdemeanor involving the  
18 illegal delivery, possession, or use of a controlled substance, the  
19 department shall find that the public health, safety, or welfare  
20 requires emergency action and, in accordance with section 92 of the  
21 administrative procedures act of 1969, **MCL 24.292**, shall summarily  
22 suspend the licensee's license or the registrant's registration. If  
23 a licensee or registrant is convicted of a misdemeanor involving  
24 the illegal delivery, possession, or use of alcohol that adversely  
25 affects the licensee's ability to practice in a safe and competent  
26 manner, the department may find that the public health, safety, or  
27 welfare requires emergency action and, in accordance with section

1 92 of the administrative procedures act of 1969, **MCL 24.292**, may  
2 summarily suspend the licensee's license or the registrant's  
3 registration.