

SENATE BILL No. 575

October 2, 2013, Introduced by Senators SCHUITMAKER and JONES and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16231 and 16232 (MCL 333.16231 and 333.16232),
section 16231 as amended by 2010 PA 382 and section 16232 as
amended by 1993 PA 79, and by adding section 16216a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16216A. (1) A MEMBER OF A DISCIPLINARY SUBCOMMITTEE SHALL
2 NOT PARTICIPATE IN MAKING A DECISION OF THAT SUBCOMMITTEE THAT 1 OR
3 MORE OF THE GROUNDS LISTED IN SECTION 16221 EXIST, IN ANY
4 INVESTIGATION, OR IN THE IMPOSITION OF SANCTIONS UNDER SECTION
5 16226, CONCERNING A LICENSEE, REGISTRANT, OR APPLICANT FOR
6 LICENSURE OR REGISTRATION IF THAT SUBCOMMITTEE MEMBER HAS A
7 CONFLICT OF INTEREST.

(2) A MEMBER OF A DISCIPLINARY SUBCOMMITTEE SHALL DISCLOSE A POTENTIAL CONFLICT OF INTEREST DESCRIBED IN SUBSECTION (1) BEFORE THAT SUBCOMMITTEE TAKES ANY ACTION DESCRIBED IN SUBSECTION (1).

(3) AS USED IN THIS SECTION, "CONFLICT OF INTEREST" MEANS ANY OF THE FOLLOWING:

(A) HAS A PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME OF THE INVESTIGATION OF OR THE IMPOSITION OF DISCIPLINARY SANCTIONS ON THE LICENSEE, REGISTRANT, OR APPLICANT FOR LICENSURE OR REGISTRATION.

(B) HAD A PAST OR HAS A PRESENT BUSINESS OR PROFESSIONAL RELATIONSHIP WITH THE INDIVIDUAL THAT THE DISCIPLINARY SUBCOMMITTEE IS INVESTIGATING OR AGAINST WHOM THE DISCIPLINARY SUBCOMMITTEE IS CONSIDERING SANCTIONS.

(C) HAS GIVEN EXPERT TESTIMONY IN A MEDICAL MALPRACTICE ACTION AGAINST OR ON BEHALF OF THE INDIVIDUAL THAT THE DISCIPLINARY SUBCOMMITTEE IS INVESTIGATING OR AGAINST WHOM THE DISCIPLINARY SUBCOMMITTEE IS CONSIDERING SANCTIONS.

(D) HAS OTHER INTEREST OR RELATIONSHIP DESIGNATED AS A CONFLICT OF INTEREST IN A RULE PROMULGATED OR ORDER ISSUED UNDER THIS ACT.

Sec. 16231. (1) A person or governmental entity ~~who~~ THAT believes that a violation of this article or article 7 or a rule promulgated under this article or article 7 exists may ~~make~~ SUBMIT an allegation of that fact to the department in writing. THE DEPARTMENT SHALL NOT ACCEPT AN ANONYMOUS WRITTEN ALLEGATION UNDER THIS SUBSECTION.

(2) ~~If, upon~~ SUBJECT TO SUBSECTION (3), IF THE DEPARTMENT DETERMINES AFTER reviewing an application or an allegation or a

1 licensee's **OR REGISTRANT'S** file under section 16211(4) ~~the~~
2 ~~department determines THAT~~ there is a reasonable basis to believe
3 ~~the existence of THAT~~ a violation of this article or article 7 or a
4 rule promulgated under this article or article 7 **EXISTS**, the
5 department **SHALL DO 1 OF THE FOLLOWING:**

6 (A) **UNLESS SUBDIVISION (B) APPLIES, SUBJECT TO SUBSECTION**
7 **(10), with the authorization of A PANEL OF AT LEAST 3 BOARD MEMBERS**
8 **THAT INCLUDES** the chair **AND AT LEAST 2 OTHER MEMBERS** of the
9 appropriate board or task force ~~or his or her designee, shall~~
10 **DESIGNATED BY THE CHAIR, SHALL** investigate **THE ALLEGED VIOLATION.**
11 ~~if SUBJECT TO SUBSECTION (10), IF the chair or his or her designee~~
12 **PANEL** fails to grant or deny authorization within 7 days after
13 ~~receipt of THE BOARD OR TASK FORCE RECEIVES~~ a request for
14 authorization, the department shall investigate.

15 (B) **IF THE DEPARTMENT REVIEWS AN ALLEGATION IN WRITING UNDER**
16 **SUBSECTION (1) THAT CONCERNS A LICENSEE OR REGISTRANT WHOSE RECORD**
17 **CREATED UNDER SECTION 16211 INCLUDES 1 OR MORE WRITTEN ALLEGATIONS**
18 **RECEIVED IN THE PRECEDING 5 YEARS, SHALL INVESTIGATE THE ALLEGED**
19 **VIOLATION. AUTHORIZATION BY A PANEL DESCRIBED IN SUBDIVISION (A) IS**
20 **NOT REQUIRED FOR AN INVESTIGATION BY THE DEPARTMENT UNDER THIS**
21 **SUBDIVISION.**

22 (3) **IF A PERSON OR GOVERNMENTAL ENTITY SUBMITS A WRITTEN**
23 **ALLEGATION UNDER SUBSECTION (1) MORE THAN 5 YEARS AFTER THE DATE OF**
24 **THE INCIDENT OR ACTIVITY THAT IS THE BASIS OF THE ALLEGED**
25 **VIOLATION, THE DEPARTMENT MAY INVESTIGATE THE ALLEGED VIOLATION IN**
26 **THE MANNER DESCRIBED IN SUBSECTION (2) (A) OR (B), AS APPLICABLE,**
27 **BUT IS NOT REQUIRED TO CONDUCT AN INVESTIGATION UNDER SUBSECTION**

1 (2) (A) OR (B) .

2 (4) ~~(3) Upon the receipt of~~ **IF IT RECEIVES** information
3 reported ~~pursuant to~~ **UNDER** section 16243(2) that indicates 3 or
4 more malpractice settlements, awards, or judgments against a
5 licensee in a period of 5 consecutive years or 1 or more
6 malpractice settlements, awards, or judgments against a licensee
7 totaling more than \$200,000.00 in a period of 5 consecutive years,
8 whether or not a judgment or award is stayed pending appeal, the
9 department shall investigate.

10 (5) ~~(4) At any time during an investigation or following the~~
11 issuance of a complaint, the department may schedule a compliance
12 conference ~~pursuant to~~ **UNDER** section 92 of the administrative
13 procedures act of 1969, MCL 24.292. The conference may include the
14 applicant, licensee, registrant, or individual, the applicant's,
15 licensee's, registrant's, or individual's attorney, 1 member of the
16 department's staff, and any other individuals approved by the
17 department. One member of the appropriate board or task force who
18 is not a member of the disciplinary subcommittee with jurisdiction
19 over the matter may attend the conference and provide ~~such~~ **ANY**
20 assistance ~~as~~ **THAT IS** needed. At the compliance conference, the
21 department shall attempt to reach agreement. If an agreement is
22 reached, the department shall submit a written statement outlining
23 the terms of the agreement, or a stipulation and final order, if
24 applicable, or a request for dismissal to the appropriate
25 disciplinary subcommittee for approval. If the agreement or
26 stipulation and final order or request for dismissal is rejected by
27 the disciplinary subcommittee, or if no agreement is reached, **THE**

1 **DEPARTMENT SHALL SCHEDULE** a hearing before a hearings examiner.
2 ~~shall be scheduled.~~ A party shall not make a transcript of the
3 compliance conference. All records and documents of a compliance
4 conference held before a complaint is issued are subject to section
5 16238.

6 (6) ~~(5)~~ Within 90 days after an investigation is initiated
7 under subsection ~~(2)~~ **(3)** or ~~(3)~~ **(4)**, the department shall do 1 or
8 more of the following:

9 (a) Issue a formal complaint.

10 (b) Conduct a compliance conference under subsection ~~(4)~~ **(5)**.

11 (c) Issue a summary suspension.

12 (d) Issue a cease and desist order.

13 (e) Dismiss the complaint.

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

17 (7) ~~(6)~~ Unless the person submitting ~~the~~ **AN** allegation under
18 subsection (1) otherwise agrees in writing, the department shall
19 keep the identity of a person ~~submitting~~ **THAT SUBMITTED** the
20 allegation confidential until disciplinary proceedings under this
21 part are initiated against the subject of the allegation and the
22 person ~~making~~ **THAT MADE** the allegation is required to testify in
23 the proceedings.

24 (8) ~~(7)~~ The department shall serve a complaint ~~pursuant to~~
25 **UNDER** section 16192. The department shall include in the complaint
26 a notice that the applicant, licensee, registrant, or individual
27 who is the subject of the complaint has 30 days from the date of

1 receipt to respond in writing to the complaint.

2 (9) ~~(8)~~—The department shall treat the failure of ~~the~~**AN**
3 applicant, licensee, registrant, or individual to respond to ~~the~~**A**
4 complaint within the 30-day period set forth in subsection ~~(7)~~**(8)**
5 as an admission of the allegations contained in the complaint. The
6 department shall notify the appropriate disciplinary subcommittee
7 of the individual's failure to respond and shall forward a copy of
8 the complaint to that disciplinary subcommittee. The disciplinary
9 subcommittee may then impose an appropriate sanction under this
10 article or article 7.

11 (10) ALL OF THE FOLLOWING APPLY FOR PURPOSES OF SUBSECTION
12 (3) (A) :

13 (A) IF THE CHAIR OF THE BOARD OR TASK FORCE HAS A CONFLICT OF
14 INTEREST, HE OR SHE SHALL APPOINT ANOTHER MEMBER OF THE BOARD OR
15 TASK FORCE AS HIS OR HER DESIGNEE AND SHALL NOT PARTICIPATE IN THE
16 PANEL'S DECISION TO GRANT OR DENY AUTHORIZATION TO THE DEPARTMENT
17 TO INVESTIGATE AN INDIVIDUAL.

18 (B) A MEMBER OF THE BOARD OR TASK FORCE SHALL NOT PARTICIPATE
19 IN THE PANEL'S DECISION TO GRANT OR DENY AUTHORIZATION TO THE
20 DEPARTMENT TO INVESTIGATE AN INDIVIDUAL IF THAT MEMBER HAS A
21 CONFLICT OF INTEREST. IF THE CHAIR OF THE BOARD OR TASK FORCE IS
22 NOTIFIED THAT A MEMBER OF THE PANEL HAS A CONFLICT OF INTEREST, THE
23 CHAIR SHALL REMOVE HIM OR HER FROM THE PANEL AND APPOINT ANOTHER
24 MEMBER OF THE BOARD OR TASK FORCE TO SERVE ON THE PANEL.

25 (C) A MEMBER OF THE BOARD OR TASK FORCE WHO PARTICIPATES IN OR
26 IS REQUESTED TO PARTICIPATE IN THE PANEL'S DECISION TO GRANT OR
27 DENY AUTHORIZATION TO THE DEPARTMENT TO INVESTIGATE AN INDIVIDUAL

1 SHALL DISCLOSE TO THE DEPARTMENT, TO THE CHAIR OF THE BOARD OR TASK
2 FORCE, AND TO THE OTHER MEMBER OF THE PANEL A POTENTIAL CONFLICT OF
3 INTEREST BEFORE THOSE PARTICIPANTS MAKE THAT DECISION.

4 (11) AS USED IN SUBSECTION (10), "CONFLICT OF INTEREST" MEANS
5 ANY OF THE FOLLOWING:

6 (A) HAS A PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME OF THE
7 INVESTIGATION OF OR THE IMPOSITION OF DISCIPLINARY SANCTIONS ON THE
8 LICENSEE, REGISTRANT, OR APPLICANT FOR LICENSURE OR REGISTRATION.

9 (B) HAD A PAST OR HAS A PRESENT BUSINESS OR PROFESSIONAL
10 RELATIONSHIP WITH THE INDIVIDUAL THAT THE DEPARTMENT IS
11 INVESTIGATING OR REQUESTING AUTHORIZATION TO INVESTIGATE.

12 (C) HAS GIVEN EXPERT TESTIMONY IN A MEDICAL MALPRACTICE ACTION
13 AGAINST OR ON BEHALF OF THE INDIVIDUAL THAT THE DEPARTMENT IS
14 SEEKING AUTHORIZATION TO INVESTIGATE.

15 (D) ANY OTHER INTEREST OR RELATIONSHIP DESIGNATED AS A
16 CONFLICT OF INTEREST IN A RULE PROMULGATED OR ORDER ISSUED UNDER
17 THIS ACT.

18 Sec. 16232. (1) The department shall provide an opportunity
19 for a hearing in connection with the denial, reclassification,
20 limitation, reinstatement, suspension, or revocation of a license
21 or a proceeding to reprimand, fine, order ~~community service or~~
22 restitution, or place a licensee on probation.

23 (2) The department shall provide an opportunity for a hearing
24 in connection with the denial, limitation, suspension, revocation,
25 or reinstatement of a registration or a proceeding to reprimand,
26 fine, order ~~community service or~~ restitution, or place a registrant
27 on probation.

1 (3) A disciplinary subcommittee shall meet within 60 days
2 after receipt of the recommended findings of fact and conclusions
3 of law from a hearings examiner to impose a penalty.

4 (4) Only the department shall promulgate rules governing
5 hearings under this article or article 7 and related preliminary
6 proceedings.