

HOUSE BILL NO. 6111

August 17, 2020, Introduced by Reps. Slagh and Meerman and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16221a and 16233 (MCL 333.16221a and
333.16233), section 16221a as added by 2014 PA 346 and section
16233 as amended by 2014 PA 280.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16221a. (1) **Neither of the following is a ground for**
2 **investigating a licensee or registrant under section 16221 or for**
3 **taking disciplinary action against the licensee or registrant under**



1 **section 16226:**

2 (a) Except in the case of gross negligence or willful
3 misconduct as determined by the department, ~~a health care~~
4 ~~provider's~~ **the licensee's or registrant's** recommendation or
5 treatment provided ~~as authorized under the right to try act, 2014~~
6 **PA 345, MCL 333.26451 to 333.26457.** ~~is not grounds for the~~
7 ~~department to investigate under section 16221 or for disciplinary~~
8 ~~action against a licensee under section 16226.~~

9 (b) Conduct that violates an executive order issued by the
10 governor during a state of disaster or emergency declared under the
11 emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or
12 1945 PA 302, MCL 10.31 to 10.33, relating to COVID-19. This
13 subdivision does not apply if the licensee's or registrant's
14 conduct would be a ground for investigation or disciplinary action
15 under this article if the executive order had not been issued.

16 (2) As used in this section:

17 (a) "COVID-19" means severe acute respiratory syndrome
18 coronavirus 2 (SARS-CoV-2).

19 (b) "Gross negligence" means conduct so reckless as to
20 demonstrate a substantial lack of concern for whether serious
21 injury to a person would result.

22 (c) ~~(b)~~ "Willful misconduct" means conduct committed with an
23 intentional or reckless disregard for the safety of others, as by
24 failing to exercise reasonable care to prevent a known danger.

25 Sec. 16233. (1) The department may conduct an investigation
26 necessary to administer and enforce this article. Investigations
27 may include written, oral, or practical tests of a licensee's or
28 registrant's competency. The department may establish a special
29 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, article 7, or article 8 or a rule
3 promulgated under this article, article 7, or article 8.

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 individual's failure to respond to a complaint, or attend or be
10 represented at a hearing as described in sections 16231 and 16231a,
11 or the recommended findings of fact and conclusions of law to the
12 appropriate disciplinary subcommittee to determine whether the
13 order is to remain in effect or be dissolved.

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

19 (5) ~~After~~ **Except as otherwise provided in subsection (7),**
20 **after** consultation with the chair of the appropriate board or task
21 force or his or her designee, the department may summarily suspend
22 a license or registration if the public health, safety, or welfare
23 requires emergency action in accordance with section 92 of the
24 administrative procedures act of 1969, MCL 24.292. If a licensee or
25 registrant is convicted of a felony; a misdemeanor punishable by
26 imprisonment for a maximum term of 2 years; or a misdemeanor
27 involving the illegal delivery, possession, or use of a controlled
28 substance, the department shall find that the public health,
29 safety, or welfare requires emergency action and, in accordance



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

11 (6) The department may summarily suspend a pharmacy license if
12 the department has received a notice from the United States ~~food~~
13 ~~and drug administration~~ **Food and Drug Administration** or the ~~centers~~
14 ~~for disease control and prevention~~ **Centers for Disease Control and**
15 **Prevention** that there is an imminent risk to the public health,
16 safety, or welfare and emergency action in accordance with section
17 92 of the administrative procedures act of 1969, MCL 24.292, is
18 appropriate. A suspension under this subsection remains in effect
19 for the duration of the emergency situation that poses a risk to
20 the public health, safety, or welfare. Notwithstanding any
21 provision of this act to the contrary, the department is not
22 required to conduct an investigation or consult with the board of
23 pharmacy to take emergency action under this subsection.

24 (7) **The department shall not summarily suspend a licensee's**
25 **license or a registrant's registration under subsection (5) for**
26 **conduct that violates an executive order issued by the governor**
27 **during a state of disaster or emergency declared under the**
28 **emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or**
29 **1945 PA 302, MCL 10.31 to 10.33, relating to COVID-19. This**



1 subsection does not apply if the licensee's or registrant's conduct
2 would be a ground for summary suspension under subsection (5) if
3 the executive order had not been issued. As used in this
4 subsection, "COVID-19" means severe acute respiratory syndrome
5 coronavirus 2 (SARS-CoV-2).

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. _____ or House Bill No. 6110 (request no.
8 07349'20 a) of the 100th Legislature is enacted into law.

