



# HOUSE BILL No. 5091

September 20, 1995, Introduced by Reps. Law, Jamian, Griffin, Bennane, Crissman, Rocca, McManus and Hammerstrom and referred to the Committee on Regulatory Affairs.

A bill to amend sections 16221 and 16233 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 16221 as amended by Act No. 133 of the Public Acts of 1993 and section 16233 as amended by Act No. 79 of the Public Acts of 1993, being sections 333.16221 and 333.16233 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 16221 and 16233 of Act No. 368 of the  
2 Public Acts of 1978, section 16221 as amended by Act No. 133 of  
3 the Public Acts of 1993 and section 16233 as amended by Act  
4 No. 79 of the Public Acts of 1993, being sections 333.16221 and  
5 333.16233 of the Michigan Compiled Laws, are amended to read as  
6 follows:

1           Sec. 16221. The department may investigate activities  
2 related to the practice of a health profession by a licensee, a  
3 registrant, or an applicant for licensure or registration. The  
4 department may hold hearings, administer oaths, and order rele-  
5 vant testimony to be taken and shall report its findings to the  
6 appropriate disciplinary subcommittee. The disciplinary subcom-  
7 mittee shall proceed under section 16226 if it finds that ~~any~~ 1  
8 OR MORE of the following grounds exist:

9           (a) A violation of general duty, consisting of negligence or  
10 failure to exercise due care, including negligent delegation to  
11 or supervision of employees or other individuals, whether or not  
12 injury results, or any conduct, practice, or condition which  
13 impairs, or may impair, the ability to safely and skillfully  
14 practice the health profession.

15           (b) Personal disqualifications, consisting of ~~any~~ 1 OR  
16 MORE of the following:

17           (i) Incompetence.

18           (ii) Subject to sections 16165 to 16170a, substance abuse as  
19 defined in section 6107.

20           (iii) Mental or physical inability reasonably related to and  
21 adversely affecting the licensee's ability to practice in a safe  
22 and competent manner.

23           (iv) Declaration of mental incompetence by a court of compe-  
24 tent jurisdiction.

25           (v) Conviction of a misdemeanor punishable by imprisonment  
26 for a maximum term of 2 years, a misdemeanor involving the  
27 illegal delivery, possession, or use of ~~alcohol or~~ a controlled

1 substance, or a felony. A certified copy of the court record is  
2 conclusive evidence of the conviction.

3 (vi) Lack of good moral character.

4 (vii) Conviction of a criminal offense under sections 520a  
5 to 520l of the Michigan penal code, Act No. 328 of the Public  
6 Acts of 1931, being sections 750.520a to 750.520l of the Michigan  
7 Compiled Laws. A certified copy of the court record is conclu-  
8 sive evidence of the conviction.

9 (viii) Conviction of a violation of section 492a of the  
10 Michigan penal code, Act No. 328 of the Public Acts of 1931,  
11 being section 750.492a of the Michigan Compiled Laws. A certi-  
12 fied copy of the court record is conclusive evidence of the  
13 conviction.

14 (ix) Conviction of a misdemeanor or felony involving fraud  
15 in obtaining or attempting to obtain fees related to the practice  
16 of a health profession. A certified copy of the court record is  
17 conclusive evidence of the conviction.

18 (x) Final adverse administrative action by a licensure, reg-  
19 istration, disciplinary, or certification board involving the  
20 holder of, or an applicant for, a license or registration regu-  
21 lated by another state or a territory of the United States. A  
22 certified copy of the record of the board is conclusive evidence  
23 of the final action.

24 (xi) Conviction of a misdemeanor that is reasonably related  
25 to or that adversely affects the licensee's ability to practice  
26 in a safe and competent manner. A certified copy of the court  
27 record is conclusive evidence of the conviction.

1 (c) Prohibited acts, consisting of ~~any~~ 1 OR MORE of the  
2 following:

3 (i) Fraud or deceit in obtaining or renewing a license or  
4 registration.

5 (ii) Permitting the license or registration to be used by an  
6 unauthorized person.

7 (iii) Practice outside the scope of a license.

8 (iv) Obtaining, possessing, or attempting to obtain or pos-  
9 sess a controlled substance as defined in section 7104 or a drug  
10 as defined in section 7105 without lawful authority; or selling,  
11 prescribing, giving away, or administering drugs for other than  
12 lawful diagnostic or therapeutic purposes.

13 (d) Unethical business practices, consisting of ~~any~~ 1 OR  
14 MORE of the following:

15 (i) False or misleading advertising.

16 (ii) Dividing fees for referral of patients or accepting  
17 kickbacks on medical or surgical services, appliances, or medica-  
18 tions purchased by or in behalf of patients.

19 (iii) Fraud or deceit in obtaining or attempting to obtain  
20 third party reimbursement.

21 (e) Unprofessional conduct, consisting of ~~any~~ 1 OR MORE of  
22 the following:

23 (i) Misrepresentation to a consumer or patient or in obtain-  
24 ing or attempting to obtain third party reimbursement in the  
25 course of professional practice.

26 (ii) Betrayal of a professional confidence.

1 (iii) Promotion for personal gain of an unnecessary drug,  
2 device, treatment, procedure, or service.

3 (iv) Directing or requiring an individual to purchase or  
4 secure a drug, device, treatment, procedure, or service from  
5 another person, place, facility, or business in which the  
6 licensee has a financial interest.

7 (f) Failure to report a change of name or mailing address  
8 within 30 days after the change occurs.

9 (g) A violation, or aiding or abetting in a violation, of  
10 this article or of rules promulgated under this article.

11 (h) Failure to comply with a subpoena issued pursuant to  
12 this part, failure to respond to a complaint issued under this  
13 article or article 7, failure to appear at a compliance confer-  
14 ence or an administrative hearing, or failure to report under  
15 section 16222 or 16223.

16 (i) Failure to pay an installment of an assessment levied  
17 pursuant to section 2504 of the insurance code of 1956, Act  
18 No. 218 of the Public Acts of 1956, ~~as amended,~~ being section  
19 500.2504 of the Michigan Compiled Laws, within 60 days after  
20 notice by the appropriate board.

21 (j) A violation of section 17013 or 17513.

22 (k) Failure to meet 1 or more of the requirements for licen-  
23 sure or registration under section 16174.

24 (l) A violation of section 17015 or 17515.

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

1 registrant's competency. The department may establish a special  
2 paralegal unit to assist the department.

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

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

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

22 (5) After consultation with the chair of the appropriate  
23 board or task force or his or her designee, the department may  
24 summarily suspend a license or registration if the public health,  
25 safety, or welfare requires emergency action in accordance with  
26 section 92 of the administrative procedures act of 1969, being  
27 section 24.292 of the Michigan Compiled Laws. If a licensee or

1 registrant is convicted of a felony or a misdemeanor punishable  
2 by imprisonment for a maximum term of 2 years or a misdemeanor  
3 involving the illegal delivery, possession, or use of ~~alcohol~~  
4 ~~or~~ a controlled substance, the department shall find that the  
5 public health, safety, or welfare requires emergency action and,  
6 IN ACCORDANCE WITH SECTION 92 OF THE ADMINISTRATIVE PROCEDURES  
7 ACT OF 1969, shall SUMMARILY suspend the licensee's license or  
8 the registrant's registration. IF A LICENSEE OR REGISTRANT IS  
9 CONVICTED OF A MISDEMEANOR INVOLVING THE ILLEGAL DELIVERY, POS-  
10 SESSION, OR USE OF ALCOHOL THAT ADVERSELY AFFECTS THE LICENSEE'S  
11 ABILITY TO PRACTICE IN A SAFE AND COMPETENT MANNER, THE DEPART-  
12 MENT MAY FIND THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE REQUIRES  
13 EMERGENCY ACTION AND, IN ACCORDANCE WITH SECTION 92 OF THE ADMIN-  
14 ISTRATIVE PROCEDURES ACT OF 1969, MAY SUSPEND THE LICENSEE'S  
15 LICENSE OR THE REGISTRANT'S REGISTRATION.