

SENATE BILL NO. 864

February 5, 1998, Introduced by Senators BENNETT, VAN REGENMORTER, SHUGARS, GOUGEON, BULLARD, GEAKE, STEIL, DUNASKISS, STILLE, MC MANUS, GAST, NORTH, HOFFMAN and SCHUETTE and referred to the Committee on Health Policy and Senior Citizens.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, 16245, 16247, 16248, and 20165 (MCL 333.16221, 333.16226, 333.16245, 333.16247, 333.16248, and 333.20165), sections 16221 and 16226 as amended by 1996 PA 594, section 16245 as amended by 1993 PA 87, sections 16247 and 16248 as amended by 1993 PA 79, and section 20165 as amended by 1990 PA 179, and by adding sections 16275 and 20197.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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
5 relevant testimony to be taken and shall report its findings to
6 the appropriate disciplinary subcommittee. The disciplinary

1 subcommittee shall proceed under section 16226 if it finds that 1
2 or more of the following grounds exist:

3 (a) A violation of general duty, consisting of negligence or
4 failure to exercise due care, including negligent delegation to
5 or supervision of employees or other individuals, whether or not
6 injury results, or any conduct, practice, or condition which
7 impairs, or may impair, the ability to safely and skillfully
8 practice the health profession.

9 (b) Personal disqualifications, consisting of 1 or more of
10 the following:

11 (i) Incompetence.

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

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

17 (iv) Declaration of mental incompetence by a court of compe-
18 tent jurisdiction.

19 (v) Conviction of a misdemeanor punishable by imprisonment
20 for a maximum term of 2 years; a misdemeanor involving the ille-
21 gal delivery, possession, or use of a controlled substance; or a
22 felony. A certified copy of the court record is conclusive evi-
23 dence of the conviction.

24 (vi) Lack of good moral character.

25 (vii) Conviction of a criminal offense under sections 520a
26 to 520l of the Michigan penal code, ~~Act No. 328 of the Public~~
27 ~~Acts of 1931, being sections 750.520a to 750.520l of the Michigan~~

1 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520A TO 750.520I. A
2 certified copy of the court record is conclusive evidence of the
3 conviction.

4 (viii) Conviction of a violation of section 492a of the
5 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
6 ~~being section 750.492a of the Michigan Compiled Laws~~ 1931 PA
7 328, MCL 750.492A. A certified copy of the court record is con-
8 clusive evidence of the conviction.

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

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

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

23 (c) Prohibited acts, consisting of 1 or more of the
24 following:

25 (i) Fraud or deceit in obtaining or renewing a license or
26 registration.

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

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

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

9 (d) Unethical business practices, consisting of 1 or more of
10 the following:

11 (i) False or misleading advertising.

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

15 (iii) Fraud or deceit in obtaining or attempting to obtain
16 third party reimbursement.

17 (e) Unprofessional conduct, consisting of 1 or more of the
18 following:

19 (i) Misrepresentation to a consumer or patient or in obtain-
20 ing or attempting to obtain third party reimbursement in the
21 course of professional practice.

22 (ii) Betrayal of a professional confidence.

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

25 (iv) Directing or requiring an individual to purchase or
26 secure a drug, device, treatment, procedure, or service from

1 another person, place, facility, or business in which the
2 licensee has a financial interest.

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

5 (g) A violation, or aiding or abetting in a violation, of
6 this article or of a rule promulgated under this article.

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

12 (i) Failure to pay an installment of an assessment levied
13 pursuant to section 2504 of the insurance code of 1956, ~~Act~~
14 ~~No. 218 of the Public Acts of 1956, being section 500.2504 of the~~
15 ~~Michigan Compiled Laws~~ 1956 PA 218, MCL 500.2504, within 60 days
16 after notice by the appropriate board.

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

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

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

21 (m) A violation of section 17016 or 17516.

22 (N) FAILURE TO COMPLY WITH SECTION 9206(3).

23 (O) ~~(n)~~ A violation of section 5654 or 5655.

24 (P) A VIOLATION OF SECTION 16275.

25 Sec. 16226. (1) After finding the existence of 1 or more of
26 the grounds for disciplinary subcommittee action listed in

1 section 16221, a disciplinary subcommittee shall impose 1 or more
2 of the following sanctions for each violation:

3

4 Violations of Section 16221

Sanctions

| | |
|-----------------------------|---------------------------------|
| 5 Subdivision (a), (b)(ii), | Probation, limitation, denial, |
| 6 (b)(iv), (b)(vi), or | suspension, revocation, |
| 7 (b)(vii) | restitution, community service, |
| 8 | or fine. |
| 9 Subdivision (b)(viii) | Revocation or denial. |
| 10 Subdivision (b)(i), | Limitation, suspension, |
| 11 (b)(iii), (b)(v), | revocation, denial, |
| 12 (b)(ix), | probation, restitution, |
| 13 (b)(x), or (b)(xi) | community service, or fine. |
| 14 Subdivision (c)(i) | Denial, revocation, suspension, |
| 15 | probation, limitation, commu- |
| 16 | nity service, or fine. |
| 17 Subdivision (c)(ii) | Denial, suspension, revocation, |
| 18 | restitution, community service, |
| 19 | or fine. |
| 20 Subdivision (c)(iii) | Probation, denial, suspension, |
| 21 | revocation, restitution, commu- |
| 22 | nity service, or fine. |
| 23 Subdivision (c)(iv) | Fine, probation, denial, |
| 24 or (d)(iii) | suspension, revocation, commu- |
| 25 | nity service, |
| 26 | or restitution. |

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|----|-----------------------------------|----------------------------------|
| 1 | Subdivision (d)(i) | Reprimand, fine, probation, |
| 2 | or (d)(ii) | community service, denial, |
| 3 | | or restitution. |
| 4 | Subdivision (e)(i) | Reprimand, fine, probation, |
| 5 | | limitation, suspension, commu- |
| 6 | | nity service, denial, or |
| 7 | | restitution. |
| 8 | Subdivision (e)(ii) | Reprimand, probation, |
| 9 | or (h) | suspension, restitution, commu- |
| 10 | | nity service, denial, or fine. |
| 11 | Subdivision (e)(iii) | Reprimand, fine, probation, |
| 12 | or (e)(iv) | suspension, revocation, limita- |
| 13 | | tion, community service, |
| 14 | | denial, or restitution. |
| 15 | Subdivision (f) | Reprimand or fine. |
| 16 | Subdivision (g) | Reprimand, probation, denial, |
| 17 | | suspension, revocation, limita- |
| 18 | | tion, restitution, community |
| 19 | | service, or fine. |
| 20 | Subdivision (i) | Suspension or fine. |
| 21 | Subdivision (j) or (n) | |
| 22 | (O) | Reprimand or fine. |
| 23 | Subdivision (k) | Reprimand, denial, or |
| 24 | | limitation. |
| 25 | Subdivision (l) OR (N) | Denial, revocation, restitution, |
| 26 | | probation, suspension, |

1 limitation, reprimand, or
2 fine.

3 Subdivision (m) Revocation or denial.

4 SUBDIVISION (P) PERMANENT REVOCATION.

5 (2) Determination of sanctions for violations under this
6 section shall be made by a disciplinary subcommittee. If, during
7 judicial review, the court of appeals determines that a final
8 decision or order of a disciplinary subcommittee prejudices sub-
9 stantial rights of the petitioner for 1 or more of the grounds
10 listed in section 106 of the administrative procedures act of
11 1969, ~~being section 24.306 of Michigan Compiled Laws~~ 1969 PA
12 306, MCL 24.306, and holds that the final decision or order is
13 unlawful and is to be set aside, the court shall state on the
14 record the reasons for the holding and may remand the case to the
15 disciplinary subcommittee for further consideration.

16 (3) A disciplinary subcommittee may impose a fine of up to,
17 but not exceeding, \$250,000.00 for a violation of
18 section 16221(a) or (b).

19 (4) A DISCIPLINARY SUBCOMMITTEE SHALL IMPOSE A FINE OF
20 \$500,000.00 FOR A VIOLATION OF SECTION 16221(P).

21 ~~(4)~~ (5) A disciplinary subcommittee may require a licensee
22 or registrant or an applicant for licensure or registration who
23 has violated this article or article 7 or a rule promulgated
24 under this article or article 7 to satisfactorily complete an
25 educational program, a training program, or a treatment program,
26 a mental, physical, or professional competence examination, or a
27 combination of those programs and examinations.

1 Sec. 16245. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SECTION, AN individual whose license is limited, suspended, or
3 revoked under this part may apply to his or her board or task
4 force for a reinstatement of a revoked or suspended license or
5 reclassification of a limited license pursuant to section 16247
6 or 16249.

7 (2) An individual whose registration is suspended or revoked
8 under this part may apply to his or her board for a reinstatement
9 of a suspended or revoked registration pursuant to section
10 16248.

11 (3) A board or task force shall reinstate a license or reg-
12 istration suspended for grounds stated in section 16221(i) upon
13 payment of the installment.

14 (4) Except as otherwise provided in this subsection, in case
15 of a revoked license or registration, an applicant shall not
16 apply for reinstatement before the expiration of 3 years after
17 the effective date of the revocation. In THE case of a license
18 or registration that was revoked for a violation of section
19 16221(b)(vii), a violation of section 16221(c)(iv) consisting of
20 a felony conviction, or any other felony conviction involving a
21 controlled substance, an applicant shall not apply for reinstatement
22 before the expiration of 5 years after the effective date of
23 the revocation. IN THE CASE OF A LICENSE OR REGISTRATION THAT
24 WAS REVOKED FOR A VIOLATION OF SECTION 16221(P), THE APPLICANT
25 CANNOT APPLY FOR REINSTATEMENT. The department shall return an
26 application for reinstatement received before the expiration of
27 the applicable time period under this subsection AND AN

1 APPLICATION FOR REINSTATEMENT FROM AN INDIVIDUAL WHOSE LICENSE OR
2 REGISTRATION WAS REVOKED FOR A VIOLATION OF SECTION 16221(P).

3 (5) The department shall provide an opportunity for a hear-
4 ing before final rejection of an application for reinstatement
5 EXCEPT AN APPLICATION FOR REINSTATEMENT OF A LICENSE OR REGISTRA-
6 TION THAT WAS REVOKED FOR A VIOLATION OF SECTION 16221(P).

7 (6) Based upon the recommendation of the disciplinary sub-
8 committee for each health profession, the department shall adopt
9 guidelines to establish specific criteria to be met by an appli-
10 cant for reinstatement under this article or article 7. The cri-
11 teria may include corrective measures or remedial education as a
12 condition of reinstatement. If a board or task force, in rein-
13 stating a license or registration, deviates from the guidelines
14 adopted under this subsection, the board or task force shall
15 state the reason for the deviation on the record.

16 (7) An individual who seeks reinstatement or reclassifica-
17 tion of a license or registration pursuant to this section shall
18 pay the application processing fee as a reinstatement or reclas-
19 sification fee. If approved for reinstatement or reclassifica-
20 tion, the individual shall pay the per year license or registra-
21 tion fee for the applicable license or registration period.

22 Sec. 16247. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-
23 TION (2), A board or task force may reinstate a license or issue
24 a limited license to an individual whose license has been sus-
25 pended or revoked under this part if after a hearing the board or
26 task force is satisfied by clear and convincing evidence that the
27 applicant is of good moral character, is able to practice the

1 profession with reasonable skill and safety to patients, has met
2 the criteria in the rules promulgated under section 16245(6), and
3 should be permitted in the public interest to resume practice.
4 Pursuant to the rules promulgated under section 16245(6), as a
5 condition of reinstatement, a disciplinary subcommittee, upon the
6 recommendation of a board or task force, may impose a disci-
7 plinary or corrective measure authorized under this part and
8 require that the licensee attend a school or program selected by
9 the board or task force to take designated courses or training to
10 become competent or proficient in those areas of practice in
11 which the board or task force finds the licensee to be
12 deficient. The board or task force may require a statement on a
13 form approved by it from the chief administrator of the school or
14 program attended or the person responsible for the training cer-
15 tifying that the licensee has achieved the required competency or
16 proficiency.

17 (2) A BOARD OR TASK FORCE SHALL NOT REINSTATE THE LICENSE OF
18 AN INDIVIDUAL WHOSE LICENSE WAS REVOKED FOR A VIOLATION OF SEC-
19 TION 16221(P).

20 (3) ~~(2)~~ As a condition of reinstatement, a board or task
21 force shall place the licensee on probation for 1 year under con-
22 ditions set by the board or task force. If a licensee whose
23 license has been revoked cannot apply for reinstatement for 5
24 years after the date of revocation, then, as a condition of rein-
25 statement, the board or task force shall require the licensee to
26 take and pass the current licensure examination.

1 (4) ~~(3)~~ A board or task force shall not reinstate a
2 license suspended or revoked for grounds stated in section
3 16221(b)(i), (iii), or (iv) until it finds that the licensee is
4 mentally or physically able to practice with reasonable skill and
5 safety to patients. The board or task force may require further
6 examination of the licensee, at the licensee's expense, necessary
7 to verify that the licensee is mentally or physically able. A
8 licensee affected by this section shall be afforded the opportu-
9 nity at reasonable intervals to demonstrate that he or she can
10 resume competent practice in accordance with standards of accept-
11 able and prevailing practice.

12 Sec. 16248. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-
13 TION (2), A registration board may reinstate a registration
14 revoked or suspended under this part if, after a hearing, the
15 board is satisfied by clear and convincing evidence that the
16 individual is of good moral character, has the education and
17 experience as required in this article, has met the criteria in
18 the rules promulgated under section 16245(6), and will use the
19 title lawfully and act in accordance with this article.

20 (2) A REGISTRATION BOARD SHALL NOT REINSTATE THE REGISTRA-
21 TION OF AN INDIVIDUAL WHOSE REGISTRATION WAS REVOKED FOR A VIOLA-
22 TION OF SECTION 16221(P).

23 SEC. 16275. (1) UNTIL THE EXPIRATION OF 5 YEARS AFTER THE
24 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A
25 LICENSEE OR REGISTRANT OR OTHER INDIVIDUAL SHALL NOT ENGAGE IN OR
26 ATTEMPT TO ENGAGE IN HUMAN CLONING OR HUMAN CLONING RESEARCH.

1 THIS SUBSECTION DOES NOT PROHIBIT CLONING OR CLONING RESEARCH
2 THAT DOES NOT PRODUCE A HUMAN EMBRYO.

3 (2) A LICENSEE OR REGISTRANT WHO VIOLATES SUBSECTION (1) IS
4 SUBJECT TO THE ADMINISTRATIVE PENALTIES PRESCRIBED IN SECTIONS
5 16221 AND 16226 AND TO THE CRIMINAL PENALTIES PRESCRIBED IN SUB-
6 SECTIONS (4) AND (5).

7 (3) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) IS SUBJECT TO
8 A CIVIL PENALTY OF NOT MORE THAN \$500,000.00.

9 (4) A LICENSEE, REGISTRANT, OR OTHER INDIVIDUAL WHO VIOLATES
10 SUBSECTION (1) IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT
11 MORE THAN \$500,000.00 OR BY IMPRISONMENT FOR NOT LESS THAN 2
12 YEARS, BUT NOT MORE THAN 5 YEARS, OR BOTH.

13 (5) A LICENSEE, REGISTRANT, OR OTHER INDIVIDUAL WHO VIOLATES
14 SUBSECTION (1) A SECOND OR SUBSEQUENT TIME IS GUILTY OF A FELONY,
15 PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000,000.00 OR BY IMPRIS-
16 ONMENT FOR NOT LESS THAN 5 YEARS, BUT NOT MORE THAN 10 YEARS, OR
17 BOTH.

18 (6) AS USED IN THIS SECTION:

19 (A) "HUMAN CLONING" MEANS THE USE OF HUMAN SOMATIC CELL
20 NUCLEAR TRANSFER TECHNOLOGY TO PRODUCE AN EMBRYO.

21 (B) "HUMAN SOMATIC CELL NUCLEAR TRANSFER" MEANS TRANSFERRING
22 THE NUCLEUS OF A HUMAN SOMATIC CELL INTO AN OOCYTE FROM WHICH THE
23 NUCLEUS HAS BEEN REMOVED OR RENDERED INERT.

24 (C) "SOMATIC CELL" MEANS A CELL OF AN EMBRYO, FETUS, OR A
25 FULLY DEVELOPED HUMAN BEING THAT IS NOT AND WILL NOT BECOME A
26 SPERM OR EGG CELL.

1 Sec. 20165. (1) Except as otherwise provided in this
2 section, after notice of intent to an applicant or licensee to
3 deny, limit, suspend, or revoke ~~a~~ THE APPLICANT'S OR LICENSEE'S
4 license or certification and an opportunity for a hearing, the
5 department may deny, limit, suspend, or revoke the license or
6 certification OR IMPOSE AN ADMINISTRATIVE FINE ON A LICENSEE if
7 ~~any~~ 1 OR MORE of the following exist:

8 (a) Fraud or deceit in obtaining or attempting to obtain a
9 license or certification or in THE operation of the licensed
10 health facility or agency.

11 (b) A violation of this article or ~~the rules~~ A RULE
12 promulgated under this article.

13 (c) False or misleading advertising.

14 (d) Negligence or failure to exercise due care, including
15 negligent supervision of employees and subordinates.

16 (e) Permitting a license or certificate to be used by an
17 unauthorized health facility or agency.

18 (f) Evidence of abuse regarding ~~patient~~ A PATIENT'S
19 health, welfare, or safety or THE DENIAL OF a ~~denial of~~
20 PATIENT'S rights.

21 (g) Failure to comply with section 10102a(7).

22 (h) Failure to comply with part 222 or a term, condition, or
23 stipulation of a certificate of need issued under part 222, or
24 both.

25 (I) A VIOLATION OF SECTION 20197(1).

26 (2) ~~An~~ THE DEPARTMENT MAY DENY AN application for a
27 license or certification ~~may be denied~~ BASED on a finding of

1 ~~any~~ A condition or practice ~~which~~ THAT would constitute a
2 violation of this article if the applicant were a licensee.

3 (3) Denial, suspension, or revocation of an individual emer-
4 gency medical services personnel license under part 209 is gov-
5 erned by section 20958.

6 (4) IF THE DEPARTMENT DETERMINES UNDER SUBSECTION (1) THAT A
7 HEALTH FACILITY OR AGENCY HAS VIOLATED SECTION 20197(1), THE
8 DEPARTMENT SHALL IMPOSE AN ADMINISTRATIVE FINE OF \$5,000,000.00
9 ON THE HEALTH FACILITY OR AGENCY.

10 SEC. 20197. (1) UNTIL THE EXPIRATION OF 5 YEARS AFTER THE
11 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A
12 HEALTH FACILITY OR AGENCY SHALL NOT ALLOW A LICENSEE OR REGIS-
13 TRANT UNDER ARTICLE 15 OR ANY OTHER INDIVIDUAL TO ENGAGE IN OR
14 ATTEMPT TO ENGAGE IN HUMAN CLONING OR HUMAN CLONING RESEARCH IN A
15 FACILITY OWNED OR OPERATED BY THE HEALTH FACILITY OR AGENCY.
16 THIS SUBSECTION DOES NOT PROHIBIT A HEALTH FACILITY OR AGENCY
17 FROM ALLOWING A LICENSEE OR REGISTRANT UNDER ARTICLE 15 OR ANY
18 OTHER INDIVIDUAL FROM ENGAGING IN CLONING OR CLONING RESEARCH
19 THAT DOES NOT PRODUCE A HUMAN EMBRYO IN A FACILITY OWNED OR OPER-
20 ATED BY THE HEALTH FACILITY OR AGENCY.

21 (2) A HEALTH FACILITY OR AGENCY THAT VIOLATES SUBSECTION (1)
22 IS SUBJECT TO THE ADMINISTRATIVE PENALTIES PRESCRIBED IN SECTION
23 20165(4).

24 (3) AS USED IN THIS SECTION, "HUMAN CLONING" MEANS THAT TERM
25 AS DEFINED IN SECTION 16275.