

**SUBSTITUTE FOR
HOUSE BILL NO. 4926**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16211, 16216, and 16238 (MCL 333.16211,
333.16216, and 333.16238), section 16211 as amended and section
16238 as added by 1993 PA 79 and section 16216 as amended by 2014
PA 413, and by adding section 16211a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16211. (1) The department shall create and maintain a
2 permanent historical record for each licensee and registrant with
3 respect to information and data transmitted pursuant to law.
4 (2) The individual historical record ~~shall~~**must** include a
5 written allegation against the licensee or registrant that is
6 substantiated after investigation.

1 (3) The individual historical record may include other items
2 concerning a licensee's or registrant's record of practice that the
3 appropriate board determines will facilitate proper and periodic
4 review, but only those items as designated by rule.

5 (4) ~~The~~ **Subject to section 16211a, the** department shall
6 promptly review the entire file of a licensee or registrant,
7 including all prior matters with respect to which no action was
8 taken at the time, with respect to whom there is received 1 or more
9 of the following:

10 (a) A notice of revocation, suspension, or limitation of staff
11 privileges or a change in employment status due to disciplinary
12 action by a licensed health facility.

13 (b) A written allegation of a violation of this article,
14 article 7, or a rule promulgated under this article or article 7
15 that is substantiated after investigation.

16 (c) A notice of disciplinary action by a health professional
17 society.

18 (d) An adverse malpractice settlement, award, or judgment.

19 (e) Written notice of 1 or more of the following:

20 (i) A felony conviction.

21 (ii) A misdemeanor conviction punishable by imprisonment for a
22 maximum term of 2 years.

23 (iii) A misdemeanor conviction, if the misdemeanor involves the
24 illegal delivery, possession, or use of alcohol or a controlled
25 substance.

26 (f) Notice that a licensee or registrant is ineligible to
27 participate as a provider in a federally funded health insurance or
28 health benefits program based upon the licensee's or registrant's
29 failure to meet the program's standards of professional practice. A

1 certified copy of the action or final order making the licensee or
2 registrant ineligible is sufficient notice for purposes of this
3 subdivision.

4 (g) A report or notice under section 16222.

5 (h) Notice of a disciplinary action by a licensure,
6 registration, disciplinary, or specialty certification board in
7 another state.

8 (5) The department shall retain written allegations that are
9 unsubstantiated for 5 years, after which the department shall
10 remove the allegations from the file, if no further allegations
11 against the licensee or registrant have been received by the
12 department within the 5-year period.

13 (6) Except as provided in section ~~16231(6)~~, **16231(7)**, a
14 licensee, registrant, or applicant may review ~~his or her~~ **the**
15 individual historical record **of the licensee, registrant, or**
16 **applicant.**

17 **Sec. 16211a. (1) Beginning 1 year after the effective date of**
18 **the amendatory act that added this section, a licensee, registrant,**
19 **or applicant may submit an application to the department to set**
20 **aside a disciplinary record of the licensee, registrant, or**
21 **applicant. The application must be in a form and manner required by**
22 **the department. The department shall set aside a disciplinary**
23 **record of a licensee, registrant, or applicant if the licensee,**
24 **registrant, or applicant demonstrates all of the following to the**
25 **department:**

26 (a) The licensee, registrant, or applicant submits the
27 application to the department no sooner than 5 years after the date
28 that sanctions are no longer in force against the licensee,
29 registrant, or applicant for the disciplinary record the licensee,

1 registrant, or applicant is seeking to set aside.

2 (b) The licensee, registrant, or applicant establishes that
3 the licensee, registrant, or applicant has not been the subject of
4 disciplinary action since the date the sanction was imposed for the
5 disciplinary record the licensee, registrant, or applicant is
6 seeking to set aside.

7 (c) The licensee, registrant, or applicant timely completed
8 the sanction imposed by the board or task force for the
9 disciplinary record the licensee, registrant, or applicant is
10 seeking to set aside.

11 (d) The licensee, registrant, or applicant has not previously
12 had a disciplinary record set aside under this section.

13 (e) The disciplinary record that the licensee, registrant, or
14 applicant is seeking to set aside involves a violation that meets
15 both of the following:

16 (i) The violation was a failure to complete continuing
17 education required for the renewal of the license or registration
18 held by the licensee, registrant, or applicant, and the licensee,
19 registrant, or applicant demonstrates to the satisfaction of the
20 department that the licensee, registrant, or applicant has since
21 successfully completed the continuing education requirement that
22 was the subject of the disciplinary record.

23 (ii) If the violation was discovered during an audit conducted
24 by the department, the violation was based on a 1-time failure to
25 complete the continuing education described in subparagraph (i)
26 during the time frame that was the subject of the audit.

27 (2) If the department sets aside a disciplinary record under
28 this section for a licensee, registrant, or applicant, the
29 department shall remove the disciplinary record from the

1 department's website described in section 16216, and the licensee,
2 registrant, or applicant may represent that no disciplinary record
3 exists regarding the subject matter of the disciplinary record that
4 was set aside.

5 (3) A disciplinary record that is set aside under this section
6 is not subject to disclosure under the freedom of information act,
7 1976 PA 442, MCL 15.231 to 15.246.

8 (4) The department is not liable in a civil action for
9 reporting a public record of discipline that has been set aside
10 under this section, if that record was available as a public record
11 on the date of the report.

12 Sec. 16216. (1) The chair of each board or task force shall
13 appoint 1 or more disciplinary subcommittees for that board or task
14 force. A disciplinary subcommittee for a board or task force ~~shall~~
15 **must** consist of 2 public members and 3 professional members from
16 the board or task force.

17 (2) A final decision of a disciplinary subcommittee finding a
18 violation of this article, article 7, or article 8 requires a
19 majority vote of the members appointed and serving on the
20 disciplinary subcommittee.

21 (3) A final decision of a disciplinary subcommittee imposing a
22 sanction under this article, article 7, or article 8 or a final
23 decision of a disciplinary subcommittee other than a final decision
24 described in subsection (2) requires a majority vote of the members
25 appointed and serving on the disciplinary subcommittee with an
26 affirmative vote by at least 1 public member.

27 (4) The chair of a board or task force shall appoint a public
28 member of the disciplinary subcommittee of that board or task force
29 as the chairperson of that disciplinary subcommittee. The chair of

1 a board or task force shall not serve as a member of the
2 disciplinary subcommittee of that board or task force.

3 (5) The department may review a final decision of a
4 disciplinary subcommittee within 30 days after the date of the
5 disciplinary subcommittee's decision. If the department determines
6 that the action taken by a disciplinary subcommittee does not
7 protect the health, safety, and welfare of the public, the
8 department, with the approval of the board chair, may set aside the
9 decision of the disciplinary subcommittee and issue a different
10 final action. The final action of the department serves as the
11 final action on the matter and is subject to judicial review in the
12 same manner as the final decision of the disciplinary subcommittee.

13 (6) ~~Beginning January 1, 2015, Except as otherwise provided in~~
14 **section 16211a**, the department shall include on its public
15 licensing and registration website each final decision that imposes
16 disciplinary action against a licensee ~~, or registrant~~, including
17 the reason for and description of that disciplinary action.

18 Sec. 16238. (1) Except as otherwise provided in section
19 ~~13(1)(u) (i) and (ii) 13(1)(t) (i) and (ii)~~ of the freedom of
20 information act, ~~Act No. 442 of the Public Acts of 1976, being~~
21 ~~section 15.243 of the Michigan Compiled Laws, 1976 PA 442, MCL~~
22 **15.243**, the information including, but not limited to, patient
23 names, obtained in an investigation or a compliance conference
24 before a complaint is issued, is confidential and ~~shall~~**must** not be
25 disclosed except to the extent necessary for the proper functioning
26 of a hearings examiner, a disciplinary subcommittee, or the
27 department.

28 (2) A compliance conference conducted under this part before a
29 complaint is issued ~~shall be~~**is** closed to the public.