

1998 PUBLIC AND LOCAL ACTS

[No. 109]

(HB 4846)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16221, 16226, and 16245 (MCL 333.16221, 333.16226, and 333.16245), sections 16221 and 16226 as amended by 1996 PA 594 and section 16245 as amended by 1993 PA 87, and by adding section 16275.

The People of the State of Michigan enact:

333.16221 Investigation of licensee, registrant, or applicant for licensure or registration; hearings, oaths, and testimony; report; grounds for proceeding under §333.16226. [M.S.A. 14.15(16221)]

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

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

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

(i) Incompetence.

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

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

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.

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(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under sections 520a to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520l. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

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

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States. A certified copy of the record of the board is conclusive evidence of the final action.

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

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

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

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

(iii) Practice outside the scope of a license.

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

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

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

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

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

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

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

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

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

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

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

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(i) Failure to pay an installment of an assessment levied pursuant to section 2504 of the insurance code of 1956, 1956 PA 218, MCL 500.2504, within 60 days after notice by the appropriate board.

(j) A violation of section 17013 or 17513.

(k) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(l) A violation of section 17015 or 17515.

(m) A violation of section 17016 or 17516.

(n) Failure to comply with section 9206(3).

(o) A violation of section 5654 or 5655.

(p) A violation of section 16274.

333.16226 Sanctions; determination; judicial review; maximum fine for violation of §333.16221(a) or (b); completion of program or examination. [M.S.A. 14.15(16226)]

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Subdivision (a), (b)(i),
(b)(iv), (b)(v), or (b)(vi)

Subdivision (b)(vii)

Subdivision (b)(j),
(b)(iii), (b)(v),
(b)(ix), (b)(x), or (b)(xi)

Subdivision (c)(i)

Subdivision (c)(ii)

Subdivision (c)(iii)

Subdivision (c)(iv) or (d)(ii)

Subdivision (d)(j) or (d)(i)

Subdivision (e)(j)

Subdivision (e)(i) or (h)

Sanctions

Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.

Revocation or denial.

Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.

Denial, revocation, suspension, probation, limitation, community service, or fine.

Denial, suspension, revocation, restitution, community service, or fine.

Probation, denial, suspension, revocation, restitution, community service, or fine.

Fine, probation, denial, suspension, revocation, community service, or restitution.

Reprimand, fine, probation, community service, denial, or restitution.

Reprimand, fine, probation, limitation, suspension, community service, denial, or restitution.

Reprimand, probation, suspension, restitution, community service, denial, or fine.

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Subdivision (e)(iii) or (e)(iv)	Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution.
Subdivision (f)	Reprimand or fine.
Subdivision (g)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.
Subdivision (i)	Suspension or fine.
Subdivision (j) or (o)	Reprimand or fine.
Subdivision (k)	Reprimand, denial, or limitation.
Subdivision (l) or (n)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.
Subdivision (m)	Revocation or denial.
Subdivision (p)	Revocation.

(2) Determination of sanctions for violations under this section shall be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

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

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

333.16245 Reinstatement of limited, suspended, or revoked license or registration; application; payment; time; hearing; guidelines; fees. [M.S.A. 14.15(16245)]

Sec. 16245. (1) An individual whose license is limited, suspended, or revoked under this part may apply to his or her board or task force for a reinstatement of a revoked or suspended license or reclassification of a limited license pursuant to section 16247 or 16249.

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

(3) A board or task force shall reinstate a license or registration suspended for grounds stated in section 16221(i) upon payment of the installment.

(4) Except as otherwise provided in this subsection, in case of a revoked license or registration, an applicant shall not apply for reinstatement before the expiration of 3 years after the effective date of the revocation. In the case of a license or registration that was revoked for a violation of section 16221(b)(vii), a violation of section 16221(c)(iv) consisting

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of a felony conviction, any other felony conviction involving a controlled substance, or a violation of section 16221(p), an applicant shall not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The department shall return an application for reinstatement received before the expiration of the applicable time period under this subsection.

(5) The department shall provide an opportunity for a hearing before final rejection of an application for reinstatement.

(6) Based upon the recommendation of the disciplinary subcommittee for each health profession, the department shall adopt guidelines to establish specific criteria to be met by an applicant for reinstatement under this article or article 7. The criteria may include corrective measures or remedial education as a condition of reinstatement. If a board or task force, in reinstating a license or registration, deviates from the guidelines adopted under this subsection, the board or task force shall state the reason for the deviation on the record.

(7) An individual who seeks reinstatement or reclassification of a license or registration pursuant to this section shall pay the application processing fee as a reinstatement or reclassification fee. If approved for reinstatement or reclassification, the individual shall pay the per year license or registration fee for the applicable license or registration period.

333.16275 Human cloning; prohibition; exception; violation; penalty; private right of action; "human cloning" defined.
[M.S.A. 14.15(16275)]

Sec. 16275. (1) A licensee or registrant or other individual shall not engage in or attempt to engage in human cloning.

(2) Subsection (1) does not prohibit scientific research or cell-based therapies not specifically prohibited by that subsection.

(3) A licensee or registrant or other individual who violates subsection (1) is subject to a civil penalty of \$10,000,000.00. A fine collected under this subsection shall be distributed in the same manner as penal fines are distributed in this state.

(4) This section does not give a person a private right of action.

(5) As used in this section, "human cloning" means that term as defined in section 16274.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) House Bill No. 4962.
- (b) House Bill No. 5475.
- (c) Senate Bill No. 864.

Approved June 3, 1998.

Filed with Secretary of State June 4, 1998.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
House Bill No. 4962 was filed with the Secretary of State June 4, 1998, and became P.A. 1998, No. 110, Eff. March 23, 1999.
House Bill No. 5475 was filed with the Secretary of State June 4, 1998, and became P.A. 1998, No. 111, Eff. March 23, 1999.
Senate Bill No. 864 was filed with the Secretary of State June 4, 1998, and became P.A. 1998, No. 108, Eff. March 23, 1999.