

HOUSE BILL No. 6364

September 25, 2018, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16211, 16222, 16231, 16235, 16238, 16244, 16648, 16911, 18117, 18237, 18513, 20175, and 21515 (MCL 333.16211, 333.16222, 333.16231, 333.16235, 333.16238, 333.16244, 333.16648, 333.16911, 333.18117, 333.18237, 333.18513, 333.20175, and 333.21515), sections 16211 and 16235 as amended and section 16238 as added by 1993 PA 79, section 16222 as amended by 2014 PA 97, section 16231 as amended by 2017 PA 249, section 16244 as amended by 1993 PA 87, section 16648 as amended by 2004 PA 401, section

16911 as added by 1995 PA 126, sections 18117 and 18237 as amended by 1998 PA 496, section 18513 as amended by 2004 PA 61, and section 20175 as amended by 2006 PA 481.

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.

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

11 (4) The department shall promptly review the entire file of a
12 licensee or registrant, including all prior matters with respect to
13 which no action was taken at the time, with respect to whom there
14 is received 1 or more of the following:

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

18 (b) A written allegation of a violation of this article,
19 article 7, or a rule promulgated under this article or article 7
20 that is substantiated after investigation.

21 (c) A notice of disciplinary action by a health professional
22 society.

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

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

2 (i) A felony conviction.

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

5 (iii) A misdemeanor conviction, if the misdemeanor involves
6 the illegal delivery, possession, or use of alcohol or a controlled
7 substance.

8 (f) Notice that a licensee or registrant is ineligible to
9 participate as a provider in a federally funded health insurance or
10 health benefits program based upon the licensee's or registrant's
11 failure to meet the program's standards of professional practice. A
12 certified copy of the action or final order making the licensee or
13 registrant ineligible is sufficient notice for purposes of this
14 subdivision.

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

16 (h) Notice of a disciplinary action by a licensure,
17 registration, disciplinary, or specialty certification board in
18 another state.

19 (5) The department shall retain written allegations that are
20 unsubstantiated for 5 years, after which the department shall
21 remove the allegations from the file, if no further allegations
22 against the licensee or registrant have been received by the
23 department within the 5-year period.

24 (6) Except as provided in section ~~16231(6)~~, **16231(8)**, a
25 licensee, registrant, or applicant may review his or her individual
26 historical record.

27 Sec. 16222. (1) A licensee or registrant who has knowledge

1 that another licensee or registrant has committed a violation under
2 section 16221, article 7, or article 8 or a rule promulgated under
3 article 7 or article 8 shall ~~report~~ **FILE AN AFFIDAVIT WITH THE**
4 **DEPARTMENT THAT REPORTS** the conduct and the name of the subject of
5 the report to the department. ~~Information~~ **THE AFFIDAVIT MUST BE**
6 **SIGNED UNDER PENALTY OF PERJURY BY THE LICENSEE OR REGISTRANT WHO**
7 **IS MAKING A REPORT UNDER THIS SUBSECTION. SUBJECT TO SECTIONS 16238**
8 **AND 16244, THE INFORMATION** obtained by the department under this
9 subsection is confidential. ~~and is subject to sections 16238 and~~
10 ~~16244.~~ Failure of a licensee or registrant to make a report under
11 this subsection does not give rise to a civil cause of action for
12 damages against the licensee or registrant, but the licensee or
13 registrant is subject to administrative action under sections 16221
14 and 16226 ~~. This~~ **AND A PERSON THAT WILLFULLY MAKES A FALSE**
15 **STATEMENT IN AN AFFIDAVIT UNDER THIS SUBSECTION IS GUILTY OF**
16 **PERJURY UNDER SECTION 423 OF THE MICHIGAN PENAL CODE, 1931 PA 328,**
17 **MCL 750.423. THE DUTY TO MAKE A REPORT UNDER THIS** subsection does
18 not apply to a licensee or registrant who obtains the knowledge of
19 a violation while providing professional services to the licensee
20 or registrant to whom the knowledge applies, who is serving on a
21 duly constituted ethics or peer review committee of a professional
22 association, or who is serving on a committee assigned a
23 professional review function in a health facility or agency.

24 (2) Unless the licensee or registrant making a report under
25 subsection (1) otherwise agrees in writing **OR EXCEPT TO THE EXTENT**
26 **NECESSARY FOR THE PROPER FUNCTIONING OF THE DEPARTMENT AS THAT TERM**
27 **IS DEFINED IN SECTION 16238,** the identity of the licensee or

1 registrant making a report under subsection (1) shall remain
2 confidential unless disciplinary proceedings under this part are
3 initiated against the subject of the report and the licensee or
4 registrant making the report is required to testify in the
5 proceedings.

6 (3) A licensee or registrant shall notify the department of
7 any criminal conviction within 30 days after the date of the
8 conviction. Failure of a licensee or registrant to notify the
9 department under this subsection shall result in administrative
10 action under sections 16221 and 16226.

11 (4) A licensee or registrant shall notify the department of
12 any disciplinary licensing or registration action taken by another
13 state against the licensee or registrant within 30 days after the
14 date of the action. This subsection includes, but is not limited
15 to, a disciplinary action that is stayed pending appeal. Failure of
16 a licensee or registrant to notify the department under this
17 subsection shall result in administrative action under sections
18 16221 and 16226.

19 Sec. 16231. (1) A person or governmental entity that believes
20 that a violation of this article, article 7, or article 8 or a rule
21 promulgated under this article, article 7, or article 8 exists may
22 submit an allegation of that fact to the department in writing. **AN**
23 **ALLEGATION THAT IS SUBMITTED TO THE DEPARTMENT UNDER THIS**
24 **SUBSECTION MUST BE IN AN AFFIDAVIT THAT IS SIGNED UNDER PENALTY OF**
25 **PERJURY BY THE PERSON SUBMITTING THE ALLEGATION. A PERSON THAT**
26 **WILLFULLY MAKES A FALSE STATEMENT IN AN AFFIDAVIT UNDER THIS**
27 **SUBSECTION IS GUILTY OF PERJURY UNDER SECTION 423 OF THE MICHIGAN**

1 **PENAL CODE, 1931 PA 328, MCL 750.423.**

2 (2) Subject to subsection (3) and section 16221b, if the
3 department determines after reviewing an application or an
4 allegation or a licensee's or registrant's file under section
5 16211(4) that there is a reasonable basis to believe that a
6 violation of this article, article 7, or article 8 or a rule
7 promulgated under this article, article 7, or article 8 exists, 1
8 of the following applies:

9 (a) Unless subdivision (b) applies, subject to subsection
10 ~~(10)~~, **(11)**, with the authorization of a panel of at least 3 board
11 members that includes the chair and at least 2 other members of the
12 appropriate board or task force designated by the chair, the
13 department shall investigate the alleged violation. Subject to
14 subsection ~~(10)~~, **(11)**, if the panel fails to grant or deny
15 authorization within 7 days after the board or task force receives
16 a request for authorization, the department shall investigate. If
17 the department believes that immediate jeopardy exists, the
18 director or his or her designee shall authorize an investigation
19 and notify the board chair of that investigation within 2 business
20 days.

21 (b) If it reviews an allegation in writing under subsection
22 (1) that concerns a licensee or registrant whose record created
23 under section 16211 includes 1 substantiated allegation, or 2 or
24 more written investigated allegations, from 2 or more different
25 individuals or entities, received in the preceding 4 years, the
26 department shall investigate the alleged violation. Authorization
27 by a panel described in subdivision (a) is not required for an

1 investigation by the department under this subdivision.

2 (3) If a person or governmental entity submits a written
3 allegation under subsection (1) more than 4 years after the date of
4 the incident or activity that is the basis of the alleged
5 violation, the department may investigate the alleged violation in
6 the manner described in subsection (2) (a) or (b), as applicable,
7 but is not required to conduct an investigation under subsection
8 (2) (a) or (b).

9 (4) If it receives information reported under section 16243(2)
10 that indicates 3 or more malpractice settlements, awards, or
11 judgments against a licensee in a period of 5 consecutive years or
12 1 or more malpractice settlements, awards, or judgments against a
13 licensee totaling more than \$200,000.00 in a period of 5
14 consecutive years, whether or not a judgment or award is stayed
15 pending appeal, the department shall investigate.

16 (5) At any time during an investigation or following the
17 issuance of a complaint, the department may schedule a compliance
18 conference under section 92 of the administrative procedures act of
19 1969, MCL 24.292. The **COMPLIANCE** conference may include the
20 applicant, licensee, registrant, or individual, the applicant's,
21 licensee's, registrant's, or individual's attorney, 1 member of the
22 department's staff, and any other individuals approved by the
23 department. One member of the appropriate board or task force who
24 is not a member of the disciplinary subcommittee with jurisdiction
25 over the matter may attend the **COMPLIANCE** conference and provide
26 any assistance that is needed. At the compliance conference, the
27 department shall attempt to reach agreement. If an agreement is

1 reached, the department shall submit a written statement outlining
2 the terms of the agreement, or a stipulation and final order, if
3 applicable, or a request for dismissal to the appropriate
4 disciplinary subcommittee for approval. If the agreement or
5 stipulation and final order or request for dismissal is rejected by
6 the disciplinary subcommittee, or if no agreement is reached, the
7 department shall schedule a hearing before an administrative law
8 judge. A party shall not make a transcript of the compliance
9 conference. All records and documents of a compliance conference
10 held before a complaint is issued are subject to section 16238.

11 **(6) DURING AN INVESTIGATION OF AN ALLEGED VIOLATION, THE**
12 **DEPARTMENT SHALL REQUEST THAT AN APPLICANT, LICENSEE, REGISTRANT,**
13 **OR INDIVIDUAL WHO IS THE SUBJECT OF THE INVESTIGATION PROVIDE THE**
14 **DEPARTMENT WITH AN AFFIDAVIT RESPONDING TO THE ALLEGED VIOLATION.**
15 **WITHIN 21 DAYS AFTER THE DATE OF RECEIPT OF THE DEPARTMENT'S**
16 **REQUEST, THE APPLICANT, LICENSEE, REGISTRANT, OR INDIVIDUAL SHALL**
17 **PROVIDE THE DEPARTMENT WITH THE AFFIDAVIT. THE AFFIDAVIT MUST BE**
18 **SIGNED UNDER PENALTY OF PERJURY BY THE APPLICANT, LICENSEE,**
19 **REGISTRANT, OR INDIVIDUAL AND IF ANOTHER INDIVIDUAL ASSISTS THE**
20 **APPLICANT, LICENSEE, REGISTRANT, OR INDIVIDUAL WITH THE PREPARATION**
21 **OF THE AFFIDAVIT, THE AFFIDAVIT MUST INCLUDE THE NAME AND TITLE OF**
22 **THE INDIVIDUAL WHO PROVIDED THE ASSISTANCE. A PERSON THAT WILLFULLY**
23 **MAKES A FALSE STATEMENT IN AN AFFIDAVIT UNDER THIS SUBSECTION IS**
24 **GUILTY OF PERJURY UNDER SECTION 423 OF THE MICHIGAN PENAL CODE,**
25 **1931 PA 328, MCL 750.423.**

26 **(7) ~~(6)~~ Within 90 days after an investigation is initiated**
27 **under subsection (2), (3), or (4), the department shall do 1 or**

1 more of the following:

2 (a) Issue a formal complaint.

3 (b) Conduct a compliance conference under subsection (5).

4 (c) Issue a summary suspension.

5 (d) Issue a cease and desist order.

6 (e) Dismiss the allegation.

7 (f) Place in the complaint file not more than 1 written
8 extension of not more than 30 days to take action under this
9 subsection.

10 (8) ~~(7)~~—Unless the person submitting an allegation under
11 subsection (1) otherwise agrees in writing **OR EXCEPT TO THE EXTENT**
12 **NECESSARY FOR THE PROPER FUNCTIONING OF THE DEPARTMENT AS THAT TERM**
13 **IS DEFINED IN SECTION 16238**, the department shall keep the identity
14 of a person that submitted the allegation confidential until
15 disciplinary proceedings under this part are initiated against the
16 subject of the allegation and the person that made the allegation
17 is required to testify in the proceedings.

18 (9) ~~(8)~~—The department shall serve a complaint under section
19 16192. The department shall include in the complaint a notice that
20 the applicant, licensee, registrant, or individual who is the
21 subject of the complaint has 30 days from the date of receipt to
22 respond in writing to the complaint.

23 (10) ~~(9)~~—The department shall treat the failure of an
24 applicant, licensee, registrant, or individual to respond to a
25 complaint within the 30-day period set forth in subsection ~~(8)~~ **(9)**
26 as an admission of the allegations contained in the complaint. The
27 department shall notify the appropriate disciplinary subcommittee

1 of the individual's failure to respond and shall forward a copy of
2 the complaint to that disciplinary subcommittee. The disciplinary
3 subcommittee may then impose an appropriate sanction under this
4 article, article 7, or article 8.

5 **(11)** ~~(10)~~—All of the following apply for purposes of
6 subsection (2) (a):

7 (a) If the chair of the board or task force has a conflict of
8 interest, he or she shall appoint another member of the board or
9 task force as his or her designee and shall not participate in the
10 panel's decision to grant or deny authorization to the department
11 to investigate an individual.

12 (b) A member of the board or task force shall not participate
13 in the panel's decision to grant or deny authorization to the
14 department to investigate an individual if that member has a
15 conflict of interest. If the chair of the board or task force is
16 notified that a member of the panel has a conflict of interest, the
17 chair shall remove him or her from the panel and appoint another
18 member of the board or task force to serve on the panel.

19 (c) A member of the board or task force who participates in or
20 is requested to participate in the panel's decision to grant or
21 deny authorization to the department to investigate an individual
22 shall disclose to the department, to the chair of the board or task
23 force, and to the other member of the panel a potential conflict of
24 interest before those participants make that decision.

25 **(12)** ~~(11)~~—As used in subsection ~~(10)~~, **(11)**, "conflict of
26 interest" means any of the following:

27 (a) Has a personal or financial interest in the outcome of the

1 investigation of or the imposition of disciplinary sanctions on the
2 licensee, registrant, or applicant for licensure or registration.

3 (b) Had a past or has a present business or professional
4 relationship with the individual that the department is
5 investigating or requesting authorization to investigate.

6 (c) Has given expert testimony in a medical malpractice action
7 against or on behalf of the individual that the department is
8 seeking authorization to investigate.

9 (d) Any other interest or relationship designated as a
10 conflict of interest in a rule promulgated or order issued under
11 this act.

12 Sec. 16235. (1) ~~Upon application by the attorney general or a~~
13 ~~party to a contested case, the circuit court~~ **THE DEPARTMENT OR**
14 **DEPARTMENT OF ATTORNEY GENERAL** may issue a subpoena requiring a
15 person to appear before a hearings examiner in a contested case or
16 before the department in an investigation and be examined with
17 reference to a matter within the scope of that contested case or
18 investigation and to produce books, papers, or documents pertaining
19 to that contested case or investigation. A subpoena issued under
20 this subsection may require a person to produce all books, papers,
21 and documents pertaining to all of a licensee's or registrant's
22 patients in a health facility on a particular day if the allegation
23 that gave rise to the disciplinary proceeding was made by or
24 pertains to 1 or more of those patients.

25 **(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER**
26 **SUBSECTION (1), THE ATTORNEY GENERAL ACTING ON THE BEHALF OF THE**
27 **DEPARTMENT MAY INVOKE THE AID OF THE CIRCUIT COURT FOR INGHAM**

1 COUNTY TO REQUIRE THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE
 2 PRODUCING OF BOOKS, PAPERS, AND DOCUMENTS. THE CIRCUIT COURT MAY
 3 ISSUE AN ORDER REQUIRING THE PERSON TO APPEAR AND GIVE TESTIMONY OR
 4 TO PRODUCE THE BOOKS, PAPERS, AND DOCUMENTS. FAILURE TO OBEY THE
 5 ORDER OF THE CIRCUIT COURT MAY BE PUNISHED BY THE COURT AS A
 6 CONTEMPT.

7 (3) ~~(2)~~—A copy of a record of a board or a task force or a
 8 disciplinary subcommittee or a hearings examiner certified by a
 9 person designated by the director is prima facie evidence of the
 10 matters recorded and is admissible as evidence in a proceeding in
 11 this state with the same force and effect as if the original were
 12 produced.

13 Sec. 16238. (1) Except as otherwise provided in section
 14 ~~13(1)(u)(i)~~ **13(1)(T)(i)** and (ii) of the freedom of information
 15 act, ~~Act No. 442 of the Public Acts of 1976, being section 15.243~~
 16 ~~of the Michigan Compiled Laws, 1976 PA 442, MCL 15.243,~~ the
 17 information including, but not limited to, patient names, obtained
 18 in an investigation or a compliance conference before a complaint
 19 is issued, is confidential and ~~shall~~ **MUST** not be disclosed except
 20 to the extent necessary for the proper functioning of a hearings
 21 examiner, ~~a~~ **OR** disciplinary subcommittee, ~~or~~ **THE PROPER FUNCTIONING**
 22 **OF** the department.

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

25 (3) **AS USED IN THIS SECTION, "PROPER FUNCTIONING OF THE**
 26 **DEPARTMENT" INCLUDES, BUT IS NOT LIMITED TO, THE DISCLOSURE OF**
 27 **INFORMATION, INCLUDING INFORMATION REGARDING A PERSON THAT REPORTS**

1 OR SUBMITS AN ALLEGATION TO THE DEPARTMENT UNDER SECTION 16222 OR
2 16231, THAT THE DEPARTMENT CONSIDERS NECESSARY FOR AN APPLICANT,
3 LICENSEE, REGISTRANT, OR INDIVIDUAL TO COMPLY WITH SECTION 16231(6)
4 OR FOR THE ISSUANCE OF A SUBPOENA UNDER SECTION 16235.

5 Sec. 16244. (1) A person, including a state or county health
6 professional organization, a committee of the organization, or an
7 employee or officer of the organization furnishing information to,
8 or on behalf of, the organization, acting in good faith who makes a
9 report; assists in originating, investigating, or preparing a
10 report; or assists a board or task force, a disciplinary
11 subcommittee, a hearings examiner, the committee, or the department
12 in carrying out its duties under this article is immune from civil
13 or criminal liability including, but not limited to, liability in a
14 civil action for damages that might otherwise be incurred thereby
15 and is protected under the whistleblowers' protection act, ~~Act No.~~
16 ~~469 of the Public Acts of 1980, being sections 15.361 to 15.369 of~~
17 ~~the Michigan Compiled Laws. 1980 PA 469, MCL 15.361 TO 15.369.~~ A
18 person making or assisting in making a report, or assisting a board
19 or task force, a hearings examiner, the committee, or the
20 department, is presumed to have acted in good faith. The immunity
21 from civil or criminal liability granted under this subsection
22 extends only to acts done pursuant to this article or section
23 ~~21513(e).~~ **20175(6) TO (8).**

24 (2) The physician-patient privilege created in section 2157 of
25 the revised judicature act of 1961, ~~Act No. 236 of the Public Acts~~
26 ~~of 1961, being section 600.2157 of the Michigan Compiled Laws,~~ **1961**
27 **PA 236, MCL 600.2157,** does not apply in an investigation or

1 proceeding by a board or task force, a disciplinary subcommittee, a
2 hearings examiner, the committee, or the department acting within
3 the scope of its authorization. Unless expressly waived by the
4 individual to whom the information pertains, the information
5 obtained is confidential and ~~shall~~**MUST** not be disclosed except to
6 the extent necessary for the proper functioning of a board or task
7 force, a disciplinary subcommittee, **OR** the committee, or **THE PROPER**
8 **FUNCTIONING OF** the department. Except as otherwise provided in this
9 subsection, a person shall not use or disseminate the information
10 except pursuant to a valid court order. **AS USED IN THIS SUBSECTION,**
11 **"PROPER FUNCTIONING OF THE DEPARTMENT" INCLUDES, BUT IS NOT LIMITED**
12 **TO, THE DISCLOSURE OF INFORMATION, INCLUDING INFORMATION REGARDING**
13 **A PERSON THAT REPORTS OR SUBMITS AN ALLEGATION TO THE DEPARTMENT**
14 **UNDER SECTION 16222 OR 16231, THAT THE DEPARTMENT CONSIDERS**
15 **NECESSARY FOR AN APPLICANT, LICENSEE, REGISTRANT, OR INDIVIDUAL TO**
16 **COMPLY WITH SECTION 16231(6) OR FOR THE ISSUANCE OF A SUBPOENA**
17 **UNDER SECTION 16235.**

18 Sec. 16648. (1) Information relative to the care and treatment
19 of a dental patient acquired as a result of providing professional
20 dental services is confidential and privileged. Except as otherwise
21 permitted or required under the health insurance portability and
22 accountability act of 1996, Public Law 104-191, and regulations
23 promulgated under that act, 45 CFR parts 160 and 164, or as
24 otherwise provided in subsection (2), a dentist or a person
25 employed by the dentist shall not disclose or be required to
26 disclose that information.

27 (2) This section does not prohibit disclosure of the

1 information described in subsection (1) in the following instances:

2 (a) Disclosure as part of the defense to a claim in a court or
3 administrative agency challenging the dentist's professional
4 competence.

5 (b) Disclosure pursuant to 1967 PA 270, MCL 331.531 to
6 ~~331.533~~.**331.534**.

7 (c) Disclosure in relation to a claim for payment of fees.

8 (d) Disclosure to a third party payer of information relating
9 to fees for services in the course of a ~~good faith~~**GOOD-FAITH**
10 examination of the dentist's records to determine the amount and
11 correctness of fees or the type and volume of services furnished
12 pursuant to provisions for payment established by a third party
13 payer, or information required for a third party payer's
14 predeterminations, post treatment reviews, or audits. For purposes
15 of this subdivision, "third party payer" includes, but is not
16 limited to, a nonprofit dental care corporation, nonprofit health
17 care corporation, insurer, benefit fund, health maintenance
18 organization, and dental capitation plan.

19 (e) Disclosure, pursuant to a court order, to a police agency
20 as part of a criminal investigation.

21 (f) Disclosure as provided in section 2844a.

22 (g) Disclosure made pursuant to section 16222 if the licensee
23 reasonably believes it is necessary to disclose the information to
24 comply with section 16222.

25 (h) Disclosure under section 16281.

26 **(I) DISCLOSURE MADE PURSUANT TO SECTION 16231(6) IF THE**
27 **LICENSEE REASONABLY BELIEVES IT IS NECESSARY TO DISCLOSE THE**

1 **INFORMATION TO COMPLY WITH SECTION 16231(6).**

2 Sec. 16911. (1) Except as provided in subsection (3),
3 information regarding an individual to whom a licensee provided
4 marriage and family therapy is privileged information and not
5 subject to waiver, regardless of any of the following:

6 (a) Whether the information was obtained directly from the
7 individual, from another person involved in the therapy, from a
8 test or other evaluation mechanism, or from other sources.

9 (b) Whether the information was obtained before, during, or
10 following therapy.

11 (c) Whether the individual involved is a present client or a
12 former client.

13 (2) Except as provided in subsection (3), referrals made by a
14 circuit court or its counseling service, as provided in the circuit
15 court family counseling services act, ~~Act No. 155 of the Public~~
16 ~~Acts of 1964, being sections 551.331 to 551.344 of the Michigan~~
17 ~~Compiled Laws, 1964 PA 155, MCL 551.331 TO 551.344~~, is privileged
18 information not subject to waiver.

19 (3) The privilege established in this section is waived only
20 under 1 of the following circumstances:

21 (a) If disclosure is required by law or necessary to protect
22 the health or safety of an individual.

23 (b) If the licensee is a party defendant to a civil, criminal,
24 or administrative action arising from services performed as a
25 licensee, in which case the waiver is limited only to that action.

26 (c) If a waiver specifying the terms of disclosure is obtained
27 in writing from each individual over 18 years of age involved in

1 the marriage and family therapy and then only in accordance with
 2 the terms of the written waiver. If more than 1 individual is or
 3 was involved in the marriage and family therapy performed by a
 4 licensee, the privilege is not waived for any individual unless all
 5 individuals over 18 years of age involved in the marriage and
 6 family therapy have executed the written waiver.

7 **(D) PURSUANT TO SECTION 16231(6) IF THE LICENSEE REASONABLY**
 8 **BELIEVES IT IS NECESSARY TO COMPLY WITH SECTION 16231(6) .**

9 Sec. 18117. For the purposes of this part, the confidential
 10 relations and communications between a licensed professional
 11 counselor or a limited licensed counselor and a client of the
 12 licensed professional counselor or a limited licensed counselor are
 13 privileged communications, and this part does not require a
 14 privileged communication to be disclosed, except as otherwise
 15 provided by law. Confidential information may be disclosed only
 16 ~~upon~~ **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**

17 **(A) UPON** consent of the client. ~~, pursuant~~

18 **(B) PURSUANT** to section 16222 if the licensee reasonably
 19 believes it is necessary to disclose the information to comply with
 20 section 16222. ~~, or under~~

21 **(C) UNDER** section 16281.

22 **(D) PURSUANT TO SECTION 16231(6) IF THE LICENSEE REASONABLY**
 23 **BELIEVES IT IS NECESSARY TO DISCLOSE THE INFORMATION TO COMPLY WITH**
 24 **SECTION 16231(6) .**

25 Sec. 18237. **(1)** A psychologist licensed or allowed to use that
 26 title under this part or an individual under his or her supervision
 27 cannot be compelled to disclose confidential information acquired

1 from an individual consulting the psychologist in his or her
 2 professional capacity if the information is necessary to enable the
 3 psychologist to render services. Information may be disclosed with

4 **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**

5 (A) WITH the consent of the individual consulting the
 6 psychologist, or if the individual consulting the psychologist is a
 7 minor, with the consent of the minor's guardian. ~~—pursuant~~

8 (B) PURSUANT to section 16222 if the psychologist reasonably
 9 believes it is necessary to disclose the information to comply with
 10 section 16222. ~~—or under~~

11 (C) UNDER section 16281.

12 (D) PURSUANT TO SECTION 16231(6) IF THE PSYCHOLOGIST
 13 REASONABLY BELIEVES IT IS NECESSARY TO DISCLOSE THE INFORMATION TO
 14 COMPLY WITH SECTION 16231(6) .

15 (2) In a contest on the admission of a deceased individual's
 16 will to probate, an heir at law of the decedent, whether a
 17 proponent or contestant of the will, and the personal
 18 representative of the decedent may waive the privilege created by
 19 this section.

20 Sec. 18513. (1) ~~An individual registered or licensed under~~
 21 ~~this part—~~ **A REGISTRANT OR LICENSEE** or an employee or officer of an
 22 organization that employs the registrant or licensee is not
 23 required to disclose a communication or a portion of a
 24 communication made by a client to the individual or advice given in
 25 the course of professional employment.

26 (2) Except as otherwise provided in this section, a
 27 communication between a registrant or licensee or an organization

1 with which the registrant or licensee has an agency relationship
2 and a client is a confidential communication. A confidential
3 communication shall not be disclosed, except under ~~either or both~~
4 **ANY** of the following circumstances:

5 (a) The disclosure is part of a required supervisory process
6 within the organization that employs or otherwise has an agency
7 relationship with the registrant or licensee.

8 (b) The privilege is waived by the client or a person
9 authorized to act in the client's behalf.

10 **(C) IF THE LICENSEE OR REGISTRANT REASONABLY BELIEVES THAT IT**
11 **IS NECESSARY TO DISCLOSE THE INFORMATION TO COMPLY WITH SECTION**
12 **16231(6) .**

13 (3) If requested by the court for a court action, a registrant
14 or licensee shall submit to an appropriate court a written
15 evaluation of the prospect or prognosis of a particular client
16 without disclosing a privileged fact or a privileged communication.
17 An attorney representing a client who is the subject of an
18 evaluation described in this subsection has the right to receive a
19 copy of the evaluation. If required for the exercise of a public
20 purpose by a legislative committee, a registrant or licensee or
21 agency representative may make available statistical and program
22 information without violating the privilege established under
23 subsection (2).

24 (4) A registrant or licensee may disclose a communication or a
25 portion of a communication made by a client pursuant to section 946
26 of the mental health code, 1974 PA 258, MCL 330.1946, in order to
27 comply with the duty set forth in that section.

1 Sec. 20175. (1) A health facility or agency shall keep and
2 maintain a record for each patient, including a full and complete
3 record of tests and examinations performed, observations made,
4 treatments provided, and in the case of a hospital, the purpose of
5 hospitalization. Unless a longer retention period is otherwise
6 required under federal or state laws or regulations or by generally
7 accepted standards of medical practice, a health facility or agency
8 shall keep and retain each record for a minimum of 7 years from the
9 date of service to which the record pertains. A health facility or
10 agency shall maintain the records in such a manner as to protect
11 their integrity, to ensure their confidentiality and proper use,
12 and to ensure their accessibility and availability to each patient
13 or his or her authorized representative as required by law. A
14 health facility or agency may destroy a record that is less than 7
15 years old only if both of the following are satisfied:

16 (a) The health facility or agency sends a written notice to
17 the patient at the last known address of that patient informing the
18 patient that the record is about to be destroyed, offering the
19 patient the opportunity to request a copy of that record, and
20 requesting the patient's written authorization to destroy the
21 record.

22 (b) The health facility or agency receives written
23 authorization from the patient or his or her authorized
24 representative agreeing to the destruction of the record. Except as
25 otherwise provided under federal or state laws and regulations,
26 records required to be maintained under this subsection may be
27 destroyed or otherwise disposed of after being maintained for 7

1 years. If records maintained in accordance with this section are
2 subsequently destroyed or otherwise disposed of, those records
3 ~~shall~~ **MUST** be shredded, incinerated, electronically deleted, or
4 otherwise disposed of in a manner that ensures continued
5 confidentiality of the patient's health care information and any
6 other personal information relating to the patient. If records are
7 **NOT** destroyed or otherwise disposed of as provided under this
8 subsection, the department may take action including, but not
9 limited to, contracting for or making other arrangements to ensure
10 that those records and any other confidential identifying
11 information related to the patient are properly destroyed or
12 disposed of to protect the confidentiality of patient's health care
13 information and any other personal information relating to the
14 patient. Before the department takes action in accordance with this
15 subsection, the department, if able to identify the health facility
16 or agency responsible for the improper destruction or disposal of
17 the medical records at issue, shall send a written notice to that
18 health facility or agency at the last known address on file with
19 the department and provide the health facility or agency with an
20 opportunity to properly destroy or dispose of those medical records
21 as required under this subsection unless a delay in the proper
22 destruction or disposal may compromise the patient's
23 confidentiality. The department may assess the health facility or
24 agency with the costs incurred by the department to enforce this
25 subsection. ~~In addition to the sanctions set forth in section~~
26 ~~20165, a hospital that fails to comply with this subsection is~~
27 ~~subject to an administrative fine of \$10,000.00.~~

1 (2) A hospital shall take precautions to ~~assure~~**ENSURE** that
2 the records required by subsection (1) are not wrongfully altered
3 or destroyed. ~~A hospital that fails to comply with this subsection~~
4 ~~is subject to an administrative fine of \$10,000.00.~~

5 (3) Unless otherwise provided by law, the licensing and
6 certification records required by this article are public records.

7 (4) Departmental officers and employees shall respect the
8 confidentiality of patient clinical records and shall not divulge
9 or disclose the contents of records in a manner that identifies an
10 individual except pursuant to court order or as otherwise
11 authorized by law.

12 **(5) THE DEPARTMENT MAY REQUEST AND WITHIN 30 DAYS OF RECEIVING**
13 **THE REQUEST A HEALTH FACILITY OR AGENCY SHALL PROVIDE THE**
14 **DEPARTMENT WITH ANY OF THE FOLLOWING FOR THE PURPOSES OF THE**
15 **DEPARTMENT'S INVESTIGATION OF AN INDIVIDUAL OR HEALTH PROFESSIONAL**
16 **EMPLOYED BY THE HEALTH FACILITY OR AGENCY:**

17 **(A) UNLESS OTHERWISE PROHIBITED BY LAW, UNREDACTED MEDICAL**
18 **RECORDS THAT ARE REQUESTED BY THE DEPARTMENT.**

19 **(B) THE COMPLETE PERSONNEL FILE FOR THE INDIVIDUAL OR HEALTH**
20 **PROFESSIONAL.**

21 **(C) ANY OTHER INFORMATION THAT THE DEPARTMENT CONSIDERS**
22 **RELEVANT.**

23 **(6) ~~(5)~~**A health facility or agency that employs, contracts
24 with, or grants privileges to a health professional ~~licensed or~~
25 ~~registered under article 15~~ shall report the following to the
26 department not more than 30 days after it occurs:

27 (a) Disciplinary action taken by the health facility or agency

1 against a health professional ~~licensed or registered under article~~
2 ~~15~~ based on the ~~licensee's or registrant's~~ **HEALTH PROFESSIONAL'S**
3 professional competence, disciplinary action that results in a
4 change of employment status, or disciplinary action based on
5 conduct that adversely affects the ~~licensee's or registrant's~~
6 **HEALTH PROFESSIONAL'S** clinical privileges for a period of more than
7 15 days. As used in this subdivision, "adversely affects" means the
8 reduction, restriction, suspension, revocation, denial, or failure
9 to renew the clinical privileges of a ~~licensee or registrant~~ **HEALTH**
10 **PROFESSIONAL** by a health facility or agency.

11 (b) Restriction or acceptance of the surrender of the clinical
12 privileges of a ~~licensee or registrant~~ **HEALTH PROFESSIONAL** under
13 either of the following circumstances:

14 (i) The ~~licensee or registrant~~ **HEALTH PROFESSIONAL** is under
15 investigation by the health facility or agency.

16 (ii) There is an agreement in which the health facility or
17 agency agrees not to conduct an investigation into the ~~licensee's~~
18 ~~or registrant's~~ **HEALTH PROFESSIONAL'S** alleged professional
19 incompetence or improper professional conduct.

20 (c) A case in which a health professional resigns or
21 terminates a contract or whose contract is not renewed instead of
22 the health facility **OR AGENCY** taking disciplinary action against
23 the health professional.

24 (7) ~~(6)~~ Upon request by another health facility or agency
25 seeking a reference for purposes of changing or granting staff
26 privileges, credentials, or employment, a health facility or agency
27 that employs, contracts with, or grants privileges to health

1 professionals ~~licensed or registered under article 15~~ shall notify
2 the requesting health facility or agency of any disciplinary or
3 other action reportable under subsection ~~(5)~~ **(6)** that it has taken
4 against a health professional ~~licensed or registered under article~~
5 ~~15 and~~ employed by, under contract to, or granted privileges by the
6 health facility or agency.

7 **(8)** ~~(7)~~ For the purpose of reporting disciplinary actions
8 under this section, a health facility or agency shall include only
9 the following in the information provided:

10 (a) The name of the ~~licensee or registrant~~ **HEALTH PROFESSIONAL**
11 against whom disciplinary action has been taken.

12 (b) A description of the disciplinary action taken.

13 (c) The specific grounds for the disciplinary action taken.

14 (d) The date of the incident that is the basis for the
15 disciplinary action.

16 **(9)** ~~(8)~~ ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,**
17 **THE** records, data, and knowledge collected for or by individuals or
18 committees assigned a professional review function in a health
19 facility or agency, or an institution of higher education in this
20 state that has colleges of osteopathic and human medicine, are
21 confidential, ~~shall~~ **MUST** be used only for the purposes provided in
22 this article, are not public records, and are not subject to court
23 subpoena. **THIS SUBSECTION DOES NOT PROHIBIT THE DISCLOSURE OF**
24 **RECORDS, DATA, AND KNOWLEDGE REQUESTED BY THE DEPARTMENT FOR THE**
25 **INVESTIGATION OF A HEALTH PROFESSIONAL OR INDIVIDUAL.**

26 **(10)** **IN ADDITION TO THE SANCTIONS SET FORTH IN SECTION 20165,**
27 **A HEALTH FACILITY OR AGENCY THAT VIOLATES THIS SECTION IS SUBJECT**

1 TO AN ADMINISTRATIVE FINE OF \$10,000.00 FOR EACH VIOLATION.

2 (11) AS USED IN THIS SECTION, "HEALTH PROFESSIONAL" MEANS AN
3 INDIVIDUAL WHO IS LICENSED OR REGISTERED UNDER ARTICLE 15.

4 Sec. 21515. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
5 SUBSECTION, THE records, data, and knowledge collected for or by
6 individuals or committees assigned a review function described in
7 this article are confidential, and ~~shall~~ MUST be used only for the
8 purposes provided in this article, ~~shall not be~~ ARE NOT public
9 records, and ~~shall~~ ARE not be available for SUBJECT TO court
10 subpoena. THIS SUBSECTION DOES NOT PROHIBIT THE DISCLOSURE OF
11 RECORDS, DATA, AND KNOWLEDGE REQUESTED BY THE DEPARTMENT FOR THE
12 INVESTIGATION OF A HEALTH PROFESSIONAL OR INDIVIDUAL.

13 (2) AS USED IN THIS SECTION, "HEALTH PROFESSIONAL" MEANS AN
14 INDIVIDUAL WHO IS LICENSED OR REGISTERED UNDER ARTICLE 15.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.