

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.16231 Allegation; review; investigation; compliance conference; duties of department following investigation; confidentiality of identity; complaint; failure to respond; conditions applicable to subsection (2)(a); "conflict of interest" defined.

Sec. 16231.

(1) A person or governmental entity that believes that a violation of this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 exists may submit an allegation of that fact to the department in writing.

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

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

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

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

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

(5) At any time during an investigation or following the issuance of a complaint, the department may schedule a compliance conference under section 92 of the administrative procedures act of 1969, MCL 24.292. The conference may include the applicant, licensee, registrant, or individual, the applicant's, licensee's, registrant's, or individual's attorney, 1 member of the department's staff, and any other individuals approved by the department. One member of the appropriate board or task force who is not a member of the disciplinary subcommittee with jurisdiction over the matter may attend the conference and provide any assistance that is needed. At the compliance conference, the department shall attempt to reach agreement. If an agreement is reached, the department shall submit a written statement outlining the terms of the agreement, or a stipulation and final order, if applicable, or a request for dismissal to the appropriate disciplinary subcommittee for approval. If the agreement or stipulation and final order or request for dismissal is rejected by the disciplinary subcommittee, or if no agreement is reached, the department shall schedule a hearing before an administrative law judge. A party shall not make a transcript of the compliance conference. All records and documents of a compliance conference held before a complaint is issued are subject to section 16238.

(6) Within 90 days after an investigation is initiated under subsection (2), (3), or (4), the department shall do 1 or more of the following:

- (a) Issue a formal complaint.
- (b) Conduct a compliance conference under subsection (5).
- (c) Issue a summary suspension.
- (d) Issue a cease and desist order.
- (e) Dismiss the allegation.

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

(7) Unless the person submitting an allegation under subsection (1) otherwise agrees in writing, the department shall keep the identity of a person that submitted the allegation confidential until disciplinary proceedings under this part are initiated against the subject of the allegation and the person that made the allegation is required to testify in

the proceedings.

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

(9) The department shall treat the failure of an applicant, licensee, registrant, or individual to respond to a complaint within the 30-day period set forth in subsection (8) as an admission of the allegations contained in the complaint. The department shall notify the appropriate disciplinary subcommittee of the individual's failure to respond and shall forward a copy of the complaint to that disciplinary subcommittee. The disciplinary subcommittee may then impose an appropriate sanction under this article, article 7, or article 8.

(10) All of the following apply for purposes of subsection (2)(a):

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

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

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

(11) As used in subsection (10), "conflict of interest" means any of the following:

(a) Has a personal or financial interest in the outcome of the investigation of or the imposition of disciplinary sanctions on the licensee, registrant, or applicant for licensure or registration.

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

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1986, Act 174, Imd. Eff. July 7, 1986 ;-- Am. 1993, Act 79, Eff. Apr. 1, 1994 ;-- Am. 2010, Act 382, Imd. Eff. Dec. 22, 2010 ;-- Am. 2013, Act 268, Imd. Eff. Dec. 30, 2013 ;-- Am. 2014, Act 95, Eff. July 1, 2014 ;-- Am. 2017, Act 249, Imd. Eff. Dec. 27, 2017

Compiler's Notes: Section 3 of Act 174 of 1986 provides: "This amendatory act shall only apply to contested cases filed on or after July 1, 1986."

Popular Name: Act 368