

# SENATE BILL NO. 111

February 13, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

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.

1 (c) A notice of disciplinary action by a health professional  
2 society.

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

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

5 (i) A felony conviction.

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

8 (iii) A misdemeanor conviction, if the misdemeanor involves the  
9 illegal delivery, possession, or use of alcohol or a controlled  
10 substance.

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

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

19 (h) Notice of a disciplinary action by a licensure,  
20 registration, disciplinary, or specialty certification board in  
21 another state.

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

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

1           Sec. 16222. (1) A licensee or registrant who has knowledge  
2 that another licensee or registrant has committed a violation under  
3 section 16221, article 7, or article 8 or a rule promulgated under  
4 article 7 or article 8 shall ~~report~~**file an affidavit with the**  
5 **department that reports** the conduct and the name of the subject of  
6 the report to the department. ~~Information~~**The affidavit must be**  
7 **signed under penalty of perjury by the licensee or registrant who**  
8 **is making a report under this subsection. Subject to sections 16238**  
9 **and 16244, the information** obtained by the department under this  
10 subsection is confidential. ~~and is subject to sections 16238 and~~  
11 ~~16244.~~ Failure of a licensee or registrant to make a report under  
12 this subsection does not give rise to a civil cause of action for  
13 damages against the licensee or registrant, but the licensee or  
14 registrant is subject to administrative action under sections 16221  
15 and 16226. ~~This~~**and a person that willfully makes a false**  
16 **statement in an affidavit under this subsection is guilty of**  
17 **perjury under section 423 of the Michigan penal code, 1931 PA 328,**  
18 **MCL 750.423. The duty to make a report under this** subsection does  
19 not apply to a licensee or registrant who obtains the knowledge of  
20 a violation while providing professional services to the licensee  
21 or registrant to whom the knowledge applies, who is serving on a  
22 duly constituted ethics or peer review committee of a professional  
23 association, or who is serving on a committee assigned a  
24 professional review function in a health facility or agency.

25           (2) Unless the licensee or registrant making a report under  
26 subsection (1) otherwise agrees in writing **or except to the extent**  
27 **necessary for the proper functioning of the department as that term**  
28 **is defined in section 16238,** the identity of the licensee or  
29 registrant making a report under subsection (1) shall remain

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

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

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

18 Sec. 16231. (1) A person or governmental entity that believes  
19 that a violation of this article, article 7, or article 8 or a rule  
20 promulgated under this article, article 7, or article 8 exists may  
21 submit an allegation of that fact to the department in writing. **An**  
22 **allegation that is submitted to the department under this**  
23 **subsection must be in an affidavit that is signed under penalty of**  
24 **perjury by the person submitting the allegation. A person that**  
25 **willfully makes a false statement in an affidavit under this**  
26 **subsection is guilty of perjury under section 423 of the Michigan**  
27 **penal code, 1931 PA 328, MCL 750.423.**

28 (2) Subject to subsection (3) and section 16221b, if the  
29 department determines after reviewing an application or an

1 allegation or a licensee's or registrant's file under section  
2 16211(4) that there is a reasonable basis to believe that a  
3 violation of this article, article 7, or article 8 or a rule  
4 promulgated under this article, article 7, or article 8 exists, 1  
5 of the following applies:

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

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

26 (3) If a person or governmental entity submits a written  
27 allegation under subsection (1) more than 4 years after the date of  
28 the incident or activity that is the basis of the alleged  
29 violation, the department may investigate the alleged violation in

1 the manner described in subsection (2)(a) or (b), as applicable,  
2 but is not required to conduct an investigation under subsection  
3 (2)(a) or (b).

4 (4) If it receives information reported under section 16243(2)  
5 that indicates 3 or more malpractice settlements, awards, or  
6 judgments against a licensee in a period of 5 consecutive years or  
7 1 or more malpractice settlements, awards, or judgments against a  
8 licensee totaling more than \$200,000.00 in a period of 5  
9 consecutive years, whether or not a judgment or award is stayed  
10 pending appeal, the department shall investigate.

11 (5) At any time during an investigation or following the  
12 issuance of a complaint, the department may schedule a compliance  
13 conference under section 92 of the administrative procedures act of  
14 1969, MCL 24.292. The **compliance** conference may include the  
15 applicant, licensee, registrant, or individual, the applicant's,  
16 licensee's, registrant's, or individual's attorney, 1 member of the  
17 department's staff, and any other individuals approved by the  
18 department. One member of the appropriate board or task force who  
19 is not a member of the disciplinary subcommittee with jurisdiction  
20 over the matter may attend the **compliance** conference and provide  
21 any assistance that is needed. At the compliance conference, the  
22 department shall attempt to reach agreement. If an agreement is  
23 reached, the department shall submit a written statement outlining  
24 the terms of the agreement, or a stipulation and final order, if  
25 applicable, or a request for dismissal to the appropriate  
26 disciplinary subcommittee for approval. If the agreement or  
27 stipulation and final order or request for dismissal is rejected by  
28 the disciplinary subcommittee, or if no agreement is reached, the  
29 department shall schedule a hearing before an administrative law

1 judge. A party shall not make a transcript of the compliance  
2 conference. All records and documents of a compliance conference  
3 held before a complaint is issued are subject to section 16238.

4 (6) During an investigation of an alleged violation, the  
5 department shall request that an applicant, licensee, registrant,  
6 or individual who is the subject of the investigation provide the  
7 department with an affidavit responding to the alleged violation.  
8 Within 21 days after the date of receipt of the department's  
9 request, the applicant, licensee, registrant, or individual shall  
10 provide the department with the affidavit. The affidavit must be  
11 signed under penalty of perjury by the applicant, licensee,  
12 registrant, or individual and if another individual assists the  
13 applicant, licensee, registrant, or individual with the preparation  
14 of the affidavit, the affidavit must include the name and title of  
15 the individual who provided the assistance. A person that willfully  
16 makes a false statement in an affidavit under this subsection is  
17 guilty of perjury under section 423 of the Michigan penal code,  
18 1931 PA 328, MCL 750.423.

19 (7) ~~(6)~~—Within 90 days after an investigation is initiated  
20 under subsection (2), (3), or (4), the department shall do 1 or  
21 more of the following:

- 22 (a) Issue a formal complaint.
- 23 (b) Conduct a compliance conference under subsection (5).
- 24 (c) Issue a summary suspension.
- 25 (d) Issue a cease and desist order.
- 26 (e) Dismiss the allegation.
- 27 (f) Place in the complaint file not more than 1 written  
28 extension of not more than 30 days to take action under this  
29 subsection.



1           **(8)** ~~(7)~~—Unless the person submitting an allegation under  
2 subsection (1) otherwise agrees in writing **or except to the extent**  
3 **necessary for the proper functioning of the department as that term**  
4 **is defined in section 16238**, the department shall keep the identity  
5 of a person that submitted the allegation confidential until  
6 disciplinary proceedings under this part are initiated against the  
7 subject of the allegation and the person that made the allegation  
8 is required to testify in the proceedings.

9           **(9)** ~~(8)~~—The department shall serve a complaint under section  
10 16192. The department shall include in the complaint a notice that  
11 the applicant, licensee, registrant, or individual who is the  
12 subject of the complaint has 30 days from the date of receipt to  
13 respond in writing to the complaint.

14           **(10)** ~~(9)~~—The department shall treat the failure of an  
15 applicant, licensee, registrant, or individual to respond to a  
16 complaint within the 30-day period set forth in subsection ~~(8)~~—**(9)**  
17 as an admission of the allegations contained in the complaint. The  
18 department shall notify the appropriate disciplinary subcommittee  
19 of the individual's failure to respond and shall forward a copy of  
20 the complaint to that disciplinary subcommittee. The disciplinary  
21 subcommittee may then impose an appropriate sanction under this  
22 article, article 7, or article 8.

23           **(11)** ~~(10)~~—All of the following apply for purposes of  
24 subsection (2) (a):

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

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

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

14 (12) ~~(11)~~ As used in subsection ~~(10)~~, **(11)**, "conflict of  
 15 interest" means any of the following:

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

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

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

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

28 Sec. 16235. (1) ~~Upon application by the attorney general or a~~  
 29 ~~party to a contested case, the circuit court~~ **The department or**

1 **department of attorney general** may issue a subpoena requiring a  
2 person to appear before a hearings examiner in a contested case or  
3 before the department in an investigation and be examined with  
4 reference to a matter within the scope of that contested case or  
5 investigation and to produce books, papers, or documents pertaining  
6 to that contested case or investigation. A subpoena issued under  
7 this subsection may require a person to produce all books, papers,  
8 and documents pertaining to all of a licensee's or registrant's  
9 patients in a health facility on a particular day if the allegation  
10 that gave rise to the disciplinary proceeding was made by or  
11 pertains to 1 or more of those patients.

12 **(2) If a person fails to comply with a subpoena issued under**  
13 **subsection (1), the attorney general acting on the behalf of the**  
14 **department may invoke the aid of the circuit court for Ingham**  
15 **County to require the attendance and testimony of witnesses and the**  
16 **producing of books, papers, and documents. The circuit court may**  
17 **issue an order requiring the person to appear and give testimony or**  
18 **to produce the books, papers, and documents. Failure to obey the**  
19 **order of the circuit court may be punished by the court as a**  
20 **contempt.**

21 **(3) ~~(2)~~**A copy of a record of a board or a task force or a  
22 disciplinary subcommittee or a hearings examiner certified by a  
23 person designated by the director is prima facie evidence of the  
24 matters recorded and is admissible as evidence in a proceeding in  
25 this state with the same force and effect as if the original were  
26 produced.

27 Sec. 16238. (1) Except as otherwise provided in section  
28 ~~13(1)(u)(i)~~ **13(1)(t)(i)** and *(ii)* of the freedom of information act,  
29 ~~Act No. 442 of the Public Acts of 1976, being section 15.243 of the~~

1 ~~Michigan Compiled Laws, 1976 PA 442, MCL 15.243,~~ the information  
 2 including, but not limited to, patient names, obtained in an  
 3 investigation or a compliance conference before a complaint is  
 4 issued, is confidential and ~~shall~~**must** not be disclosed except to  
 5 the extent necessary for the proper functioning of a hearings  
 6 examiner, ~~a~~ or disciplinary subcommittee, or **the proper functioning**  
 7 **of** the department.

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

10 (3) **As used in this section, "proper functioning of the**  
 11 **department" includes, but is not limited to, the disclosure of**  
 12 **information, including information regarding a person that reports**  
 13 **or submits an allegation to the department under section 16222 or**  
 14 **16231, that the department considers necessary for an applicant,**  
 15 **licensee, registrant, or individual to comply with section 16231(6)**  
 16 **or for the issuance of a subpoena under section 16235.**

17 Sec. 16244. (1) A person, including a state or county health  
 18 professional organization, a committee of the organization, or an  
 19 employee or officer of the organization furnishing information to,  
 20 or on behalf of, the organization, acting in good faith who makes a  
 21 report; assists in originating, investigating, or preparing a  
 22 report; or assists a board or task force, a disciplinary  
 23 subcommittee, a hearings examiner, the committee, or the department  
 24 in carrying out its duties under this article is immune from civil  
 25 or criminal liability including, but not limited to, liability in a  
 26 civil action for damages that might otherwise be incurred thereby  
 27 and is protected under the whistleblowers' protection act, ~~Act No.~~  
 28 ~~469 of the Public Acts of 1980, being sections 15.361 to 15.369 of~~  
 29 ~~the Michigan Compiled Laws. 1980 PA 469, MCL 15.361 to 15.369.~~ A

1 person making or assisting in making a report, or assisting a board  
2 or task force, a hearings examiner, the committee, or the  
3 department, is presumed to have acted in good faith. The immunity  
4 from civil or criminal liability granted under this subsection  
5 extends only to acts done pursuant to this article or section  
6 ~~21513(e)~~. **20175(6) to (8)**.

7 (2) The physician-patient privilege created in section 2157 of  
8 the revised judicature act of 1961, ~~Act No. 236 of the Public Acts~~  
9 ~~of 1961, being section 600.2157 of the Michigan Compiled Laws, 1961~~  
10 **PA 236, MCL 600.2157**, does not apply in an investigation or  
11 proceeding by a board or task force, a disciplinary subcommittee, a  
12 hearings examiner, the committee, or the department acting within  
13 the scope of its authorization. Unless expressly waived by the  
14 individual to whom the information pertains, the information  
15 obtained is confidential and ~~shall~~ **must** not be disclosed except to  
16 the extent necessary for the proper functioning of a board or task  
17 force, a disciplinary subcommittee, **or the committee, or the proper**  
18 **functioning of** the department. Except as otherwise provided in this  
19 subsection, a person shall not use or disseminate the information  
20 except pursuant to a valid court order. **As used in this subsection,**  
21 **"proper functioning of the department" includes, but is not limited**  
22 **to, the disclosure of information, including information regarding**  
23 **a person that reports or submits an allegation to the department**  
24 **under section 16222 or 16231, that the department considers**  
25 **necessary for an applicant, licensee, registrant, or individual to**  
26 **comply with section 16231(6) or for the issuance of a subpoena**  
27 **under section 16235.**

28 Sec. 16648. (1) Information relative to the care and treatment  
29 of a dental patient acquired as a result of providing professional

1 dental services is confidential and privileged. Except as otherwise  
2 permitted or required under the health insurance portability and  
3 accountability act of 1996, Public Law 104-191, and regulations  
4 promulgated under that act, 45 CFR parts 160 and 164, or as  
5 otherwise provided in subsection (2), a dentist or a person  
6 employed by the dentist shall not disclose or be required to  
7 disclose that information.

8 (2) This section does not prohibit disclosure of the  
9 information described in subsection (1) in the following instances:

10 (a) Disclosure as part of the defense to a claim in a court or  
11 administrative agency challenging the dentist's professional  
12 competence.

13 (b) Disclosure pursuant to 1967 PA 270, MCL 331.531 to  
14 ~~331.533.~~ **331.534.**

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

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

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

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

1 (g) Disclosure made pursuant to section 16222 if the licensee  
2 reasonably believes it is necessary to disclose the information to  
3 comply with section 16222.

4 (h) Disclosure under section 16281.

5 **(i) Disclosure made pursuant to section 16231(6) if the**  
6 **licensee reasonably believes it is necessary to disclose the**  
7 **information to comply with section 16231(6).**

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

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

15 (b) Whether the information was obtained before, during, or  
16 following therapy.

17 (c) Whether the individual involved is a present client or a  
18 former client.

19 (2) Except as provided in subsection (3), referrals made by a  
20 circuit court or its counseling service, as provided in the circuit  
21 court family counseling services act, ~~Act No. 155 of the Public~~  
22 ~~Acts of 1964, being sections 551.331 to 551.344 of the Michigan~~  
23 ~~Compiled Laws, 1964 PA 155, MCL 551.331 to 551.344,~~ is privileged  
24 information not subject to waiver.

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

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

29 (b) If the licensee is a party defendant to a civil, criminal,

1 or administrative action arising from services performed as a  
2 licensee, in which case the waiver is limited only to that action.

3 (c) If a waiver specifying the terms of disclosure is obtained  
4 in writing from each individual over 18 years of age involved in  
5 the marriage and family therapy and then only in accordance with  
6 the terms of the written waiver. If more than 1 individual is or  
7 was involved in the marriage and family therapy performed by a  
8 licensee, the privilege is not waived for any individual unless all  
9 individuals over 18 years of age involved in the marriage and  
10 family therapy have executed the written waiver.

11 (d) Pursuant to section 16231(6) if the licensee reasonably  
12 believes it is necessary to comply with section 16231(6).

13 Sec. 18117. For the purposes of this part, the confidential  
14 relations and communications between a licensed professional  
15 counselor or a limited licensed counselor and a client of the  
16 licensed professional counselor or a limited licensed counselor are  
17 privileged communications, and this part does not require a  
18 privileged communication to be disclosed, except as otherwise  
19 provided by law. Confidential information may be disclosed only  
20 ~~upon~~ **under any of the following circumstances:**

21 (a) **Upon** consent of the client. ~~, pursuant~~

22 (b) **Pursuant** to section 16222 if the licensee reasonably  
23 believes it is necessary to disclose the information to comply with  
24 section 16222. ~~, or under~~

25 (c) **Under** section 16281.

26 (d) **Pursuant to section 16231(6) if the licensee reasonably**  
27 **believes it is necessary to disclose the information to comply with**  
28 **section 16231(6).**

29 Sec. 18237. (1) A psychologist licensed or allowed to use that



1 title under this part or an individual under his or her supervision  
 2 cannot be compelled to disclose confidential information acquired  
 3 from an individual consulting the psychologist in his or her  
 4 professional capacity if the information is necessary to enable the  
 5 psychologist to render services. Information may be disclosed ~~with~~  
 6 **under any of the following circumstances:**

7 (a) **With** the consent of the individual consulting the  
 8 psychologist, or if the individual consulting the psychologist is a  
 9 minor, with the consent of the minor's guardian. ~~—pursuant~~

10 (b) **Pursuant** to section 16222 if the psychologist reasonably  
 11 believes it is necessary to disclose the information to comply with  
 12 section 16222. ~~—or under~~

13 (c) **Under** section 16281.

14 (d) **Pursuant to section 16231(6) if the psychologist**  
 15 **reasonably believes it is necessary to disclose the information to**  
 16 **comply with section 16231(6).**

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

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

28 (2) Except as otherwise provided in this section, a  
 29 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.

28 Sec. 20175. (1) A health facility or agency shall keep and  
29 maintain a record for each patient, including a full and complete

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

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

20 (b) The health facility or agency receives written  
21 authorization from the patient or his or her authorized  
22 representative agreeing to the destruction of the record. Except as  
23 otherwise provided under federal or state laws and regulations,  
24 records required to be maintained under this subsection may be  
25 destroyed or otherwise disposed of after being maintained for 7  
26 years. If records maintained in accordance with this section are  
27 subsequently destroyed or otherwise disposed of, those records  
28 ~~shall~~**must** be shredded, incinerated, electronically deleted, or  
29 otherwise disposed of in a manner that ensures continued

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

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

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

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

6           **(5) The department may request and within 30 days of receiving**  
7 **the request a health facility or agency shall provide the**  
8 **department with any of the following for the purposes of the**  
9 **department's investigation of an individual or health professional**  
10 **employed by the health facility or agency:**

11           (a) Unless otherwise prohibited by law, unredacted medical  
12 records that are requested by the department.

13           (b) The complete personnel file for the individual or health  
14 professional.

15           (c) Any other information that the department considers  
16 relevant.

17           (6) ~~(5)~~—A health facility or agency that employs, contracts  
18 with, or grants privileges to a health professional ~~licensed or~~  
19 ~~registered under article 15~~ shall report the following to the  
20 department not more than 30 days after it occurs:

21           (a) Disciplinary action taken by the health facility or agency  
22 against a health professional ~~licensed or registered under article~~  
23 ~~15~~ based on the ~~licensee's or registrant's~~ **health professional's**  
24 professional competence, disciplinary action that results in a  
25 change of employment status, or disciplinary action based on  
26 conduct that adversely affects the ~~licensee's or registrant's~~  
27 **health professional's** clinical privileges for a period of more than  
28 15 days. As used in this subdivision, "adversely affects" means the  
29 reduction, restriction, suspension, revocation, denial, or failure

1 to renew the clinical privileges of a ~~licensee or registrant~~ **health**  
 2 **professional** by a health facility or agency.

3 (b) Restriction or acceptance of the surrender of the clinical  
 4 privileges of a ~~licensee or registrant~~ **health professional** under  
 5 either of the following circumstances:

6 (i) The ~~licensee or registrant~~ **health professional** is under  
 7 investigation by the health facility or agency.

8 (ii) There is an agreement in which the health facility or  
 9 agency agrees not to conduct an investigation into the ~~licensee's~~  
 10 ~~or registrant's~~ **health professional's** alleged professional  
 11 incompetence or improper professional conduct.

12 (c) A case in which a health professional resigns or  
 13 terminates a contract or whose contract is not renewed instead of  
 14 the health facility **or agency** taking disciplinary action against  
 15 the health professional.

16 (7) ~~(6)~~ Upon request by another health facility or agency  
 17 seeking a reference for purposes of changing or granting staff  
 18 privileges, credentials, or employment, a health facility or agency  
 19 that employs, contracts with, or grants privileges to health  
 20 professionals ~~licensed or registered under article 15~~ shall notify  
 21 the requesting health facility or agency of any disciplinary or  
 22 other action reportable under subsection ~~(5)~~ **(6)** that it has taken  
 23 against a health professional ~~licensed or registered under article~~  
 24 ~~15 and~~ employed by, under contract to, or granted privileges by the  
 25 health facility or agency.

26 (8) ~~(7)~~ For the purpose of reporting disciplinary actions  
 27 under this section, a health facility or agency shall include only  
 28 the following in the information provided:

29 (a) The name of the ~~licensee or registrant~~ **health professional**

1 against whom disciplinary action has been taken.

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

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

4 (d) The date of the incident that is the basis for the  
5 disciplinary action.

6 (9) ~~(8) The~~ **Except as otherwise provided in this subsection,**  
7 **the** records, data, and knowledge collected for or by individuals or  
8 committees assigned a professional review function in a health  
9 facility or agency, or an institution of higher education in this  
10 state that has colleges of osteopathic and human medicine, are  
11 confidential, ~~shall must~~ be used only for the purposes provided in  
12 this article, are not public records, and are not subject to court  
13 subpoena. **This subsection does not prohibit the disclosure of**  
14 **records, data, and knowledge requested by the department for the**  
15 **investigation of a health professional or individual.**

16 (10) In addition to the sanctions set forth in section 20165,  
17 a health facility or agency that violates this section is subject  
18 to an administrative fine of \$10,000.00 for each violation.

19 (11) As used in this section, "health professional" means an  
20 individual who is licensed or registered under article 15.

21 Sec. 21515. (1) ~~The~~ **Except as otherwise provided in this**  
22 **subsection, the** records, data, and knowledge collected for or by  
23 individuals or committees assigned a review function described in  
24 this article are confidential, ~~and shall must~~ be used only for the  
25 purposes provided in this article, ~~shall not be~~ **are not** public  
26 records, and ~~shall are~~ not be available for ~~subject to~~ court  
27 subpoena. **This subsection does not prohibit the disclosure of**  
28 **records, data, and knowledge requested by the department for the**  
29 **investigation of a health professional or individual.**

1           (2) As used in this section, "health professional" means an  
2 individual who is licensed or registered under article 15.

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