



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

HEALTH CARE: PRACTICE-RELATED FRAUD

House Bill 4337 as enrolled
Second Analysis (12-2-87)

RECEIVED

DEC 10 1987

Sponsor: Rep. William Browne
House Committee: Public Health
Senate Committee: Health Policy

Mich. State Law Library

THE APPARENT PROBLEM:

Michigan's Public Health Code gives state health care regulatory boards the power to take disciplinary action against licensed health practitioners on a number of grounds, such as physical or mental incompetence (including drug abuse), criminal conviction, unethical business practices (including defrauding third party payors), "unprofessional conduct" (including "misrepresentation ... in obtaining or attempting to obtain third party reimbursement in the course of professional practice"), and "lack of good moral character."

After a physician had been convicted in the Ingham County Circuit Court of medicaid fraud, the attorney general's office filed a complaint with the Board of Medicine, charging that the physician had violated the section of the Public Health Code concerning practitioners convicted of a misdemeanor or felony "reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner." After a hearing, the administrative law judge ruled that the physician had violated this section of the code, and the board ordered the physician's license to be suspended for at least a year.

The physician appealed the board's order, arguing that his conviction of medicaid fraud did not affect his ability to practice medicine in a "safe and competent manner." The Wayne County Circuit Court agreed with the physician and overturned the Board of Medicine's suspension of his license. In the court's opinion, the physician in question had been charged under the wrong section of the code — that pertaining to a practitioner's mental and physical abilities to perform his or her duties — but could nevertheless still be charged under the sections of the code dealing specifically with practice-related insurance fraud.

As a result of this case the Department of Licensing and Regulation has requested legislation that would allow health practitioner regulatory boards to proceed against practitioners convicted of criminal fraud, using as their basis for disciplinary action a certified copy of the court record.

Furthermore, hospitals and health maintenance organizations (HMOs) now are required under the code to notify all appropriate regulatory boards of disciplinary action taken by the hospital or HMO that results in a change of employment status or privileges of practice of a physician or dentist. It has been argued that the type of disciplinary actions required to be reported should be limited to those that affect the practice of a health profession and should not include such actions as parking tickets, which now have to be reported.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code, adding conviction of criminal fraud to the list of personal disqualifications under which state health care regulatory

boards could take disciplinary action (including fines and license actions) against health practitioners. A certified copy of the court record would be conclusive evidence of the conviction. Further, the bill would narrow the range of disciplinary actions against a physician or dentist that a hospital or health maintenance organization is required to report to the appropriate health regulatory board to those actions related to the practice of a health profession.

MCL 333.16221 and 333.16226

FISCAL IMPLICATIONS:

There are no fiscal implications for the state, according to the House Fiscal Agency. (4-28-87)

ARGUMENTS:

For:

The Public Health Code specifies the grounds on which regulatory boards may take disciplinary action against practitioners found in violation of the code. Practitioners may be disciplined for violating their "general duty" (defined in the code as consisting of negligence or failure to exercise "due care" or "any conduct ... which may impair the ability to safely and skillfully practice the health profession"); for a number of "personal disqualifications," prohibited acts, and unethical business practices; for "unprofessional conduct;" and for a variety of other grounds. "Personal disqualifications," in addition to categories such as incompetence and substance abuse, includes convictions for a number of criminal offenses, including criminal sexual conduct and criminal offenses "reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner." When a practitioner is convicted of one of the criminal offenses listed in the code, the relevant regulatory board may take disciplinary action based on a certified copy of the court record of the conviction. Otherwise, even if the practitioner has been convicted of some other criminal offense, the board must conduct its own investigation of the practitioner, including calling witnesses, hearing testimony, and gathering evidence.

Because of the way the Public Health Code is written, the attorney general's office has been charging practitioners convicted of criminal fraud under the "personal disqualifications" section of the code which refers to convictions of misdemeanors or felonies "reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner" and regulatory boards have been using certified copies of the court record as the basis upon which to take disciplinary action against such practitioners. In this way, the Department of Licensing and Regulation has avoided the expense and delay of, basically, re-trying practitioners convicted of criminal

H.B. 4337 (12-2-87)

OVER

fraud. Although one may well argue (as the physician who appealed the suspension of his license did) that conviction of criminal fraud does not, in and of itself, affect a practitioner's technical ability to practice his or her profession in a "safe and competent manner," clearly someone convicted of criminal fraud should be disciplined. While the attorney general is appealing the Wayne County Circuit Court opinion that prompted the bill, the bill is needed to allow the Department of Licensing and Regulation to continue to proceed in a timely fashion against practitioners convicted of criminal fraud.

For:

Currently, hospitals and health maintenance organizations are required under the Public Health Code to notify the appropriate regulatory board of disciplinary actions taken against a physician or dentist. This can include sanctions from those dealing with patient care to a whole raft of violations, such as parking violations, that have no effect on the delivery and standard of care. While these boards should be notified of disciplinary actions taken as the result of improper patient care, there is no need for notification of disciplinary actions taken on more "technical" matters. The bill would narrow the range of sanctions to be reported and concentrate on those that affect the care of patients.