House
Legislative
Analysis
Section

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HEALTH CARE: DISCIPLINE BOARD

House Bills 4279, 4287 and 4288
Sponsor: Rep. David M. Gubow

House Bills 4280 and 4289
Sponsor: Rep. Richard Bandstra

House Bill 4283
Sponsor: Rep. Gerald H. Law

Committee: Public Health

House Bill 4281
Sponsor: Rep. Frank M. Fitzgerald

House Bill 4282
Sponsor: Rep. Sharon Gire

House Bill 4284
Sponsor: Rep. Nelson W. Saunders

House Bills 4285 and 4286
Sponsor: Rep. Roland G. Niederstadt

Committee: Judiciary

Complete to 2-26-91

A SUMMARY OF HOUSE BILLS 4279-4289 AS INTRODUCED 2-15-91

House Bills 4279 and 4280, the main bills in the package, would amend the Public Health Code to revise the current system under which health care professionals are disciplined; House Bill 4287 would create an act establishing a program to help health professionals who were at risk of alcohol or other drug abuse; while the remaining bills in the package would amend various state laws to conform with the changes proposed by the main bills.

House Bill 4279 (MCL 333.7105 et al.) and House Bill 4280 (MCL 333. 7311 et al). Currently, the fifteen health care professions recognized in the Public Health Code are certified (either licensed or registered) and disciplined by their governing boards. That is, the licensing or registration board both grants licenses or registrations as well as taking disciplinary action against health professionals who violate the Public Health Code or who are convicted of certain criminal offenses. The bills would split these certification and disciplinary functions between (a) the existing boards, which would continue to function separately as certifying bodies for each health care profession falling under their jurisdiction,

and (b) a single, newly created "health professionals disciplinary board," which would be the disciplinary board for all fifteen health care professions governed by the health code.

House Bill 4279 would:

* create a health professionals disciplinary board in the Department of Licensing and Regulation (DLR) which would take over the disciplinary functions currently carried out by each of the licensing or regulation boards;
* add "whistleblower" provisions to the health code to require health care professionals to report other health care professionals under certain conditions and protect the "whistleblower" against retaliatory action by his or her employer institution;
* require licensed health care professionals in private practice, upon request, to provide patients with information regarding the new complaint procedures;
* require health care facilities to make available to all patients information regarding the new complaint procedures;
* require licensed or registered health care professionals who had their licenses or registrations revoked or suspended to notify all private patients they had treated in the year immediately preceding the revocation or suspension;
* require hospitals to release, under certain circumstances, information on disciplinary actions against licensed or registered employees that involved safety and competency to practice;
* require the DLR to report to the legislature on the effectiveness of the new disciplinary process; and
* repeal two sections of the health code pertaining to physician's assistants.

The Health Professional Disciplinary Board. The bill would create a five-member health professional disciplinary board in the Department of Licensing and Regulation (DLR). The governor would appoint two permanent members, each from a different political party, and designate one of these two public members to serve as chairperson of the board. The other three board members would be licensed or registered health care professionals who were members of the licensing or registration board of the health professional under investigation, and would be appointed for two-years terms by their respective boards. If possible, the professional members would serve for the duration of a particular case.

Board decisions concerning violations and imposition of penalties would have to be by a majority vote (decisions on penalties would have to include the vote of at least one of the permanent, public members).

The board would be authorized to hold hearings and administer oaths, and would impose sanctions, including requiring licensees or registrants to perform community service, in addition to being able to impose the existing penalties (probation, license or registration actions, and requiring licensees or registrants to pay restitution or fines). The board also could require licensees or registrants to be tested for substance abuse (and for mental or physical competence), as well as being able to require them to satisfactorily complete educational, training, or treatment programs. Finally, the board would develop and recommend to the DLR specific criteria for license reinstatement.

"Whistleblower" provisions. Licensed or registered health care providers who knew that another licensed or registered provider had violated the health code would be required to report that person to the Department of Licensing and Regulation. (Currently, reporting is on a voluntary basis.) However, a licensed health care professional could not be sued for damages if he or she failed to fulfill this requirement. The identity of the provider doing the reporting would be kept confidential unless he or she agreed in writing or was required to testify in disciplinary proceedings. Exemptions to mandatory peer reporting would be made in cases where a licensed or registered health professional learned of a violation in the course either of providing professional services to the violator or in serving on a professional ethics committee or a peer review committee.

Licensed health care professionals who had criminal convictions or disciplinary actions taken against them by another state would have to report these to the DLR within 15 days of the conviction or action, even if a disciplinary action were stayed pending appeal.

The bill also would prohibit hospitals (or other health facilities or agencies) from punishing employees who reported health care professionals to the DLR or who acted as expert witnesses in malpractice lawsuits. Hospitals could be fined up to $10,000 for each violation of this prohibition. Confidential information regarding clients or patients, which now may be disclosed only with the consent of the client or patient, could be disclosed by health care professionals if they believed it was necessary in order to comply with the bill's mandatory reporting requirements.

Patient information pamphlets. Hospitals (and other health facilities, whether licensed or not, and agencies) would be required to conspicuously post pamphlets describing how a patient could file complaints with the DLR against the hospital or against its licensed or registered practitioners. Private health care practitioners would have to make these pamphlets available upon request from their patients. The Department of Public Health would provide the pamphlets and prepare them in cooperation with the appropriate professional associations.

Practitioner notification of patients. The bill would require health care professionals who had their licenses or registrations revoked or suspended for more than 30 days to notify in writing each patient or client the health care professional had treated privately in the year immediately preceding the revocation or suspension. The notice would have to be sent within thirty days after the date of the final order imposing the revocation or suspension, and would have to include at least the name, address, license or registration number, the fact that the license or registration had been revoked or suspended, and the effective date and term of the revocation or suspension. A copy of the notice would have to be sent to the Department of Licensing and Regulation when copies were sent to patients or clients.

Release of disciplinary information by health facilities. Hospitals (and other health facilities or agencies) would have to report whenever they took disciplinary action pertaining to safety and competency to practice against any of their licensed or registered employees:

(a) To the DLR within 15 days of taking the action or face a fine of $5,000 and a subpoena, and

(b) upon request from another hospital in the process of changing or granting staff privileges, credentials, or employment to a licensed or registered health professional.

Hospitals (health facilities, or health agencies) also would be required (upon request) to provide the DLR or the disciplinary board with information on disciplinary action, pertaining to safety or competency to practice, taken by the hospital against any of its licensed or registered workers (including cases in which, in lieu of disciplinary action, the provider resigns or terminates a contract or the hospital does not renew his or her contract).

Practitioner record reviews. The DLR currently keeps records for each licensed health care practitioner. The record includes written allegations against practitioners that have been investigated and substantiated, and it may include other information on a provider's practice that the licensing board considers useful for periodic review. A licensing board is required to review a provider's file whenever it receives certain information: notification from a hospital that it has revoked, suspended, or limited the provider's staff privileges; a written allegation that was substantiated after an investigation; notice of disciplinary action by a health professional society; or an adverse malpractice settlement, award, or judgment.

The bill would transfer the responsibility for reviewing a file from the licensing boards to the department. Review would still be triggered by notification by a hospital of changes in staff privileges and by notification by a professional society of disciplinary action. But the bill would strike the requirement that a review be triggered by an adverse malpractice action, and would require that a written allegation be only of a violation and not "substantiated after investigation." The bill would, in addition, require the department to review a practitioner's records if it (a) received a report under the bill's mandatory peer reporting requirement, (b) was notified of certain misdemeanor convictions (those with two-year sentences or for illegal delivery, possession, or use of alcohol or other controlled substances); or (c) was notified that a provider had become ineligible to participate in federal Medicare or Medicaid programs because he or she failed to meet the program's standards of professional practice.

Departmental powers and duties. The Department of Licensing and Regulation would be able to establish a special "paralegal unit" to assist the department in its activities. The department could order a practitioner to cease and desist from a violation, and could summarily suspend a license or a registration if the public health, safety, or welfare required "emergency action." The definition of situations calling for "emergency action" would be defined by rules promulgated by the department but, at the very least, would include felony convictions, two-year misdemeanor convictions, or misdemeanor convictions involving alcohol or other controlled substances.

After administrative disciplinary action is final, the department currently publishes a list of the names and addresses of health care professionals who have been disciplined and reports disciplinary action to the Department of Public Health, to the insurance commissioner, to the appropriate professional associations and to the state and federal agencies in charge of federal health care programs. Under the bill, the department also

would be required to report annually to each county clerk a list of licensees who had been disciplined in the preceding three years.

The department also would be required to report annually to the legislature and each licensure or registration board on disciplinary actions that had been taken, and within two years after the bills took effect the DLR would have to report to the legislature on the effectiveness of the new process.

Based on recommendations from the disciplinary board for each health profession, the department would establish by rule specific criteria for reinstatement of a license or registration (including guidelines for requiring corrective measures or remedial education as a condition of reinstatement).

Other provisions. The bill would remove from the Board of Pharmacy its present authority to take license action (denial, revocation, suspension) against controlled substances license holders. Instead it would give that authority to the disciplinary board, which also could restrict such licenses. In emergencies, however, the DLR (instead of, as currently, the Board of Pharmacy) could suspend, without an order to show cause, a controlled substances license. A hearings examiner, rather than the board, would be the agency authorized to withdraw a suspension prior to the completion of a judicial review.

A drug control license would be void automatically if the disciplinary board suspended or revoked a licensed health care professional's license.

Licenses or registrations suspended or revoked for illegal drug diversion or for criminal sexual conduct convictions could not be reinstated for five years (otherwise, reinstatement could be granted after three years, as currently is the case for all suspensions or revocations).

When a physician licensed in another state applied for licensure in Michigan under the provisions of the health code that allow licensure without taking the licensing examination, the Board of Medicine could not require graduates of medical schools from countries other than the United State or Canada to meet higher requirements than are required of graduates from American or Canadian medical schools.

The disciplinary process. The present disciplinary process for health care professionals begins when the DLR receives a written complaint against a licensed or registered health care professional. Though complaints most commonly are filed by patients, they also can come from hospital disciplinary reporting, criminal conviction reporting from the state and federal courts, professional associations, and other law enforcement agencies. The department notifies the appropriate licensing board of the allegation, and the board then reviews the allegation and decides whether or not a violation of the Public Health Code has occurred. (The code lists a variety of actions which can be investigated by the department, including incompetency, negligence, criminal convictions, substance abuse, fraud, and so forth.) If the board (or, under certain circumstances, the department) decides that a violation may have occurred, the department investigates the allegation, gathering facts, evidence and testimony. If the department decides that the evidence establishes that

a violation has occurred, it sends an investigation report to the attorney general's office, which reviews the report to decide whether there is sufficient evidence to support prosecution. If so, the attorney general's office files a formal complaint with the Department of Licensing and Regulation and the complaint is served on the health care professional in question, who then can respond to the charges and request an informal conference. If the informal conference does not result in a settlement, the case enters the administrative hearing process, a trial-like procedure where evidence is presented and testimony is taken before an administrative law judge. The administrative law judge issues findings of fact and conclusions of law, and sends the hearing records to the appropriate licensing board for review. After reviewing the hearing records, the board decides on the appropriate action: either dismissal or the imposition of disciplinary sanctions ranging from reprimand, probation, fines, or restitution, to license limitation, suspension or revocation. (The licensing board also reviews all settlements reached at informal conferences and may accept or reject these settlements.) The health care professional in question can appeal his or her board's action to the circuit court and, if necessary, to the court of appeals.

Under the bill, the disciplinary process would be combined for all 15 currently existing licensing or registration boards. It would consist of the following stages: receipt of allegations by the DLR; an informal regulatory review conference; investigation by the department; issuance of a formal complaint by the department; an informal settlement conference; a formal administrative hearing by a hearings examiner; and a final hearing by the disciplinary board. The attorney general would represent the department and serve as legal counsel to the disciplinary board (though the same attorney could not act as prosecutor and advisor). Throughout the process, information would be kept confidential with the exception of complaints, agreements resulting from informal regulatory reviews, and stipulations and final orders approved by the disciplinary board. Failure to respond to a formal complaint or to appear or be represented at a scheduled conference (whether a regulatory review conference or a settlement conference) or hearing (whether before a hearings examiner or the disciplinary board) would be considered an admission of the allegations in the complaint, and the disciplinary board could proceed to impose sanctions on the subject of the complaint. The subject of a complaint could request a single continuance ("for good cause shown") for each of the conferences (both the regulatory review conference and the settlement conference) and for each of the hearings (i.e., that before a hearings examiner and that before the disciplinary board). The entire process, once a formal complaint had been issued, ideally would take no more than nine months (though the disciplinary board could, with good cause shown, extend the process).

The DLR would continue to receive allegations of violations, but also would evaluate the allegations, instead of sending them to a licensing board for review. If the department believed that a violation had occurred, it could schedule an informal regulatory review conference, consisting of the health professional in question, his or her attorney, a department staff member, and anyone else approved by the department. In addition, one member of the relevant licensing or registration board could attend. Transcripts of these informal conferences could not be made and all conference records and documents would be confidential (except complaints, agreements, and stipulations and final orders approved by the disciplinary board).

(Under current law, the department must investigate certain cases involving malpractice litigation. When a licensing board notifies the department of three or more malpractice settlements, awards, or judgements--or one or more such settlement, award, or judgment of more than $200,000--against a licensed health care professional in ten consecutive years the department is required to investigate. The bill would keep the $200,000 threshold, but would shorten the period from ten to five years.)

If an agreement were reached at an informal regulatory review conference, the department would submit one of three alternatives to the disciplinary board for approval: a written statement outlining the terms of the agreement; a stipulation and final order, if applicable; or a request for dismissal. If the disciplinary board rejected the department's recommendation, an investigation into the allegations by the department would automatically be done.

If an agreement were not reached at the informal regulatory review conference, the department could request authorization from the chairperson of the appropriate licensing or registration board to conduct an investigation. If the chair did not respond to the request within ten days the department would proceed with the investigation.

Within 45 days after an investigation were authorized (or were completed after an informal regulatory review conference), the department would have to take one or more of the following actions (though the department also could request a 30-day extension from the disciplinary board):

* request authorization from the appropriate board chairperson to issue a complaint (the board would have ten days to authorize or dismiss the complaint, after which time the department could decide to issue a complaint or dismiss the matter);
* issue a summary suspension;
* issue a cease and desist order; or
* request authorization from the board to dismiss the matter.

If a complaint were authorized, the DLR would issue a complaint and serve it (or make a reasonable attempt to serve it) upon the health care professional (either directly or by certified mail), informing the person that he or she had 30 days to respond in writing. Before preparing a complaint,the department could consult with the attorney general.

The DLR would hold a settlement conference, at which the subject could have an attorney. In addition, one member of the appropriate licensing or registration board could attend. If a settlement were reached, the department would prepare a proposed consent and a "stipulation and final order," and submit them to the disciplinary board for approval. As with the informal regulatory review conference, no transcripts could be made of the settlement conference and all conference records and documents (except complaints and stipulations and final orders approved by the disciplinary board) would be confidential.

If a settlement were not reached or the subject of a complaint did not attend a settlement conference, the complaint would be referred to a hearings examiner (who would be either an employee of, or under contract to, the department), who would hold a hearing within 45 days of receiving the referral to decide whether a violation of the health code had

occurred. The subject of the complaint could have an attorney present at the hearing, and the department would be represented by the attorney general's office. As in the cases of informal hearings and settlement conferences, one member of the appropriate board also could attend. The hearings examiner would prepare recommended findings of fact and conclusions of law to send to the disciplinary board, but would neither recommend nor impose penalties.

Within 60 days of receiving a report from a hearings examiner that a licensed or registered health care professional had committed a violation, the disciplinary board would hold a formal hearing, reviewing the recommended findings of fact and conclusions of law of the hearings examiner. The disciplinary board hearing would not start all over again ("de novo"), unless a majority of the board believed that were necessary. However, the board could request additional testimony or evidence on specific issues, and could, if it thought necessary, revise the recommended findings of fact and conclusions of law. An independent special assistant attorney general, under contract to the attorney general and who had not represented the department before a hearings examiner, would advise the disciplinary board on legal matters. If the disciplinary board agreed with the hearing examiner's findings, the board would impose the appropriate penalties. If the board decided that grounds did not exist for disciplinary action, it would dismiss the complaint.

After issuing its decision, the disciplinary board would send a copy of the final order to the appropriate licensing board. A disciplinary board decision could be appealed to the court of appeals by right (i.e. automatically). The entire new disciplinary process would have to be completed within nine months after a formal complaint was issued, though the board could, with good cause shown, extend the nine-month deadline.

Tie bar. The bill is tie-barred to House Bills 4288 and 4289, which would increase licensing and registration fees.

House Bill 4280 would separate the licensing and registration of health care professionals (which would continue to be handled by the fifteen existing health care professional licensing or registration boards) from the disciplining of health care professionals (which would be handled by the health professionals disciplinary board created in House Bill 4279).

Licensing and registration boards. The existing licensing and registration boards would continue to be responsible for licensing and registration criteria, testing, and granting or denying licenses or registrations to practice (including renewals).

The bill also would increase membership on thirteen of the existing fifteen licensing or registration boards: chiropractic, medicine, nursing, optometry, osteopathic medicine and surgery, pharmacy, physical therapy, podiatric medicine and surgery, counseling, psychology, occupational therapists, sanitarians, and veterinary medicine. The boards would continue to have a majority of licensees as members, but the bill would increase public membership on most of the existing boards (with the exception of the boards for dentistry and physical therapy), as well as increasing professional membership on three of the thirteen boards

(podiatric medicine and surgery, occupational therapists, and sanitarians). The increases would be as follows:

	Public members		Professional members	
	Current:	Proposed:	Current:	Proposed:
Chiropractic	2	4	5	(no change)
Medicine	3	8	11	(no change)
Nursing	2	8	15	(no change)
Optometry	2	4	5	(no change)
Osteopathic Medicine	2	4	5	(no change)
Pharmacy	2	5	6	(no change)
Physical therapy	2	4	5	(no change)
Podiatrists	2	4	3	5
Counseling	2	4	7	(no change)
Psychology	3	4	5	(no change)
Occupational Therapy	2	4	3	5
Sanitarians	2	4	3	5
Veterinarians	2	3	5	(no change)

The bill also would:

* eliminate the "retiree's limited license" (a license which authorizes the use of protected titles but which does not allow the licensee to practice the health profession in question);

* change the definition of "limited license" (by deleting reference to "scope of practice" and to "type or condition of patient or client served");

* allow licensure boards to continue to "limit" (impose conditions on) licenses, while transferring to the disciplinary board the power to "restrict" (impose conditions on) licenses;

* require licensed or registered health care professionals to report to the DLR felony convictions, two-year misdemeanor convictions, and misdemeanors involving alcohol or controlled substances convictions;

* require physicians to report to DLR the name of each hospital at which they are employed or have practice privileges;

* allow licensure or registration boards to inform the disciplinary board if they discovered that a licensee or registrant was under sanctions from a similar board elsewhere (in which case, the disciplinary board could then impose appropriate sanctions);

* add the newly created health professionals disciplinary board to the general provisions currently governing licensing or registration boards; and

* repeal three sections of the health code which deal with licensing boards' ability to reclassify licenses (333.16134), appointment of health profession subfield licensees (333.16134), and general provisions governing the physician's assistant task force (333.17058).

Tie Bar. The bill is tie-barred to House Bill 4279.

House Bill 4281 would amend the Open Meetings Act (MCL 15.267 and 15.268) to exempt from disclosure settlement conferences and informal regulatory review conferences (held prior to issuance of a complaint) held under House Bill 4279. The bill could not take effect unless House Bill 4279 was enacted.

House Bill 4282 would amend the Freedom of Information Act (MCL 15.243) to generally exempt from disclosure information regarding an investigation or informal regulatory review conference (as conducted under House Bill 4279). Not exempted would be information pertaining to the fact that an allegation had been made (along with the date of the allegation), that an investigation was underway, that no departmental complaint had been issued, and that an allegation had been dismissed.

House Bill 4283 would amend the health professional peer review act (MCL 331.532 to allow the release of certain confidential information given to health care professional peer review bodies in the course of licensing or disciplining health care professionals. More specifically, the bill would require that the "proceedings, reports, findings, and conclusions" of a peer review body be released or published in order to comply with the requirements of House Bill 4278, to which the bill is tie-barred.

House Bill 4284 would amend the Administrative Procedures Act (MCL 24.285 and 24.315) to exempt final decisions or orders rendered under the new health professionals' disciplinary process (set up by House Bill 4279) from the act's provisions for judicial review. The bill also would require that findings of fact and conclusions of law included in a final decision or order issued in a contested case hearing be placed in separate captioned sections. The bill could not take effect unless House Bill 4279 was enacted.

House Bill 4285 would amend the Code of Criminal Procedure (MCL 769.1 et al.) to require the Department of Licensing and Regulation to be notified when a health professional was convicted of a felony or an alcohol- or drug-related misdemeanor. Within 21 days after the conviction, the clerk of the court would report the conviction to the department on a form furnished by the department. Whether a person convicted of one of these offenses was a health professional would have to be noted in the presentence investigation report. At sentencing, the court would check whether the conviction had been reported as required; if not, the court would order the report to be made immediately. The bill could not take effect unless House Bill 4279 was enacted.

House Bill 4286 would amend the Revised Judicature Act (MCL 600.2507). At present, the act allows the secretary of state, the auditor general, the state treasurer, and the attorney general to search each other's offices and the offices of the clerk of any court of record and of any register of deeds for any documents necessary to the discharge of their duties, and to obtain certified copies of those documents without charge. The bill would amend the act to allow the director of the Department of Licensing and Regulation to request without charge searches and copies of such records (including those pertaining to criminal matters and to medical malpractice) from the secretary of state, the auditor general, the state treasurer, registers of deed, and the clerks of any court of record, including the supreme court and the probate court. The bill could not take effect unless House Bill 4279 was enacted.

House Bills 4288 and 4289 would amend the State License Fee Act (MCL 338.2203 et al.) to raise health care professionals' annual license fees and to credit these fees (and not just the increases) to a newly created health professionals regulatory fund. In addition, House Bill 4288 would create the health professions regulatory fund in the state treasury and make the Department of Licensing and Regulation (DLR) responsible for administering the fund. The fund would be used for the health professionals' disciplinary process proposed in House Bills 4279 and 4280. The bill also would allow the DLR to increase health professionals' fees by a percentage tied to the average increase granted to classified civil service employees in the department. House Bill 4289 would raise the annual license fees of health professionals not covered under House Bill 4288. The bills are tie-barred to each other and to House Bill 4279.

Proposed fee increases:	Current fee	Proposed fee
(House Bill 4288)		
Drug dispensing license	$50	$75
Chiropractors	$50	$90
Counselors	$50	$55
Dentists	$40	$90
Dental assistants	$ 5	$10
Dental hygienists	$10	$20
Medical doctors	$40	$90
(House Bill 4289)		
Nurses	$10	$20
Optometrists	$40	$90
Osteopathic physicians	$40	$90

Proposed fee increases:	Current fee	Proposed fee
Pharmacists	$10	$30
Pharmacies	$25	$50
Physical therapists	$25	$50
Physician's assistants	$25	$50
Podiatrists	$50	$90
Psychologists		
Full doctoral	$40	$90
Masters limited	$30	$60
Sanitarians	$30	$50
Occupational therapists	$55	$60
Veterinarians	$25	$50
Veterinary technicians	$10	$20