



**House
Legislative
Analysis
Section**

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HEALTH CARE DISCIPLINE

**Senate Bill 343 (Substitute H-2)
First Analysis (6-23-93)**

**Sponsor: Rep. Vernon Ehlers
Senate Committee: Health Policy
House Committee: Public Health**

THE APPARENT PROBLEM:

There has long been a public perception of the need for better "policing" of "bad" physicians, physicians whose practice endangers the health or safety of their patients. For example, almost ten years ago (in April of 1984) the Detroit Free Press published a week-long series of articles on "bad doctors" which received national attention, and there have been numerous articles in other state newspapers since then. The Michigan legislature has repeatedly addressed this issue over the past 15 years through a series of special or "ad hoc" committees established to study the problem and make recommendations to improve the existing licensing and disciplinary process. For example, the 1975-76 legislature established such a committee ("the Owen committee"), which issued its final report in February of 1977. Many of its findings and recommendations were ostensibly addressed in the Public Health Code revision of 1978. Nevertheless, almost ten years later, the Speaker of the House of Representatives believed it necessary to establish another special committee on medical licensure ("the Evans committee"), which issued its report in December of 1984. In addition, the director of the former Department of Licensing and Regulation commissioned a report by the state Health Occupations Council (which appeared in November of 1983), while the governor--in response to the "medical malpractice crisis" of 1984--appointed a special investigator who issued a final report ("the Fleming report") on health care provider malpractice and malpractice insurance in December of 1985.

Despite these recurring studies and recommendations, enough problems have persisted that in January, 1989, the Speaker of the House appointed a Special Ad Hoc Committee on Physician Licensure to examine the current physician licensure and discipline process in Michigan and to recommend legislation that might improve this process. The committee's charge

specifically did not include looking at such issues as tort reform or affordability and availability of medical malpractice insurance. The committee heard testimony from a number of groups on aspects of physician licensure and discipline. Representatives from the Department of Licensing and Regulation described the current licensing and disciplinary process as well as budget and staffing in the department for the process. Representatives of the Michigan Bar Association described the attorney discipline process. The medical, osteopathic, and podiatric licensing boards (and the three physician professional groups) testified, as did representatives from other professional groups (pharmacists, nurses, and trial lawyers), the attorney general's office, and a major medical insurer. In addition, a number of hospitals testified on the current peer review process. After the committee reviewed testimony and recommendations concerning current practices, it decided to address the licensing and disciplining of all health care professionals, not just that of physicians. The committee decided that the current disciplinary process should be streamlined and made consistent for all of the 15 currently licensed or registered health care professionals, that public participation in the process should be increased, and that participation in the process by licensed health care professionals should be ensured.

In a related problem, currently if a licensed or registered health professional is found by his or her licensing board to be personally disqualified to practice because of substance abuse or mental incompetence, the board can take a number of disciplinary actions ranging from probation to fines and suspension or revocation of the practitioner's license or registration. However, there are no provisions in law which allow the state to take nondisciplinary action with regard to health professionals who are impaired because of their use of drugs (including alcohol) or because of mental illness. Consequently, legislation has been

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introduced to allow nonpunitive, treatment-oriented approaches to deal with impaired health professionals.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.16241 et al.) to do the following:

- * establish five-member disciplinary subcommittees for each health professional board or task force that would impose penalties for violations of the health code (instead of the current system of boards and task forces imposing such penalties);

- * allow disciplinary subcommittees, after reviewing recommended findings of fact and conclusions of law of hearings examiners, to dismiss complaints and, if they find that a preponderance of the evidence supports the hearing examiner's findings, to impose appropriate sanctions;

- * require the Department of Commerce to annually send copies of the list of names and addresses of disciplined health care professionals both to the Library of Michigan and each county clerk in the state;

- * require practitioners whose licenses or registrations had been revoked or suspended for more than 60 days to notify their patients orally of the revocation or suspension during the suspension or revocation and to notify in writing those whom the practitioner had or would be seeing professionally for the four months preceding and following the date of the suspension or revocation order;

- * require licensees or registrants who had had their licenses or registrations suspended or revoked, were reprimanded, fined, placed on probation, or ordered to pay restitution to notify their employers, if any, and each hospital in which they were admitted to practice within ten days of the final order;

- * require health professional boards to develop and provide the written form used by health professionals to inform their patients of license or registration suspensions or revocations;

- * require the Department of Commerce to annually submit to the legislature and each health board or task force a report on disciplinary actions (the bill lists what the report would have to include)

and, within two years after the bill took effect, to submit a public report to the legislature on the effectiveness of the bill and recommend any administrative or statutory changes;

- * prohibit for five years (instead of the current three years) applications for reinstatement of revoked licenses or registrations in cases where the revocation was for felony convictions involving illegal drugs;

- * establish a "health professions regulatory fund" in the state treasury, to be used by the Department of Commerce to carry out its disciplinary duties under the bill (including reimbursing the attorney general for any services rendered in helping the department in doing this) and specify how the fund was to be managed;

- * establish a "nurse professional fund" to be funded by two dollars of each annual nurse's license fee (including registered nurses, licensed practical nurses, and "trained attendants") and specify how the funds were to be managed and used.

The bill also would repeal sections 16216 and 16237 of enrolled House Bill 4295 and section 16315 of enrolled House Bill 4076 (see HOUSE COMMITTEE ACTION below), as well as the sixteen sections of the State License Fee Act that set fees for health professionals.

Senate Bill 343 is tie-barred to House Bills 4076 and 4295.

HOUSE COMMITTEE ACTION:

The House Public Health Committee substituted the bill as passed by the Senate. Where the Senate-passed version (S-1) of the bill would have amended virtually all of the same sections of the Public Health Code as House Bills 4076 and 4295, to revise the existing health care professional disciplinary system, the House substitute (H-2) would do the following:

- * repeal, and then reinstate in altered form, three new sections that would be added to the Public Health Code by House Bills 4076 and 4395;

- * amend three existing sections of the Public Health Code;

* repeal the 16 sections of the State License Fee Act (Public Act 152 of 1979) that set fees for health care professionals; and

* tie-bar the bill to House Bills 4076 and 4295.

More specifically, the House substitute for Senate Bill 343 would:

* repeal the section of House Bill 4295 (H-1) that would amend the health code to establish disciplinary subcommittees with either three or five members, depending on whether the board or task force had more than ten members (currently, nine of the existing fifteen boards have fewer than ten members), and instead establish five-member subcommittees for all boards or task forces, regardless of their size (the Senate-passed version of the bill does not have disciplinary subcommittees; existing boards and task forces would continue to carry out the disciplinary process);

* repeal the section of House Bill 4295 (H-1) that would require disciplinary subcommittees, in imposing penalties, to review the recommended findings of fact and conclusions of law of the hearings examiner (in the Senate-passed version of the bill, the boards or task forces would continue to impose penalties), and reinstate it with three changes:

(1) In House Bill 4295 (H-1), an independent special assistant attorney general would be required to advise the disciplinary subcommittees; in Senate Bill 343 (H-2), the attorney general would be allowed, but not required, to assign independent special assistant attorneys general to advise disciplinary subcommittees;

(2) In Senate Bill 343 (S-1), a board or task force would be allowed to request additional testimony or evidence (in addition to revising the findings of fact and conclusions of law); in House Bill 4295 (H-1), disciplinary subcommittees would be allowed to request the hearings examiner to take additional testimony or evidence (as well as to revise the recommended findings of fact and conclusions of law); Senate Bill 343 (H-2) would explicitly add that disciplinary subcommittees could not conduct their own investigations or take their own additional testimony or evidence;

(3) In both Senate Bill 343 (S-1) and House Bill 4295 (H-1), final decisions (whether of boards or task forces, as in the Senate bill, or of disciplinary subcommittees, under the House bill) could be appealed by right to the court of appeals; under

Senate Bill 343 (H-2), final decisions of disciplinary subcommittees could be appealed to circuit court until January 1, 1995, and afterwards would go to the court of appeals.

* House Bill 4295 (H-1) would require every licensed or registered health professional who had had his or her license suspended or revoked for more than 60 days to notify, in writing, each patient or client to whom the licensee or registrant had rendered private practice services within the year immediately preceding the final order revoking or suspending the license or registration, as well as everyone who contacted the health professional for professional services during the suspension or revocation. Senate Bill 343 (S-1) would require licensed or registered private practitioners who had had their licenses or registrations suspended for more than 90 days to notify, in writing, each patient or client under their care on the date of the final order revoking or suspending the license or registration.

Senate Bill 343 (H-2) would require health care professionals whose licenses or registrations had been revoked or suspended to notify, orally and at the time of contact, everyone who contacted them for professional services during the time of the revocation or suspension. In addition, like House Bill 4295 (H-1), the bill would require health professionals who had had their licenses or registrations suspended for more than 60 days to notify their patients in writing. However, under Senate Bill 343 (H-2) the professional would have to notify only patients to whom her or she had rendered professional services 120 days before the date of the order suspending or revoking the license or registration (instead of one year), and, in addition, patients who were scheduled to receive professional services from the licensee or registrant for the first 120 days after the order.

* Senate Bill 343 (H-2) would make technical changes to section 16244 of the health code, which provides legal immunity to those helping in disciplinary proceedings, to add disciplinary subcommittees to the section.

* Senate Bill 343 (H-1) also would amend section 16245 of the health code, which regulates the reinstatement of suspended or revoked licenses or registrations. As in House Bill 4295 (H-1), Senate Bill 343 (H-2) would require the Department of Public Health [and not, as in Senate Bill 343 (S-1),

a board or task force] to provide an opportunity for a hearing before final rejection of an application for reinstatement. Senate Bill 343 (H-2) would add, like House Bill 4295 (H-1), a requirement that the Department of Public Health establish specific criteria for reinstatement. However, instead of requiring the department to promulgate rules establishing these criteria, Senate Bill 343 (H-2) would require the department to adopt guidelines, and would add that if a board or task force deviated from the guidelines when reinstating a license or registration, the board or task force would have to state its reasons for the deviation.

* Senate Bill 343 (H-2), like Senate Bill 343 (S-1) and like House Bill 4076 (H-1), would establish a "health professions regulatory fund" to be used by the Department of Commerce in carrying out its powers and duties in the health professional disciplinary process; in addition, however, it also would clarify that money in the fund also would be appropriated to the attorney general for the reasonable costs of services rendered to the department under the bill.

BACKGROUND INFORMATION:

Originally, separate health care professional disciplinary packages were introduced into both the House and the Senate. The House package consisted of eight bills, with the two main bills being House Bill 4076 (Substitute H-1) and House Bill 4295 (H-1). All of the House bills passed the House, with House Bill 4295 (H-1) being amended. The Senate package consisted of seven bills, with Senate Bill 343 (S-1) being the main bill in the package. The Senate bills also passed the Senate.

The House Committee on Public Health reported out Substitute H-2 for Senate Bill 343. The House substitute would repeal, and then reinstate in altered form, three sections added to the Public Health Code by House Bills 4076 (16315) and 4295 (16216 and 16237) "as enrolled," only two sections of which appear in the Senate-passed version of the bill (16237 and 16315). (Note: The House substitute for Senate Bill 343 would specify that the three repealed sections of the Public Health Code would be as added by "enrolled" House Bills 4076 and 4295, though, at the time of this analysis, the House bills have not been passed by the Senate nor enrolled.) The House substitute also would amend three sections (16241, 16244, and 16245) that appear both in House Bills 4076 (16141) and 4295 (16244

and 16245) and in Senate Bill 343 (S-1). And the House substitute would repeal (in addition to the reinstated new Public Health Code sections) the 16 sections of the State License Fee Act (Public Act 152 of 1979) setting fees for health care professionals.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill is a good, working compromise between Senate and House versions of a health care disciplinary package that has been before the legislature for the past three sessions. In particular, it is desirable, as this version of the bill would do, to require notification of prospective patients of health care professionals whose licenses or registrations have been suspended or revoked, as well as past and current patients of such professionals. (For further, specific arguments, please see the House Legislative Analysis Section analysis of House Bills 4076 et al., dated 3-24-93.)

Against:

The period of time for which health care professionals should have to notify their patients of license or registration suspensions or revocations should be extended to include the year immediately preceding the date of the order of suspension or revocation. The 120-day period proposed by the bill is arbitrary, and in the course of negotiating the appropriate period of time for such notification, physicians reportedly asked that the period be the same as that currently holding for attorneys (which is one year preceding the order).

POSITIONS:

A representative of the Michigan State Medical Society testified before the House Public Health Committee that MSMS opposes notification of patients after a license suspension or revocation was over. (6-15-93)

A representative of the Economic Alliance for Michigan testified in support of the bill and the proposed committee amendments. (6-15-93)