House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

HEALTH OCCUPATION SANCTIONS

House Bills 4076 and 4077 as enrolled
Sponsor: Rep. David M. Gubow

House Bill 4078 as enrolled
Sponsor: Rep. Sharon Gire

House Bill 4080 as enrolled
Sponsor: Rep. Nelson Saunders

House Bill 4289 as enrolled
Sponsor: Rep. Richard Bandstra

House Bill 4290 as enrolled
Sponsor: Rep. Michael Goschka

House Bill 4292 as enrolled
Sponsor: Rep. Sandra Hill

House Bill 4295 as enrolled
Sponsor: Rep. John Jamian

Senate Bill 343 as enrolled
Sponsor: Sen. Vernon Ehlers

House Committees: Public Health and Judiciary
Senate Committee: Health Policy

Second Analysis (1-25-94)

THE APPARENT PROBLEM:

There has long been a public perception of the need for better "policing" of "bad" 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. The present package of bills is a result of the special ad hoc committee's recommendations.

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

THE CONTENT OF THE BILLS:

The bills would change the existing health care disciplinary process, and amend a number of existing laws that would allow the rest of the package of bills to be carried out, both legally and administratively. The three main bills in the package are House Bill 4076 (MCL 333.7104 et al.), House Bill 4295 (MCL 333.16211 et al.), and Senate Bill 343 (MCL 333.16241 et al.). The following description of the content of the bills reflects the fact that Senate Bill 343 amended the House bills as enrolled.

Major provisions of the bills are as follows:

House Bill 4076 would do the following:

(1) Create a health professional recovery committee and a health care professional recovery program for drug-impaired (including alcohol-impaired) health professionals, make lying about completing a recovery program a felony, and provide some legal immunity for health professionals who participated in such programs;

(2) Add certain penalties (fines, reprimands, community service or restitution, probation) for violations of the drug licensing sections of the health code;

(3) Eliminate the existing Health Occupations Council and retirees' limited licenses;

(4) Authorize the Department of Commerce to increase health professionals' licensing and registration fees each fiscal year according to a formula based on civil service wage and salary increases; and

(5) Increase fees for drug licenses, chiropractors, physicians (both MDs and DOs), dentists (including dental assistants and dental hygienists), nurses (including registered nurses, licensed practical nurses, and trained attendants), pharmacists, and physical therapists.

[Note: The bill would eliminate the Health Occupations Council, though Section 16137 contains a reference to the council.]

House Bill 4295 would do the following:

(1) Increase the number of members on the existing health care professional boards and task forces;

(2) Revise the existing health professional disciplinary process, including allowing disciplinary subcommittees to require practitioners who violated the health code to complete educational and training programs, treatment programs, and mental, physical, or professional competence examinations;

(3) Require all licensed or registered health care professionals to report colleagues who were impaired or who had violated the health code, and provide civil immunity for those making such reports;

(4) Add certain penalties (community service, license or registration denial) to existing penalties for certain violations of the health code, and add penalties (reprimands, license or registration denial or limitation) for health professionals who failed to meet the code's general licensing and registration requirements;

(5) Move health professionals' fees from the State License Fee Act to the Public Health Code; and

(6) Increase fees for physician's assistants, podiatrists, counselors, psychologists, occupational therapists (including certified occupational therapy assistants), sanitarians, and veterinarians (including veterinary technicians).

Senate Bill 343 would do the following:

(1) Create five-member disciplinary subcommittees under each of the existing health professional boards and transfer disciplinary hearings and imposition of sanctions from the boards to these subcommittees;

(2) Establish a one-year time frame for the disciplinary process;

(3) Require health professionals who were sanctioned to notify their patients, employers (if any), and hospitals where they practiced; and

(4) Set up a health profession regulatory fund and a nurse professional fund in the Department of Commerce (which houses the Bureau of Occupational and Professional Regulation).

A more detailed description of the bills' contents follows.

Health profession licensing boards. The health profession boards and task forces (and, House Bill 4076 would explicitly add, only the boards and task forces) would continue to set license standards, to test applicants, to issue licenses (including license renewals), and to handle license reinstatements (including retesting) following disciplinary actions. Boards and task forces could not grant licenses, registrations, or certificates to applicants who had disciplinary actions pending or who were under sanctions at the time of their application.

The boards would continue to have a majority of licensees as members, with House Bill 4295 increasing membership as follows:

Licensing Board	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

Licensing Board	Public Members		Professional Members	
	Current	Proposed	Current	Proposed
Pharmacy	2	5	6	no change
Physical therapy	2	4	5	no change
Podiatry	2	4	3	5
Counseling	2	4	7	no change
Psychology	3	4	5	no change
Occupational therapy	2	4	3	5
Sanitation	2	4	3	5
Veterinary medicine	2	3	5	no change

Disciplinary subcommittees. Senate Bill 343 would create five-member disciplinary subcommittees for each board or task force (currently, the only existing health professional task force is the physician's assistant task force) that would impose sanctions for violations of the health code. Disciplinary subcommittees also would make recommendations to the Department of Commerce regarding the adoption of guidelines establishing license reinstatement criteria.

Board (or task force) chairs would appoint one or more disciplinary subcommittees for their board (or task force) consisting of two public members and three professional members from the board (or task force). The board (or task force) chair also would appoint a public member as the chair of each subcommittee. Board chairs could not serve on disciplinary subcommittees. All of a disciplinary subcommittee's final decisions would require a majority vote; a final decision that imposed sanctions would require, in addition, the vote of at least one public member.

Senate Bill 343 would allow disciplinary subcommittees to be advised on matters of law by (and get other legal assistance from) independent special assistant attorneys general appointed by the attorney general. However, the same assistant attorneys general who represented the department before a hearings examiner could not be appointed to advise and help the disciplinary subcommittee involved in that case.

Currently, only boards and hearings examiners can require health professionals to submit to mental or physical examinations. Under House Bill 4295, disciplinary subcommittees (and, with a subcommittee's approval, the department) also could require such examinations in hearings or investigations of health professionals accused of substance abuse or alleged to be mentally or physically impaired.

The disciplinary process. In general, the new disciplinary process would be as follows. Allegations and complaints of misconduct by licensed health professionals would continue to go to the Department of Commerce, which also would conduct any investigations and hold any compliance conferences. When no agreement was reached at a compliance conference, formal hearings would be conducted by hearing examiners under contract with the department. Disciplinary subcommittees would review the hearings examiner's recommended findings of fact and conclusions of law and would either dismiss the complaint or impose sanctions on the health professional for violating the health code. The compliance conference, the hearing before the hearings examiner, and final disciplinary subcommittee action would have to be completed within one year after the department initiated the investigation.

Currently, the disciplinary process for health professionals begins either with complaints or allegations made to the department (formerly the Department of Licensing and Regulation, now the Department of Commerce) or by provisions in the

health code that automatically trigger reviews of a health professional's file by his or her board (or task force). (The health code requires the department to create and keep permanent historical records on every licensed or registered health professional in the state.) Currently, boards must review a practitioner's file whenever there is (a) notification by a hospital of the revocation, suspension, or limitation of a health professional's staff privileges; (b) a written allegation substantiated after investigation; (c) notice of disciplinary actions taken by health professional societies; (d) an adverse malpractice settlement, award, or judgment; and (e) written notice of a felony conviction. House Bill 4295 would shift responsibility for file reviews from the boards to the Department of Commerce, and would add the following to the list of actions triggering a review by the department: (1) written notice of drug-related misdemeanors and "two-year" misdemeanors (in addition to felonies); (2) notice that the health professional had been denied participation in a federally funded health program because he or she failed to meet the program's standards of professional practice; (3) a report by a health professional that another health professional had violated the health code; and (4) notice of disciplinary action in another state against the health professional.

Currently, if someone believes that the health code has been violated, he or she can notify the department in writing. The department then notifies the appropriate board, which has 30 days to decide whether there is reason to believe that the health professional had committed "a violation of general duty" (that is, been negligent or failed to exercise due care), was incompetent, had been convicted of certain misdemeanors, or was practicing outside the scope of his or her license or registration. The department investigates if (a) the board fails to decide within 30 days, (b) the department receives certain information regarding malpractice settlements, awards, or judgments against the practitioner, or (c) the department determines that there is reason to believe that there were grounds for investigation other than those considered by the board.

(The health code lists a number of "grounds" upon which a board or task force may impose sanctions on a health professional, including "a violation of general duty," "personal disqualifications" [including incompetence, substance abuse, mental or physical disability, lack of "good moral character," conviction for criminal sexual assault or for giving misleading or inaccurate patient information, and certain other misdemeanor or felony convictions], certain prohibited acts [including fraud or deceit in getting or renewing a license, letting unauthorized people use one's license, practice outside one's scope of practice, and illegal drug activities], unethical business practices [including false or misleading advertising, dividing fees for referrals or taking kickbacks, fraud or deceit in getting insurance reimbursement], "unprofessional conduct" [including betrayal of a professional confidence, pushing unnecessary treatment, having patients buy from a business owned by the health professional], failing to report a change of name or address within 30 days, failing to comply with a subpoena issued under the health code, failure to give women information about alternative breast cancer treatments, and failure to pay on certain assessments under a now-defunct malpractice insurance fund.)

Initiating the process. Under the new process, allegations and complaints would continue to come to the department in a number of ways -- patient complaints, the hospital disciplinary process, the federal data bank, license complaints, professional associations, state courts, and other law enforcement agencies. However, the Department of Commerce (rather than the appropriate board or task force) would conduct the review, and there would be additions and changes to the existing review triggers: Under House Bill 4295, health professionals would be required to report conduct or treatment by other health professionals that could be the basis for disciplinary action (as well as to report impaired health professionals for help). Misdemeanor convictions triggering reviews would be limited to those involving alcohol or drugs and those punishable by imprisonment for up to two years (in addition to the current misdemeanor convictions reasonably related to or adversely affecting a health professional's ability to practice in a safe and competent way). Finally, sanctions imposed by regulatory bodies in other states or territories and failure to meet licensure or registration requirements also would be added as grounds for action. (Courts would have to report certain convictions within 21 days of sentencing: felony and two-year misdemeanor conviction by the circuit and recorder's courts, and drug- and alcohol-related misdemeanor convictions by district courts.)

Investigations. If the department believed that the health code had been violated, it would investigate,

with authorization by the chair of the appropriate board or task force. If the board didn't give it's approval within seven days of the request for authorization, the department would begin an investigation without the board's authorization. The statutory mandate to investigate health professionals involved in medical malpractice litigation would be shortened from a 10-year consecutive period to a five-year consecutive period, though the $200,000 threshold would remain the same. All information gathered in an investigation before a complaint was issued would be confidential.

Within 90 (instead of 45) days after beginning an investigation (rather than simply receiving an allegation), the department would have to issue a formal complaint, conduct a compliance conference, issue a summary suspension, issue a cease and desist order, dismiss the complaint, or put a 30-day extension in the complaint file. The department could create a paralegal unit to help in its work.

Compliance conferences. The department could schedule a compliance conference at any time to see if a complaint could be settled. The conference could include the licensee, his or her attorney, one member of the department's staff, one member of the appropriate board (but not on the disciplinary subcommittee),and anyone else approved by the department. All records of a compliance conference held before a complaint was issued would be confidential and closed to the public and no one could make transcripts of compliance conferences. If a settlement was not reached at a compliance conference, the complaint would be referred to a hearing.

Formal complaints. The department would prepare and serve formal complaints. The department could draft complaints using one of a number of methods: a staff attorney, its paralegal unit, or an attorney under contract to draft complaints. Complaints could be mailed (by regular or certified mail) to the licensee, in which case service would be considered effective three days after the date the complaint was mailed. The subject of the complaint would have 30 days from the date of receipt to respond in writing to the complaint. Refusal to accept delivery of a mailed complaint would not invalidate the serving of the complaint, and a health professional's failure to respond to a complaint within the 30 days would be considered an admission to the allegation.

Formal hearings. When no agreement was reached at a compliance conference, formal hearings would be conducted within 60 days by hearing examiners under contract with the department. The hearings examiner would determine whether there was a violation of the health code, and would prepare recommended findings of fact and conclusions of law to be sent to the appropriate disciplinary subcommittee for final decision and action. (The hearings examiner would not recommend or impose penalties.) The licensee would have to be present, and could be represented by legal counsel. The department would be represented by the attorney general's office (though not by the same assistant attorney general assigned to provide legal counsel to the board or the disciplinary subcommittee), and a member of the appropriate board also could be present. A licensee who failed to appear for scheduled hearings could be subject to civil contempt proceedings. Failure to appear also would be considered as an admission to the charges and would result in an entry of default. Licensees could be granted one continuance.

Imposition of sanctions. A disciplinary subcommittee would have to meet, to impose a penalty, within 60 days after receiving recommended findings of fact and conclusions of law from a hearings examiner. Under Senate Bill 343, when imposing a penalty, the subcommittee would review the hearings examiner's findings of fact and conclusions of law and the record of the hearing, but would be explicitly prohibited from conducting its own investigation or taking additional testimony itself. It would use as its standard of proof the preponderance of the evidence, and it could request the hearings examiner to take additional testimony or evidence on a specific issue or could revise the findings of fact and conclusions of law as it felt necessary. The subcommittee could be advised by an independent special assistant attorney general, appointed by the attorney general; the special attorney general could not be the same assistant attorney general who represented the department before the hearings examiner. A disciplinary subcommittee also could take action against a licensed health professional based on disciplinary action in other jurisdictions.

Appeals. Under Senate Bill 343, final decisions of disciplinary subcommittees could be appealed until January 1, 1995, to the circuit court; after that date, appeals of final decisions would go (by right) to the court of appeals.

Patient pamphlets. Under House Bill 4295, licensed or registered health professionals in private practice would have to provide, upon patient request, copies of pamphlets from the Department of Commerce explaining how to make a complaint about alleged provider misconduct. Health facilities and agencies also would have to "conspicuously" display pamphlets describing procedures for filing complaints (with the Department of Public Health) against a health facility or agency or complaints against a licensed or registered health professional (with the Department of Commerce) employed by, under contract to, or granted practice privileges by, the health facility or agency.

Impaired health professionals. House Bill 4076 would create a health professional recovery committee in the Department of Commerce. Each existing health professions board and task force, in consultation with the appropriate professional association, would appoint one professional member who had education, training, and clinical expertise in the treatment of people with addictive behavior or mental illness. The director of the department, who would serve as an ex officio member (without a vote), would appoint two public members, one of whom had specialized training or experience, or both, in treating people with addictive behavior. An appointed member could not, at the time of appointment, be a member of a health professions board or task force. Members would serve for two year terms.

The health professionals recovery committee would be required to establish the general components of a "health professionals recovery program" (defined in the bill as "a nondisciplinary, treatment-oriented program for impaired health professionals") and a mechanism for monitoring health professionals who might be impaired due to substance abuse, chemical dependency, or mental illness. The Department of Commerce would hire qualified consultants to help the committee to administer the recovery program, and the committee, in consultation with these consultants, would be required to develop and implement criteria for identifying, assessing, and treating or referring for treatment (when appropriate and with the health professional's consent) health professionals who might be impaired. In addition, the committee would be responsible for developing and implementing ways of evaluating continuing care or aftercare plans for impaired professionals. Finally, the committee would be required to submit annual reports on the status of the program, including statistical information on the level of participation in the program of each health profession, to each board and the physician's assistants task force. The reports also could include recommendations for improving the program.

If a recovery program consultant believed a health professional to be impaired, the consultant would be required to report this to the health professional recovery committee (either orally or in writing), and the committee then would require the consultant to proceed to determine whether or not the health professional actually was impaired. Consultants would have to immediately report any health professional they believed might pose a threat to the public health, welfare, or safety. If the department agreed and determined that the health professional in question had violated the health code, it could begin the disciplinary process.

Health professionals whom the consultant had determined were impaired could be accepted into the recovery program if they (a) acknowledged their impairment, (b) voluntarily agreed to participate in an approved treatment plan and (c) agreed either to stop practicing or to limit their practice (whichever the recovery committee decided).

The identity of participants in an approved treatment program would be confidential and not subject to disclosure under the Freedom of Information Act (Public Act 442 of 1976) unless they failed to satisfactorily complete the program or lied about successfully completing the program. The identities of people who reported suspected impaired practitioners to the recovery committee or the department also would be confidential. Five years after a practitioner had been determined by the recovery committee to have successfully completed a treatment plan, the department would destroy all records regarding the practitioner's impairment.

Anyone (whether someone providing or undergoing treatment) who intentionally lied about a health professional's successfully completing a treatment program (when he or she had not) would be guilty of a felony.

Whistleblower requirements and protections. Under House Bill 4295, licensed or registered health professionals who knew that another licensed or registered health professional had acted in a way

that would trigger sanctions by a disciplinary subcommittee (including mental or physical impairment, whether or not caused by substance abuse), or who violated the controlled substances part of the health code, would be required to report the name of the subject and the conduct in question to the Department of Commerce. The identity of reporting health professionals would be kept confidential unless (a) the health professional had agreed in writing to have his or her identity disclosed or (b) he or she was required to testify in disciplinary proceedings against the subject of the report. Health professionals would be exempted from this mandatory reporting requirement if they found out about a violation of the health code either (a) within a practitioner-client relationship with the violator, or (b) while serving on a professional ethics or peer review committee. Health professionals who failed to report as required would be immune from civil lawsuits for damages, but would be subject to administrative action.

Under House Bill 4076, anyone employed by or under contract to the Department of Commerce would be required to report to the department whenever he or she reasonably believed that a health professional might be impaired. In addition, the private consultant that would contract with the department to help the health professional recovery committee administer the health professional recovery program would be required to report immediately whenever the program consultant believed that an impaired health professional might be a threat to the public health, safety, or welfare. The identities of anyone reporting suspected impairment of a health professional, as well as that of any health professional participating in the recovery program (with certain exceptions), would be confidential.

In addition, House Bill 4295 would protect health facility or agency employees from retaliation from their employers when the employee ("in good faith") reported the malpractice of a health professional or a violation of the controlled substances or health occupations parts of the health code or acted as an expert witness in an administrative action or in a civil action involving malpractice.

House Bill 4295 would delete the existing requirement that hospital owners, operators, and governing boards notify the appropriate board whenever (a) a hospital takes a disciplinary action against physicians or dentists with practice privileges at the hospital that results in a change of employment status or practice privileges or (b) offers to let a physician or dentist resign in lieu of taking disciplinary action against him or her.

Patient notification of disciplinary sanctions. Under Senate Bill 343, health professionals with revoked or suspended licenses or registrations would have to tell patients who contacted them during the time of the revocation or suspension. Health professionals whose licenses or registrations had been suspended or revoked for more than 60 days would be required to give written notification to all of their private practice patients whom they had treated (or who were scheduled for treatment) for four months before and after the date of the final order imposing suspension or revocation. (Notification could be given orally to patients contacting the practitioner during the first four months after the date of the final order.) Notification of patients treated during the four months immediately preceding the date of the final order revoking or suspending the license or registration would have to be sent within thirty days after the date of the final order.

Other notification of sanctions. Under Senate Bill 343, when a health professional had his or her license or registration suspended or revoked for more than 60 days, he or she would have to notify the Department of Commerce at the same time he or she notified any patients he or she had treated during the 120 days immediately preceding the final order imposing the suspension or revocation.

Health professionals who were employed or who had hospital practice privileges would have to notify their employers or the applicable hospitals, within ten days of the order imposing the sanction, if the health professional had his or her license or registration suspended or revoked (or their application denied) or had been reprimanded, fined, placed on probation, or ordered to pay restitution.

Public lists of sanctioned practitioners. Currently, after final disciplinary action is taken against a health professional, the department is required to publish a list of the names and addresses of the health professionals. The department also must report disciplinary actions to the Department of Public Health, the insurance commissioner, Medicaid and Medicare, and appropriate professional programs.

Under Senate Bill 343, in addition to the existing publishing and reporting requirements, the Department of Commerce also would have to provide annually to each county clerk, and to the Library of Michigan, copies of lists of practitioners who had been disciplined during the preceding three years. The state library would distribute copies these lists to state depository libraries, where the lists would be open to public inspection.

Fee increases and the health professions regulatory fund. The House bills would increase license and registration fees of licensed or registered health professionals to pay for the new disciplinary process, with the amount of the fee increase varying for the various health professionals.

Senate Bill 343 would create a health professions regulatory fund in the treasury, and except for money sent to the newly created nurse professional fund, all health professionals fees would be credited to the health professions regulatory fund. The state treasurer would direct the investment of the fund, and interest and earnings from the investment would be credited to the fund. The unencumbered balance in the fund at the end of the fiscal year would remain in the fund and not revert to the state general fund. The Department of Commerce would use the fund only to carry out its powers and duties under the health code.

House Bill 4295 would move the license fees for health professionals from the State License Fee Act to the Public Health Code, while House Bill 4076 would let the Department of Commerce increase license fees at the beginning of each state fiscal year for that year. The percentage of the increase couldn't be greater than the average percentage wage and salary increase granted for that fiscal year to the department's classified civil service employees, and the increased fees would be used as the basis for calculating future fee increases.

House Bills 4076 and 4295 would increase license and registration fees as follows:

License	Current Fee	Proposed Fee
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
Nurses	$10	$20
Optometrists	$40	$90
Osteopathic physicians	$40	$90
Pharmacists	$10	$30
Pharmacies	$25	$50
Physical therapists	$25	$50
Physician's assistants	$25	$50
Podiatrists	$50	$90

License	Current Fee	Proposed Fee
Psychologists		
Full doctoral	$40	$90
Masters limited	$30	$60
Sanitarians	$30	$50
Occupational therapists	$55	$60
Veterinarians	$25	$50
Veterinary technicians	$10	$20

Penalties. Currently, certain violations of the health code by licensed or registered health professionals can be punished by license actions (denial, suspension, or revocation). Certain health code violations also are subject to civil fines or are misdemeanors or felonies punishable by criminal fines and imprisonment. The House bills would add certain penalties to the existing penalties for health code violations, extend the amount of time before a license or registration could be reinstated after drug-related convictions, and allow disciplinary subcommittees to require certain programs or examinations of health professionals who violated the health code.

Currently, health professionals' (as well as manufacturers' and distributors') drug licenses can be denied, suspended, or revoked for certain violations of the controlled substances section (Article 7) of the health code. These violations for which license actions can be taken include lying on license applications, loss of federal registration, and giving drugs for illegitimate or professionally unrecognized purposes or outside of the practitioner's scope of practice. House Bill 4076 would add fines, reprimands, community service or restitution, and probation to the existing license action penalties for these violations.

Currently, health professionals must meet certain general requirements for licensure or registration, including a minimum age of 18, "good moral character," a working knowledge of English (as determined by the Department of Commerce), and the appropriate education and experience. (House Bill 4076 would add to these requirements information regarding any past or current disciplinary actions or sanctions and information on any out-of-state license, registration, or certification held by the applicant.) House Bill 4295 would add penalties (reprimand or license denial or limitation) for failing to meet one or more of the requirements for licensure or registration. The bill also would add community service to the penalties for most of the other violations of the occupations section (Article 15) of the health code, as well as license or registration denial for most violations that currently do not include denial among their penalties. Health professionals who failed to report impaired practitioners, or health code violators, also would be subject to administrative action, though they would be immune from civil lawsuits.

In addition, House Bill 4295 would prohibit license or registration reinstatements for five (rather than three) years when a health professional was convicted of a drug-related violation. Applicants for license reinstatement would be placed under probation for one year as a condition of reinstatement, unless their license had been revoked for a drug-related offense, in which case the applicant would be required to take and pass the appropriate licensure examination.

Finally, House Bill 4295 would allow disciplinary subcommittees to require health code violators to satisfactorily finish educational or training programs, treatment programs, and mental, physical, or professional competence examinations.

Licensed medical facilities and agencies. Currently, health facilities with medical staffs are required to report -- both to the appropriate licensing board and to the Department of Licensing and Regulation (replaced by executive order with the Department of Commerce) -- disciplinary action taken against any member of their medical staff. House Bill 4295 would require that this reporting be done to the

Department of Commerce and include not only disciplinary actions, but restrictions or surrenders of clinical privileges. The bill also would require hospitals to provide information on disciplinary actions when such information was requested by the department or a disciplinary subcommittee, or by another hospital considering extending staff privileges to the health professional in question.

Violations would subject the hospital to an administrative fine of up to $10,000 in addition to existing sanctions.

Licensing and licensee revisions. House Bill 4076 would require applicants for licensure, registration, or specialty certification to include in their applications information about:

* any felony convictions;

* any two-year or drug-related misdemeanor convictions; and

* any sanctions imposed by similar boards elsewhere.

Physicians (medical, osteopathic, and podiatric) and dentists, in addition, would have to report hospital affiliations for licensure or relicensure.

Licensees convicted of two-year misdemeanors, drug-related misdemeanors, or felonies would have their licenses automatically suspended when the Department of Commerce was notified. Senate Bill 343 also would increase the license revocation period by two years, from three to five years total, for convictions involving controlled substances.

Currently, by being licensed to practice or by practicing in Michigan, a health professional consents to mental or physical examinations ordered by a board or a hearings examiner conducting a disciplinary hearing. Under House Bill 4295, by practicing or by applying for or receiving a license or registration to practice in the state, a health professional would thereby consent to submit to mental or physical examinations ordered by a disciplinary subcommittee, a hearings examiner, or the department.

Nurse professional fund. Senate Bill 343 also would establish a "nurse professional fund" to be used to further nursing education and to promote and advance the nursing profession. Two dollars of every annual nursing license fee would go to the fund, which also could receive gifts and other money as provided by law. The bill would specify that the Department of Commerce could use not more than one-third of the fund each year for each of three purposes: to establish and operate a nurse continuing education program, for research and development studies to promote and advance the nursing profession, and to establish and operate a nursing scholarship program. Within two years after the bill's effective date, the department would be required to promulgate rules regarding expenditure of money from the fund, including rules governing the continuing education program and rules establishing eligibility criteria for participation in the scholarship program.

Departmental reports. The Department of Commerce would be required to annually report to the legislature, and to each board and task force, on disciplinary actions taken during the preceding year. Within two years after the effective date of the bills, the department would have to submit a public report to the legislature on the effectiveness of the bills. That report would have to include a review and evaluation of the disciplinary process and the reporting requirements, and any recommended administrative or statutory changes.

Tie-bars. Both of the House bills are tie-barred to each other and to six other House bills (4077-90 and 4294) that would amend various other laws to implement the provisions of the bills and of Senate Bill 343, which is tie-barred to both House bills.

Repeals. Senate Bill 343 would repeal sections 16216 and 16237 of enrolled House Bill 4295 (which establish disciplinary subcommittees and their imposition of sanctions, respectively), section 16315 of House Bill 4076 (which establishes the health professional regulatory fund and the nurse professional fund), and 16 sections of the Public Health Code that deal with the existing health professional disciplinary process (sections 51, 53, 54, 55, 57, 59, 61, 63, 65, 67, 68, 69, 71, 73, 74, and 75).

All of the following bills are tie-barred to House Bills 4076 and 4295:

House Bill 4077 would amend the Open Meetings Act (MCL 15.267 and 15.268) to exempt from disclosure compliance conferences (which would be held prior to issuance of a formal complaint) held under House Bill 4295.

House Bill 4078 would amend the Freedom of Information Act (MCL 15.243) to generally exempt from disclosure information regarding an investigation or compliance conference conducted under House Bill 4295. 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 4080 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 4295) 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.

House Bill 4289 would amend the Revised Judicature Act (MCL 600.2507). Currently, 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 Commerce 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) or municipal court.

House Bill 4290 would amend the Code of Criminal Procedure (MCL 769.1 et al.) to require the Department of Commerce 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.

House Bill 4292 would amend the peer review act (Public Act 270 of 1967, MCL 331.532) to allow the release of certain peer review information required in the course of the disciplinary process established by House Bill 4295.

BACKGROUND INFORMATION:

Senate Bill 343 repealed, and reinstated (in the Senate bill) with some changes, two sections of House Bill 4076 (section 16216, which creates the disciplinary subcommittees, and section 16237, which requires disciplinary subcommittees to review findings of fact and conclusions of law recommended by hearings examiners in the disciplinary process) and one section of House Bill 4076 (section 16315, which creates a health professional regulatory fund and a nurse professional fund) as enrolled. The House version of section 16216 would have based the size of disciplinary subcommittees on the basis of the size of the relevant board (five members for boards with more than ten members, three subcommittee members for boards with fewer than ten members. The House version of section 16237 would have required (rather than allowed) the attorney general to assign independent special assistant attorneys general to advise the disciplinary subcommittees, and did not explicitly prohibit disciplinary subcommittees from conducting their own investigations or take additional testimony or evidence after reviewing the hearings examiner's findings of fact and conclusions of law. The House version of section 16315 did not specify that the Department of Commerce could use the health professions regulatory fund to reimburse the Department of Attorney General for the reasonable cost of services provided to the Department of Commerce in the disciplinary process.

The Senate bill also amended three sections of House Bill 4295 as enrolled:

* Section 16241, which requires health professionals to notify their patients under certain circumstances when the practitioner is disciplined;

* Section 16244, which grants immunity from civil and criminal liability to health professionals reporting their peers as required by the new disciplinary process; and

* Section 16345, which regulates the reinstatement of revoked or suspended licenses or registrations.

The enrolled House version of section 16241 would have imposed somewhat different patient notification requirements than the Senate version. Both House and Senate versions would require notification of patients, at the time of contact, who contacted the practitioner during the period of suspension or revocation. However, where the Senate version would require written notification of patients for four months both before and after the date of the final order imposing suspension or revocation, the House version would have required written notification of patients who had received professional services within the year immediately preceding the date of the final order.

The enrolled House and Senate versions of section 16244 are virtually identical. (The Senate version deletes a typographical error in the House version.)

The Senate version of section 16245 would require the Department of Commerce to adopt guidelines (instead of, as in the enrolled House version, promulgate rules) to establish specific license reinstatement criteria. The Senate version of the section would allow these criteria to include corrective measures or remedial education as a condition of reinstatement, rather than, as in the enrolled House version, "guidelines for requiring" corrective measures or remedial education. The Senate version also would specify that if a board or task force deviated from the guidelines when it reinstated a license or registration, it would have to give its reason for so doing.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the fee increases in House Bills 4076 and 4295 would generate approximately $5,300,000 in new revenue each year. The fees, which are to be deposited into the newly created Health Regulatory Fund, would be used both for disciplinary actions and to support the newly created impaired professionals program. The existence of this program should reduce the number of disciplinary actions that otherwise would have been brought against impaired practitioners. (7-1-93)

ARGUMENTS:

For:

As the fifteen-year history of special legislative committees and other state agency reports on health care professional regulation suggests, adequately disciplining, or otherwise protecting the public from, "problem" health care providers has been an ongoing problem. Part of the problem has been the result of underfunding of the agencies charged with overseeing and investigating the practice of health care professionals. Despite the fact that, as public testimony over time has pointed out, revenue from health care professional licensing fees would be able to adequately fund oversight and investigatory activities, these fees have gone into the state general fund and have not been dedicated to regulating and disciplining the licensees paying the fees. Another ongoing problem in regulating health care professionals has been what one committee report called the "interminability of the investigative and disciplinary process." Even when allegations are brought against a licensed or registered health care professional (and evidence exists which suggests that incompetent professionals are underreported), the amount of time the process takes, and the uncertain outcome, often mean that clearly incompetent health care professionals wind up being able to continue to practice, much to the detriment of the public health and safety. For example, reportedly one physician has continued to practice for seven years while appeal of disciplinary action against him remains pending.

In recent years, the legislature has taken some steps to correct parts of the many problems involved in this complex question. For example, the ease with which prescription drugs can be illegally diverted has long been identified as part of the overall problem, and the legislature responded by passing a package of legislation known as the "triplicate prescription" program, designed to address this very issue. The legislature also enacted a comprehensive malpractice litigation package which included addressing the issue of medical malpractice, and continues to work on this issue in the current session.

This package of bills would continue to move toward addressing the problem provider, both by adequately funding the disciplinary process and by streamlining the process so that it would, ideally, take no longer than a year to complete. The bills would ensure both public and professional

participation in the process and would provide plenty of opportunity for informally settling allegations while at the same time ensuring that due process and the full protection of the law would be in operation. In addition, House Bills 4076 and 4295 would provide a humane and potentially cost effective way of dealing with health care professionals who were chemically or mentally impaired, by creating a treatment alternative to the disciplinary process.

Against:

Although the proposed disciplinary process appears very promising, given the current uncertainty over the state budget it would appear to be unwise to remove money from the general fund and to earmark this money for a specific program.

Response:

According to a number of state and national studies, the diversion of licensing revenues from their intended purpose (namely, to regulate the professions and thereby protect the public health and welfare) has been an on-going problem and has been an important factor in the failure of the regulatory system to adequately protect the public from "bad" (incompetent, impaired, or even criminal) health care practitioners. By putting license fees into a health professions regulatory fund for the Department of Commerce to use to carry out its disciplinary duties, the bills would go a long way toward addressing regulatory problems resulting from inadequate funding.

Against:

House Bills 4290 and 4295 would allow appeal from a final decision by the health professionals disciplinary board to the court of appeals by "right," which is to say, appeal would be automatically granted if desired. But part of the problem with the present system is that it can be manipulated by unethical health professionals who seek only to delay as long as possible judgments fairly made against them concerning their unethical or unsafe professional practice. The bill should allow appeal only by leave of the court, which would tend to discourage such deliberately frivolous appeals, since only appeals that had legal merit would be accepted by the courts. (And even if the court of appeals did reject an appeal, there would always be recourse to the supreme court.) The bill already provides plenty of opportunities for health care professionals to respond with the full protection of the law to allegations brought against them. Unless appeal is by leave, instead of by right, the disciplinary process will continue to drag on to the detriment of public health and safety.

Response:

Allowing appeal only by leave would constitute an unacceptable infringement on an individual health professional's right of access to his or her day in court. As it now stands, House Bill 4295 fairly balances health providers' due process rights and protection of the public from "bad" practitioners.

Against:

House Bills 4290 and 4295 would require courts to notify the Department of Commerce within 21 days when a health professional was convicted of a felony or an alcohol- or other drug-related misdemeanor. This requirement would pose a number of difficulties for courts. For one thing, information on a person's occupation, when it is obtained, typically is obtained after more than 21 days has passed; for most courts, meeting the 21-day deadline would necessitate either more staff or a significant revision of procedures. In addition, generally the information on an offender's occupation is provided by the offender; there may not be sufficient assurance that offending health professionals will be reported to the department as planned. Finally, the bill may be too narrow in applying the reporting requirement to "convictions." To ensure timely reporting of all offenders in question, the reporting requirement should be triggered by guilty pleas and "no contest" pleas in addition to convictions.

For:

It is widely recognized today that people who are chemically or mentally impaired need help, not punishment. While the public continues to need protection from health professionals whose impairment can result in unsafe professional practices, these impaired professional also deserve help, not punishment. Nevertheless, right now, the only legally recognized way of dealing with chemically or mentally impaired health professionals is punitive: a practitioner who is identified as being impaired is offered not rehabilitation, but possible loss of his or her livelihood and professional standing. Several problems result from the lack of legislation allowing rehabilitation as an alternative to punishment. First, the threat of loss of licensure or regulation encourages impaired professionals to stay "underground" as long as possible (and encourages professional peers to avoid reporting their impaired colleagues), which means there can be a dangerously long period of time in which the professional practices legally but perhaps unsafely.

Secondly, an impaired health professional who has already sought treatment and who is ready to safely return to practice, can still receive ("after the fact") a psychologically devastating sanction against his or her license or registration. Thirdly, given present budget constraints and lowered staffing of state investigative agencies, an investigation can take from 18 to 24 months or longer, during which time the health care professional can continue to practice and pose a possible threat to public safety. And finally, given the shortage of health care professionals generally (and some professionals, such as nurses, in particular), the existing process can remove from practice many practitioners who could receive treatment and who could return to safe practice under supervision and monitoring.

Several states (including Ohio, Florida, Texas, New York, Massachusetts, and California) already have legislation that supports the treatment and rehabilitation of highly trained but impaired health professionals. It is time for Michigan to join these state in this enlightened approach to the problem of impaired professionals.

The non-punitive alternative for impaired health professionals, as well as the mandatory reporting requirements, should improve the identification of chemically dependent or mentally ill health professionals, while the promotion of interventions that could lead to treatment may significantly reduce the amount of time that a health professional may practice while impaired.

The bills would protect the public from potential harm from impaired health professionals, would recognize the potential for rehabilitation of health professionals who are chemically dependent or mentally ill, and would not interfere with disciplinary actions against impaired professionals who chose not to take this alternative to the disciplinary process.

Against:

A number of health professions already have recognized the problems of chemical dependency and mental illness that some of their members face, and have set up special committees or task forces to help their impaired colleagues. While there should be a legally recognized way for the state to take non-punitive action to help impaired health professionals, this should in no way weaken or interfere with the professions' existing--and in some cases long-standing--efforts to help their own.

Response:

Though the bills do not require the disciplinary subcommittees to refer impaired professionals back to their professional associations, they nevertheless provide another -- and a guaranteed -- way to help impaired professionals.

For:

Several bills would make changes in a number of laws that would allow the rest of the package of bills to be carried out, in terms of both legal and administrative procedures. For example, the proposed amendments to the Freedom of Information Act and the Open Meetings Act would protect the confidentiality of compliance conferences, which would help facilitate informal resolutions to complaints against health professionals while allowing reasonable public access to information pertinent to protecting the health and safety of health care patients and clients.

Against:

The four-month patient notification time period proposed in Senate Bill 343 is too short. The 120-day periods proposed in the bill are arbitrary and even, reportedly, contrary to the wishes expressed by physicians representatives in the course of earlier negotiations on this issue, who argued that the appropriate time period for such notification should be the same as that currently applied to attorneys, namely, for one year preceding the order. Like attorneys, health professionals who had their licenses or registrations suspended or revoked should have to notify patients whom they had treated during the year preceding the suspension or revocation.

Response:

While the notification period proposed in the bill might be arbitrary, it is not unreasonable. What is more, this particular proposal includes in the notification requirements not only patients who already would have been treated, but also possible prospective patients as well -- a patient population not included in earlier proposals regarding patient notification.