



**House
Legislative
Analysis
Section**

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HEALTH OCCUPATIONS SANCTIONS

**House Bill 5091 with committee
amendment
First Analysis (10-10-95)**

**Sponsor: Rep. Gerald Law
First Committee: Regulatory Affairs
Second Committee: Health Policy**

THE APPARENT PROBLEM:

For many years, there has been a public perception of a need for better "policing" of "bad" physicians and other health care professionals, whose practice endangers the health or safety of their patients. In 1993, a package of related bills aimed at addressing this need was signed into law. Among the changes the legislation brought about were the creation of the health professional recovery program--a non-disciplinary approach to working with health professionals who are drug- or alcohol-dependent or mentally ill--and disciplinary subcommittees which impose appropriate sanctions for violations of the health code--appointed by each of the fifteen licensing boards and composed of three professional members and three public members.

Also included in the legislation was a provision for the automatic suspension of a health professional's license for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance. Eighteen medical professions, including physicians, dentists, dental hygienists, physical and occupational therapists, veterinarians, and licensed counselors are affected by this change in the law. Since the legislation went into effect on April 1, 1994, at least eighteen license suspensions have directly resulted from offenses involving alcohol. Though some would applaud this result of the legislation, believing it an example of unsafe medical personnel being weeded out of the system, the suspensions are automatic and mandatory, leaving no discretion to the licensing boards, the disciplinary subcommittees, or the Department of Commerce to evaluate the nature of the offense and choose an appropriate course of action. This has led many to feel that health care professionals have been singled out for licensing sanctions that no other group of licensed professionals faces.

Therefore, legislation has been introduced to remove the requirement for automatic license suspensions for alcohol violations.

THE CONTENT OF THE BILL:

House Bill 5091 would amend sections of the Public Health Code governing disciplinary sanctions for health care workers. Under the code, and in accordance with the Administrative Procedures Act, the Department of Commerce (specifically, the Bureau of Occupational and Professional Regulation) may suspend licenses or registrations of health care workers if the public health, safety, or welfare is deemed to require emergency action. The department is required to suspend the license or registration of a person convicted of a felony or certain misdemeanors, and for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance. The bill would amend the code by deleting the reference to alcohol for automatic license suspension and would instead provide that if a licensee or registrant was convicted of a misdemeanor involving the delivery, possession, or use of alcohol that adversely affected "the licensee's ability to practice in a safe and competent manner", the department could find that the public health, safety, or welfare required emergency action and therefore could summarily suspend the person's license or registration.

In addition, the bill would delete a misdemeanor conviction involving the illegal delivery, possession, or use of alcohol from the criteria requiring disciplinary action by an appropriate disciplinary subcommittee. (Conviction of a misdemeanor involving the illegal possession, delivery, or use of a controlled substance would still be subject to

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sanctions by a disciplinary subcommittee and license or registration suspension by the department.)

MCL 333.16221 and 333.16233

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact at either the state or local level. (9-26-95)

ARGUMENTS:

For:

The current language in the health code does not differentiate between isolated violations and prolonged or repeated patterns of abuse. Where most agree that health care workers with serious problems of alcohol abuse need to be weeded out, the law overly penalizes minor or isolated violations. An act such as drinking a beer in a state park or having a passenger open a container of alcohol in the car can result in an automatic license suspension. Where those in the medical community should be responsible for their actions and be subject to the same alcohol-related penalties under the law as anyone else, an unfair situation has been created where health care workers can lose their livelihood for even a one-time mistake.

Further, the changes brought about by the 1993 legislation were meant to increase responsibility and professionalism within the health care profession. The health profession recovery program and disciplinary subcommittees were designed to more effectively uncover real substance abuse problems and get workers into treatment programs. The bill would allow the department and subcommittees to investigate and evaluate the circumstances of an alcohol offense and to impose sanctions that "fit the crime". In cases where the delivery of medical services by a health care worker in any way jeopardizes the public health, safety, or welfare, the department would still retain the authority to automatically suspend the worker's license. In addition, the bill would restore uniformity across the licensed professions, no longer singling out one profession for harsher sanctions.

For:

Most applications for liability or malpractice insurance for doctors and other health professionals include a question as to whether or not that person's license has ever been suspended.

Therefore, a health care worker could be denied liability insurance coverage based on even a minor alcohol offense or an offense occurring during a vacation even when it was clear that the violation in no way compromised the delivery of medical services or placed a patient at any risk.

Against:

Some people are concerned that the bill may be too permissive--that without the automatic suspensions, sanctions levied by the disciplinary subcommittees may not go far enough to curb the problem of alcohol abuse by health care professionals.

Response:

The department and the licensing boards have expressed the intention to continue to flush out "unsafe" doctors and other personnel. The bill would still grant the authority to automatically suspend licenses if the public was in any way at risk. However, by having the authority to evaluate and to "personalize" sanctions, there may be a greater chance at truly helping a health professional through a temporary or isolated problem, thus nipping a possible alcohol dependency in the bud.

POSITIONS:

The Michigan State Medical Society supports the bill. (10-9-95)

The Michigan Association of Osteopathic Physicians and Surgeons supports the bill. (10-9-95)

The Michigan Interfaith Council on Alcohol Problems supports the bill. (10-9-95)

The Department of Commerce has no position on the bill. (10-4-95)