

# Legislative Analysis

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## UNLICENSED HEALTH PROFESSIONALS

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**House Bill 5614 as introduced**  
**Sponsor: Rep. Roy Schmidt**  
**Committee: Health Policy**

### First Analysis (1-26-10)

**BRIEF SUMMARY:** The bill would require the Department of Community Health to conduct an investigation when it receives information that an individual is practicing a regulated health profession without a lawful license or registration. The bill would also allow the DCH to order any individual to cease and desist from conduct that violated Articles 7 (Controlled Substances) or 15 (Occupations) of the Public Health Code.

**FISCAL IMPACT:** It is not anticipated that House Bill 5614 will have fiscal implications of significance for the Investigation Division of the Department of Community Health Bureau of Health Professions. The statutory changes may enhance the effectiveness of the investigations process, but it is not anticipated that the number of investigations will be affected. The Investigation Division is funded with health professional licensing fees totaling \$3.8 million, and staffed by approximately 36 persons. In FY 2007-08, DCH processed over 3,200 allegations, completed 820 investigations and took 559 disciplinary actions related to health professions.

### THE APPARENT PROBLEM:

The Department of Community Health is charged with the responsibility to oversee regulated health professions and respond to allegations of violations of the Public Health Code. Historically, this responsibility has included investigations of conduct by licensed or registered practitioners and also of unlicensed individuals. As provisions of the code were amended through the years, terminology began to be used that led to some provisions being interpreted as applying only to licensees, registrants, or applicants for licensure or registration, and not to individuals who never had been licensed or registered with the state.

The problem that the bill seeks to address is that for several years, the health code has been interpreted to mean that the health boards have no authority to investigate conduct by unlicensed individuals or to issue cease and desist orders to those individuals.

### THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.16231 and 333.16233) so that the DCH would have specific authority to investigate persons who are not licensed or registered and also to issue cease and desist orders in such cases.

**Investigation of complaints involving nonlicensed individuals.** Currently, the Public Health Code provides a process by which allegations of violations of the code are investigated. The Department of Community Health reviews allegations and makes a determination whether there is merit to the allegation. If so, the DCH, with the authorization of the chair of the applicant's, licensee's, or registrant's board or task force, is required to investigate. If the chair or his or her designee fails to grant or deny authorization within seven days, the department must investigate.

Specifically, the bill would require DCH to investigate an individual upon receipt of information that may constitute a violation of Section 16294. Section 16294 makes it a felony offense for an individual to practice or hold himself or herself out as practicing a health profession regulated by Article 15 of the code without a license or registration, or under a suspended, revoked, lapsed, void, or fraudulently obtained license or registration; outside the provisions of a limited license or registration; or using the license or registration of another as his or her own.

**Cease and desist orders.** If a violation of Articles 7 (Controlled Substances) or 15 (Occupations) is occurring, the DCH has the authority to issue a cease and desist order. The individual is entitled to a hearing, but if he or she does not file a written request for a hearing within the prescribed time period, the department is required to present a notice to the appropriate disciplinary subcommittee of the applicant's, licensee's, or registrant's failure to respond to a complaint, or attend or be represented at a hearing, or the recommended findings of fact and conclusions of law in order to determine whether the cease and desist order is to remain in effect or be dissolved. The attorney general may also apply in the circuit court to restrain and enjoin, either temporarily or permanently, the individual from further violating the cease and desist order. The bill would replace the underlined passage with the term "individual."

## **ARGUMENTS:**

### ***For:***

Historically, the Department of Community Health, including the health boards, has had the authority to investigate allegations of violations of the code by health professionals and by those claiming to be health professionals. More recently, due to inconsistency of terms when amended through the years, this provision has been interpreted by some legal counsel as applying only to licensed or registered individuals. Thus, when complaints were lodged against operators of teeth whitening kiosks in malls and against an individual selling colored contact lenses from the trunk of his car, the licensing boards were told they lacked the authority to investigate and to issue cease and desist orders because the individuals involved were not, and had not been, licensed by the state.

House Bill 5614 would clearly authorize the department and the boards to investigate violations committed by individuals who had never been licensed or registered with the state, as well as individuals operating under revoked or suspended licenses. According to DCH staff, the current procedure is to notify law enforcement agencies when the initial review of a complaint reveals facts that constitute reason to believe that a person is

engaging in the practice of a health profession without the proper license or registration. Thus, the bill would not expand the department's authority, but merely clarify its authority in accordance with the original intent of the code.

By replacing the phrase "applicant's, licensee's, or registrant's" with the term "individual," it is believed that the bill will authorize the health boards to issue cease and desist orders to any individual found violating the health code. Though boards can request local prosecutors or the attorney general to seek an injunction through the circuit court to stop the conduct by an unlicensed person, it will be quicker if the boards can issue cease and desist orders. Plus, this would relieve local prosecutors of a duty so they can use precious resources elsewhere.

Considering the risk to public safety posed by unlicensed individuals acting as physical or mental health practitioners, the bill is very important.

***Against:***

The bill may not accomplish what is hoped for in regards to health boards issuing cease and desist orders to unlicensed individuals.

The meaning of a particular provision does not hinge just on a word change, but on the context surrounding that word change. Though the term "individual" is being inserted in place of language that clearly references regulated persons, the rest of the provision and the section as a whole clearly pertains only to licensees, registrants, and applicants. Thus, it could be argued that even with the amendment, the cease and desist authority contained in Section 16233 would still only apply to violations conducted by regulated individuals.

In addition, a health board lacks statutory authority to punish an unlicensed person who ignores a board-issued cease and desist order. The health code limits the sanctions and penalties that can be handed down by the department and its health boards to various administrative sanctions – that is, fines and license or registration sanctions such as suspension or revocation. Therefore, even if a health board were to issue a cease and desist order to an unlicensed individual, there would be no teeth in it.

Moreover, the department, a board or task force, and a disciplinary subcommittee, already have statutory authority under Section 16291 of the code to seek injunctive relief from the circuit court through the state attorney general or the prosecuting attorney in the county in which the violation occurred. This would stop the unlawful conduct in the same manner as the board-issued cease and desist order. But, if an unlicensed person ignored the injunction, unlike the board-issued cease and desist order, he or she would face the wrath of the court and criminal justice system.

***Against:***

Some fear the bill's changes will empower health-related professional associations to basically encourage their respective boards to go after individuals or businesses viewed as competition. Even if the individual or business is able to clear themselves from any criminal charges relating to practicing a health profession without a license or

registration, the individual or business could be bankrupt from the cost of mounting a defense.

In particular, denturists testified before the committee regarding their difficulties with professional associations stirring up trouble with law enforcement and regulatory agencies that have led to bankruptcy and the disruption of being able to practice their profession. They feel that the bill will give expanded powers to the boards to shut down any ancillary health profession deemed to be an economic threat to their members. As a solution, they point to studies that support that the regulation of dentistry, as it is called, is a cost-effective way to increase access by the public to affordable dentures. Currently, seven states regulate the practice of dentistry.

***Response:***

The question whether to regulate denturists is outside the scope of the bill and would need to be addressed in separate legislation. Meanwhile, Michigan does not prohibit dentistry, but does prohibit denturists – as nonlicensed practitioners – from dealing independently with the public. They can, however, practice their profession under the auspices of a licensed dentist, in the same way that other ancillary health professionals work under their employers’ licenses. (Denturists, through education and training, provide removable dentures directly to a patient.)

***POSITIONS:***

The following entities indicated support for the bill on 1-26-10:

Department of Community Health  
Michigan Dental Association  
Michigan Osteopathic Association  
Michigan Academy of Family Physicians  
Michigan State Medical Society (MSMS)  
Michigan Health & Hospital Association (MHA)  
Michigan Chapter/National Association of Social Workers (NASW)

A representative of the Michigan Denture Reform Committee testified in opposition to the bill. (1-19-10)

A representative of the Michigan State Denturist Society testified in opposition to the bill. (1-19-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.