

CSC CONVICTION: ALLOW PERMANENT REVOCATION OF HEALTH CARE LICENSE

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House Bill 4411 as introduced
Sponsor: Rep. Gail Haines

House Bill 4412 (Substitute H-1)
Sponsor: Rep. Matt Huuki

House Bill 4413 as introduced
Sponsor: Rep. Lesia Liss

Committee: Health Policy
First Analysis (5-10-11)

BRIEF SUMMARY: Together, the bills would allow for the permanent revocation of the license or registration of a healthcare professional upon conviction of certain criminal sexual conduct offenses.

FISCAL IMPACT: The bills may have a modest direct fiscal impact on the Department of Licensing and Regulatory Affairs, Bureau of Health Professions, affecting administration costs and revenue for licensure and regulatory activities related to increased health professions license revocations. The policy change will reduce the number of licensed health professionals, but provide an increase in patient safety, both of which may have an effect on costs. The Bureau oversees 400,000 licensed health professionals. In FY 2008-09, some 695 disciplinary actions were taken by the Bureau against licensed health professionals. The Bureau was transferred to Licensing and Regulatory Affairs from the Department of Community Health by Executive Order 2011-4, effective April 23, 2011.

THE APPARENT PROBLEM:

In 2002, an Oakland County dentist pled guilty under a plea agreement to multiple charges, including that he sexually molested a patient. Reportedly, the dentist had drugged and brutally beaten and raped the female patient on multiple occasions. Though the sexual assault originally charged could have resulted in up to 15 years in prison, under the plea agreement to a lesser offense, he was sentenced to 12 months in jail and placed on probation for five years. A July 27, 2002 *Oakland County Press* article entitled "Former Dentist Pleads Guilty to Sex Charge" reported that Police Chief William Dwyer of Farmington Hills "said that the deal was in the best interests of everyone." Plea deals are often offered to spare the victim the pain of a trial. Chief Dwyer was quoted as saying, "We're pleased by the conclusion. We feel justice is being served. He's out of business in Michigan or probably anywhere."

Yet, even before the term of probation had expired, an administrative law judge recommended that the dentist's suspended license be restored. Despite the objections of

the Department of Community Health, the Michigan Dental Board reinstated the license, though with some limitations.

Some were shocked to hear that the dentist was back "in business." Under Michigan law, a health profession license or registration cannot be permanently revoked, even if the offense was against a client or patient and was egregious. Last session, legislation was offered to address the issue, but failed to be enacted. Now, similar legislation is being offered that would allow the license or registration of a health professional to be permanently revoked for certain sexual conduct offenses if the health professional used his or her position to target and victimize a patient or client.

THE CONTENT OF THE BILLS:

Together, the bills would allow for the permanent revocation of the license or registration of a healthcare professional upon conviction of certain criminal sexual conduct offenses.

Under provisions of the Public Health Code, a licensed or registered healthcare professional (or applicant) can be subject to administrative sanctions for engaging in certain conduct or prohibited acts, as specified in the code. For example, negligence or failure to exercise due care, incompetence, practice outside the scope of a license, or conviction of certain criminal offenses can result in sanctions levied against the person's license or registration. These sanctions include denial, suspension, or revocation of the license or registration; reprimand; fines; restitution; and community service.

Currently, the following healthcare professions are licensed or registered under Article 15 of the Public Health Code: acupuncturists, chiropractors, dentists, dental assistants, dental hygienists, audiologists, marriage and family therapists, physicians (M.D.s and D.O.s), nurses, nursing home administrators, optometrists, speech-language pathologists, pharmacists, physical therapists and physical therapy assistants, physician's assistants, athletic trainers, massage therapists, podiatrists, counselors, psychologists, occupational therapists and occupational therapy assistants, dietitians and nutritionists, sanitarians, social workers and social service technicians, respiratory therapists, and veterinarians and veterinarian technicians.

The Department of Community Health has authority to investigate activities of licensed or registered healthcare professionals and applicants for licensure or registration. This includes conducting hearings, administering oaths, and ordering relevant testimony to be given. The findings of the investigation are then reported to the appropriate disciplinary subcommittee. Disciplinary subcommittees are required to impose one or more of the sanctions that apply to a specific violation.

House Bills 4411, 4412, and 4413 would each amend the Public Health Code and are tied to each other. The bills would do the following:

House Bill 4413 would amend Section 16221 of the Public Health Code (MCL 333.16221). Currently, conviction of a criminal offense under Sections 520b to 520g of

the Michigan Penal Code (the criminal sexual conduct statutes) is grounds for a license or registration sanction. The bill would revise the current provision to apply only to a conviction for fourth-degree criminal sexual conduct (CSC) or assault with the intent to commit CSC in the first-, second-, or third-degree. A separate provision would be added to specify that conviction of a criminal offense for first-, second-, or third-degree CSC or a second or subsequent conviction of first-, second-, or third-degree CSC would be grounds for action by the disciplinary subcommittee. A certified copy of the court record would be conclusive evidence of the conviction. The bill would also make several changes of a technical nature.

House Bill 4412 would amend Section 16226 of the code (MCL 333.16226). Currently, for a conviction of a criminal offense under Sections 520b to 520g of the Michigan Penal Code, a disciplinary subcommittee is required to impose one or more of the following sanctions for each violation: probation, limitation, denial, suspension, revocation, restitution, community service, or fine.

Under the bill, for a conviction of first-, second-, or third-degree CSC or a second or subsequent conviction of first-, second-, or third-degree CSC, a disciplinary subcommittee could impose a permanent revocation of the license or registration. The bill would also make several technical revisions. However, the sanction of permanent revocation could only be imposed on a licensed or registered health professional for a violation that occurred while the licensee or registrant was acting within his or her health profession.

House Bill 4411 would amend Section 16245 of the code (MCL 333.16245). Currently, a person whose license or registration was revoked upon conviction for a CSC offense can apply for reinstatement five years after the effective date of the revocation. Under the bill package, only a license or registration revoked for a conviction of fourth-degree CSC or assault with the intent to commit CSC in the first-, second-, or third-degree could be reinstated after five years.

The bill would provide that if a license or registration was permanently revoked for a conviction of first-, second-, or third-degree CSC or a second or subsequent conviction of first-, second-, or third-degree CSC, the licensee or registrant would be ineligible for reinstatement. The department would have to return an application for reinstatement received by an applicant who was now ineligible for reinstatement under the bill. Further, the requirement for the department to provide the opportunity for a hearing before final rejection of an application for reinstatement would not apply in this instance.

BACKGROUND INFORMATION:

The issue of permanently revoking the license or registration of a health care provider was first addressed in legislation offered in the 2009-2010 Legislative Session (House Bills 4468-4469 and 5043).

ARGUMENTS:

For:

The story related earlier in the analysis (see *Apparent Problem*) was particularly troubling to many. The relationship between a patient/client and those in the medical and counseling professions is one built on trust. When a health care provider violates that trust by sexually assaulting a patient or client, it would seem that the provider should forever be banned from returning to that profession. Yet, under current law, a health care provider can apply for reinstatement of a revoked license after five years. License suspensions can be lifted at any time by the licensing board.

Last year, the bills as introduced were too broad and would have prevented entry into the health professions for anyone having a first-, second-, or third-degree CSC, even so-called Romeos and Juliets (young people having sex with under-age boyfriends or girlfriends). The bills also would have required the immediate and permanent revocation of any currently licensed or registered health professional with a past conviction regardless of the circumstances surrounding the offense or whether the person had turned his or her life around.

By contrast, House Bills 4411-4413 would address this issue appropriately. First of all, permanent revocation would be an option, not a mandate. Disciplinary subcommittees and licensing boards would maintain discretion to review each case on its elements to determine if the person posed any risk of reoffending. Contrary to what many believe, studies show that the recidivism rate for sex offenders is significantly lower than for other crimes. Secondly, permanent revocation could only be imposed on an actively licensed or registered professional who committed the offense while acting within his or her profession – meaning that the victim was a client or patient.

This is an important distinction. Though any sexual assault is serious, there is a difference between a doctor who violates the relationship of trust with a patient or client and a doctor who is above-board in all respects with patients but who, for whatever the circumstances, commits a CSC offense in his or her "private life." The health provider in either instance should face consequences under the law, but once the debt to society is paid, the bill package would grant discretion to a licensing board to review the elements of each case and decide on a case-by-case basis if the person has been rehabilitated, if the person poses no further harm to patients, and if reinstatement (with or without restrictions or limitations on the license or registration) was appropriate. Permanent revocation would be reserved (but not mandated) for those health care providers who, like the dentist in the example, were licensed or registered at the time and used their position as a health care professional to victimize a client or patient.

Response:

As written, it is unclear whether the option to imposing permanent revocation proposed by House Bill 4412 would pertain only to assaults involving patients or clients, or if it would also include convictions for assaults committed against coworkers and subordinates while on duty. Health care providers often work long hours, late nights, and under isolated conditions. The relationship of trust that forms between health care

providers is as worthy of protection as is the relationship of trust between patients and providers; violations of that trust should also be subject to permanent revocation.

POSITIONS:

MidMichigan Health indicated support for the bills. (4-28-11)

The Michigan Dental Association indicated support for the bills in concept. (4-28-11)

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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.