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Senate Bill 575 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Reforms, Restructuring and Reinventing
House Committee: Regulatory Reform

PUBLIC ACT 95 of 2014

Date Completed: 4-7-14

CONTENT

The bill amends Article 15 (Occupations) of the Public Health Code to do the following:

- **Prohibit a member of a disciplinary subcommittee who has a conflict of interest from participating in a decision that grounds for sanctions exist, or in the imposition of sanctions, concerning a licensee or registrant.**
- **Require the Department of Licensing and Regulatory Affairs (LARA) to investigate an alleged violation if it receives authorization from a panel of board or task force members, or if there has been at least one substantiated allegation or at least two investigated allegations in the preceding four years.**
- **Permit LARA to investigate an allegation made more than four years after an alleged violation.**
- **Prohibit a board or task force member from participating on a panel if he or she has a conflict of interest.**
- **Require a member of a disciplinary subcommittee or a board or task force to disclose a potential conflict of interest before the subcommittee or panel makes a decision.**
- **Delete a requirement that LARA provide an opportunity for a hearing in connection with a proceeding to order community service.**

The bill will take effect on July 1, 2014.

Disciplinary Subcommittee

Section 16221, in Article 15, authorizes the Department of Licensing and Regulatory Affairs to investigate activities related to the practice of a health profession by a licensee, registrant, or applicant. The Department must report its findings to the appropriate disciplinary subcommittee, which is required to impose sanctions under Section 16226 if it finds that there was a violation of a general duty, a personal disqualification, the commission of a prohibited act, an unethical business practice, or unprofessional conduct.

Under the bill, a member of a disciplinary subcommittee who has a conflict of interest may not participate in a decision that one or more grounds listed in Section 16221 exist, in any investigation, or in the imposition of sanctions under Section 16226, concerning a licensee or registrant. The bill requires a member of a disciplinary subcommittee to disclose a potential conflict of interest before the subcommittee takes any action in the matter.

As used in these provisions, the bill defines "conflict of interest" as any of the following:

- Has a personal or financial interest in the outcome of the investigation of, or the imposition of disciplinary sanctions on, the licensee, registrant, or applicant for licensure or registration.

- Had a past or has a present business or professional relationship with the individual whom the disciplinary subcommittee is investigating or against whom it is considering sanctions.
- Has given expert testimony in a medical malpractice action against or on behalf of the individual.
- Has any other interest or relationship designated as a conflict of interest in a rule promulgated or order issued under the Code.

Investigating Violations

Currently, if a person or governmental entity that believes a violation of Article 7 (Controlled Substances) or Article 15 exists, the person or entity may allege the suspected violation to LARA in writing. The Department must follow certain procedures if it receives such an allegation, or if it receives a file from a disciplinary subcommittee regarding a registrant or licensee under Section 16211(4), and determines that there is reason to believe that a violation of Article 7 or 15 exists.

(Section 16211 requires LARA to create a permanent record for each licensee and registrant with respect to information and data transmitted pursuant to law. The record must include a written allegation against the licensee or registrant that is substantiated after investigation, and may include other items as designated by rule. The Department also must retain written allegations that are unsubstantiated for five years. Subsection (4) requires LARA to review the file of a licensee or registrant for whom it has received certain items, e.g., notice of revocation of staff privileges by a health facility, an adverse malpractice judgment, or a felony conviction, or a written allegation of a violation of Article 7 or 15 that is substantiated after investigation.)

Upon receiving an allegation or a file, LARA is required to investigate the alleged violation if the chair of the appropriate board or task force authorizes an investigation, or if the chair fails to grant or deny authorization within seven days after receiving a request.

The bill, instead, requires LARA to investigate if it has the authorization of a panel of at least three board members. The panel must include the chair and at least two other members of the appropriate board or task force designated by the chair. If the panel fails to grant or deny authorization within seven days after receiving a request, LARA must investigate the alleged violation. If LARA believes that immediate jeopardy exists, the Director or his or her designee must authorize an investigation and notify the board chair of the investigation within two business days.

The bill also requires LARA to investigate an alleged violation if the Department receives a written allegation that concerns a licensee or registrant whose record created under Section 16211 includes one substantiated allegation, or two or more written investigated allegations, from two or more different individuals or entities, received in the preceding four years. Authorization by a panel is not required for an investigation under this provision.

In addition, the bill permits LARA to investigate an alleged violation, in either manner described above, as applicable, if a person or governmental entity submits a written allegation of a violation more than four years after the date of the incident or activity that is the basis of the alleged violation.

Panel Member Conflict of Interest

In situations in which the bill requires LARA to seek authorization to investigate from a panel, if the chair of the board or task force has a conflict of interest, he or she must appoint another member of the board or task force as his or her designee, and may not participate in the panel's decision to grant or deny authorization to LARA to investigate an individual.

Also, a member of a board or task force who has a conflict of interest may not participate in the panel's decision. If the chair is notified that a panel member has a conflict of interest, the chair must remove the member from the panel and appoint another member.

In addition, a member who participates in or is requested to participate in the panel's decision must disclose a potential conflict of interest to LARA, the chair of the board or task force, and the other panel members before they make a decision.

For the purpose of these provisions, the bill defines "conflict of interest" as any of the following:

- Has a personal or financial interest in the outcome of the investigation of, or the imposition of disciplinary sanctions on, the licensee, registrant, or applicant for licensure or registration.
- Had a past or has a present business or professional relationship with the individual whom the Department is investigating or requesting authorization to investigate.
- Has given expert testimony in a medical malpractice action against or on behalf of the individual whom LARA is seeking to investigate.
- Has any other interest or relationship designated as a conflict of interest in a rule promulgated or order issued under the Code.

Community Service

The Code prescribes various sanctions, including community service. The Department must provide an opportunity for a hearing in connection with the denial, reclassification, limitation, reinstatement, suspension, or revocation of a license or reinstatement of a registration, or a proceeding to reprimand, fine, order community service or restitution, or place a licensee or registrant on probation.

The bill deletes community service from this provision.

MCL 333.16216a et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.