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Senate Bills 577 and 578 (as enacted)

PUBLIC ACTS 97 & 98 of 2014

Sponsor: Senator Rick Jones

Senate Committee: Reforms, Restructuring and Reinventing

House Committee: Regulatory Reform

Date Completed: 4-8-14

CONTENT

Senate Bill 577 amends Article 15 (Occupations) of the Public Health Code to do the following:

- Require the Department of Licensing and Regulatory Affairs (LARA) to investigate an allegation that there are grounds for action against a health professional by a disciplinary subcommittee.
- Include sexual conduct with a patient in the category of unprofessional conduct that is grounds for disciplinary action, and prescribe sanctions.
- Include offering practice-related services in exchange for sexual favors as unprofessional conduct, and prescribe sanctions.
- Require a disciplinary subcommittee to impose sanctions if a licensee or registrant fails to notify LARA of a criminal conviction or of disciplinary action taken by another state.
- Require a disciplinary subcommittee to impose a fine of at least \$25,000 if a violation of a general duty or a personal disqualification results in a patient's death, and otherwise modify the sanctions that a disciplinary subcommittee may impose.

Senate Bill 578 amends Article 15 to do the following:

- Permit LARA to review a final decision of a disciplinary subcommittee and, under certain circumstances, to set aside the decision.
- Provide that the final action of LARA will serve the final action on the matter and be subject to judicial review.
- Require LARA to post on its website each final decision in which disciplinary action is taken.

The bills will take effect on July 1, 2014.

Senate Bill 577

Department Investigation

Article 15 of the Code governs health-related occupations and establishes the scope of health profession licensing boards, registration boards, subfield task forces, and specialty field task forces. Along with LARA, these entities are responsible for regulating the specific professions. The chair of each board or task force must appoint one or more disciplinary subcommittees for the board or task force.

Section 16221 permits LARA to investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The section also requires a disciplinary subcommittee to proceed to impose sanctions under Section 16226 if it finds that one or more grounds for sanctions exist. The grounds include the following: a violation of a general duty consisting of negligence or failure to exercise due care; a personal disqualification (such as incompetence, substance use disorder, or a felony conviction); a prohibited act (including fraud or deceit in obtaining a license, and practicing outside the scope of a license); an unethical business practice (such as false or misleading advertising); unprofessional conduct (such as betrayal of a professional confidence); and others.

The bill requires LARA to investigate any allegation that one or more of the grounds for disciplinary subcommittee action exist, and allows LARA to investigate activities related to the practice of a health profession by a licensee, registrant, or applicant.

Currently, LARA must report its findings to the appropriate disciplinary subcommittee. The bill instead requires LARA, after its investigation, to provide a copy of the administrative complaint to the appropriate disciplinary subcommittee.

Grounds for Disciplinary Action

The bill includes as unprofessional conduct any conduct by a health professional with a patient while the professional is acting within the health profession for which he or she is licensed or registered, including conduct initiated by a patient or conduct to which a patient consents, that is sexual or may reasonably be interpreted as sexual, including, but not limited to, sexual intercourse, kissing in a sexual manner, or touching of a body part for any purpose other than appropriate examination, treatment, or comfort.

The bill also includes as unprofessional conduct offering to provide practice-related services, such as drugs, in exchange for sexual favors.

In addition, if a licensee or registrant fails to notify LARA of a criminal conviction or of disciplinary licensing or registration action taken by another state within 30 days after the date of the conviction or action, the failure will amount to unprofessional conduct.

Sanctions for Violations

If a disciplinary subcommittee finds that one or more of the grounds for disciplinary action in Section 16221 exist, it must impose one or more of the sanctions described in Section 16226. The sanctions vary depending on the nature of the violation.

The bill requires a sanction of permanent revocation if the ground for disciplinary action is a conviction of criminal sexual conduct (CSC) that occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered. Otherwise, the sanctions for a CSC conviction will include probation, limitation, denial, suspension, revocation, or restitution, and a fine may be assessed. Currently, the sanctions for a CSC conviction include probation, limitation, denial, suspension, revocation, restitution, community service, a fine, or permanent revocation, that permanent revocation may not be imposed unless the licensee or registrant was acting within his or her health profession.

For conduct with a patient that is sexual or may reasonably be interpreted as sexual, or for offering services in exchange for sexual favors, the bill authorizes probation, suspension, revocation, limitation, denial, or restitution. A fine also may be assessed.

For failure to notify LARA of a criminal conviction, or of disciplinary action taken by another state, the bill authorizes reprimand, denial, limitation, probation, or a fine.

Currently, a disciplinary subcommittee may impose a fine of up to \$250,000 for a violation of a general duty or personal disqualification under Section 16221. Under the bill, if the violation results in the death of one or more patients, a disciplinary subcommittee must impose a fine of at least \$25,000.

For an offense committed within two years after a previous offense of the same kind, a disciplinary subcommittee currently may suspend or revoke the license or registration. Under the bill, the subcommittee must suspend the license or registration for at least 180 days, or revoke the license or registration.

Currently community service be required for certain violations. The bill eliminates community service as a sanction.

Senate Bill 578

The bill permits LARA to review a final decision of a disciplinary subcommittee within 30 days after the date of the decision. If LARA determines that the action taken by the disciplinary subcommittee does not protect the health, safety, and welfare of the public, the Department, with the approval of the board chairperson, may set aside the decision and issue a different final action.

The final action of the Department will serve as the final action on the matter and will be subject to judicial review in the same manner as the final decision of the disciplinary subcommittee. (Section 16237 provides that a final decision of a disciplinary subcommittee may be appealed only to the Court of Appeals, and an appeal is by right.)

Beginning January 1, 2015, the bill requires LARA to include on its public licensing and registration website each final decision in which disciplinary action is taken against a licensee, including the reason for and description of that action.

MCL 333.16221 et al. (S.B. 577)
333.16216 (S.B. 578)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 577

The bill will have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. Under the bill, the Department will be required to investigate any allegation of activity that is grounds for disciplinary subcommittee action. To the extent that the Department does not already investigate all allegations, costs associated with investigations may increase by an unknown amount.

The bill also adds sexual conduct with a patient, and failure to notify the Department of a criminal conviction or of disciplinary action taken by another state, to the list of activities that are grounds for disciplinary subcommittee action. The sanctions for these violations include the assessment of a fine. It is unknown how many licensees or registrants will be found to have committed these violations, so it is not possible to estimate how much fine revenue will be generated annually. Any fines generated will be credited to the Health Professions Regulatory Fund.

Senate Bill 578

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.