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Senate Bill 577 (as introduced 10-2-13)
Sponsor: Senator Rick Jones
Committee: Reforms, Restructuring and Reinventing

Date Completed: 10-22-13

CONTENT

The bill would amend the Public Health Code to do the following:

- Require the Department of Licensing and Regulatory Affairs (LARA) to investigate an allegation that grounds for disciplinary subcommittee action against a health professional existed.**
- 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.**
- Provide that a licensee's or registrant's failure to notify LARA of a criminal conviction or disciplinary licensing or registration action in another state would require LARA to investigate the licensee or registrant.**
- Modify the sanctions that a disciplinary subcommittee may impose.**

Disciplinary Subcommittee Investigations of Health Professionals

Section 16221 of the Code authorizes LARA to investigate activities related to the practice of a health profession by a licensee, registrant, or applicant. The investigations generally relate to whether there was a violation of a general duty consisting of negligence or failure to exercise due care, a personal disqualification (such as incompetence or substance use disorder), a prohibited act, an unethical business practice, or unprofessional conduct. If LARA finds that any of these circumstances exist, the disciplinary subcommittee must proceed to impose sanctions under Section 16226.

The bill would amend Section 16221 to require LARA to investigate any allegation that one or more of the grounds for disciplinary subcommittee action existed, and allow LARA to investigate other activities related to the practice of a health profession by a licensee, registrant, or applicant for licensure or registration.

Grounds for Disciplinary Action

The Code provides a list of grounds for disciplinary action against a licensee, registrant, or applicant for licensure or regulation, including unprofessional conduct, e.g., misrepresentation, betrayal of professional confidence, or promotion for personal gain.

Under the bill, unprofessional conduct would include any conduct by a health professional with a patient while the professional was acting within the health profession for which he or she was licensed or registered. Prohibited conduct would include conduct by a patient, or

conduct to which a patient consented, that was sexual in any way or could 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.

Unprofessional conduct also would include offering to provide practice-related services, such as drugs, in exchange for sexual favors.

Additionally, a licensee's or registrant's failure to notify LARA of a criminal conviction or disciplinary licensing or registration action in another state within 30 days after the date of the conviction or action would constitute grounds for disciplinary action.

Sanctions for Violations

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

Section 16226 provides for sanctions in the form of community service for certain grounds for disciplinary action. The bill would allow community service only for permitting a license or registration to be used by an unauthorized person.

Under the bill, if the grounds for disciplinary action were based on a criminal conviction of criminal sexual conduct, and the violation occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered, the sanction would be permanent revocation. Otherwise, the sanctions could include probation, limitation, denial, suspension, revocation, or restitution, and a fine could be assessed. Currently, the Code allows probation, limitation, denial, suspension, revocation, restitution, community service, a fine, or permanent revocation if the licensee or registrant was acting within his or her health profession.

Sanctions for prohibited sexual conduct or offering services in exchange for sexual favors, discussed above, would include probation, suspension, revocation, limitation, denial, or restitution, and the disciplinary subcommittee could assess a fine.

Failure to notify LARA of a criminal conviction or other disciplinary action, as discussed above, would qualify for sanctions in the form of 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 resulted in the death of one or more patients, a disciplinary subcommittee would have to 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 may suspend or revoke the license or registration. Under the bill, the subcommittee would have to either suspend the license or registration for at least 180 days, or revoke the license or registration.

MCL 333.16221 et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would 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 would be required to investigate any allegation of activities that would be

grounds for disciplinary subcommittee action. To the extent that the Department does not already investigate all allegations, costs associated with investigations could increase by an unknown amount.

The bill also would add sexual conduct with a patient and failure to notify the Department of criminal convictions or disciplinary actions taken by other states to the list of activities that are grounds for disciplinary subcommittee action. The bill would allow for a fine to be levied as a penalty for these violations. It is unknown how many licensees or registrants would be found to be guilty of these violations, so it is not possible to estimate how much fine revenue would be generated annually. Any fines generated would be credited to the Health Professions Regulatory Fund.

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.