House Legislative Analysis Section

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

This revised analysis replaces the analysis dated 9-25-90.

HEALTH PROFESSIONAL DISCIPLINARY BD

House Bill 5903 (Substitute H-2)
Sponsor: Rep. David M. Gubow

House Bill 5904 (Substitute H-1)
Sponsor: Rep. Richard Bandstra

House Bill 5905 as introduced
Sponsor: Rep. Gerald H. Law

House Bill 5912 (Substitute H-1)
Sponsor: Rep. Francis R. Spaniola

House Bill 5913 as introduced
Sponsor: Rep. Lad S. Stacey

Committee: Public Health

Revised First Analysis (11-8-90)

THE APPARENT PROBLEM:

There has long been a public perception of the need for better "policing" of "bad" physicians, physicians whose practice endangers the health or safety of their patients. For example, in April of 1984, the Detroit Free Press published a week-long series of articles on "bad doctors" which received national attention, and there have been numerous articles in other state newspapers since then. The Michigan legislature has repeatedly addressed this issue over the past 15 years through a series of special or "ad hoc" committees established to study the problem and make recommendations to improve the existing licensing and disciplinary process. For example, the 1975-76 legislature established such a committee ("the Owen committee"), which issued its final report in February of 1977. Many of its findings and recommendations were ostensibly addressed in the Public Health Code revision of 1978. Nevertheless, almost ten years later, the Speaker of the House of Representatives believed it necessary to establish another special committee on medical licensure ("the Evans committee"), which issued its report in December of 1984. In addition, the director of the Department of Licensing and Regulation commissioned a report by the state Health Occupations Council (which appeared in November of 1983), while the governor — in response to the "medical malpractice crisis" of 1984 — appointed a special investigator who issued a final report ("the Fleming report") on health care provider malpractice and malpractice insurance in December of 1985.

Despite these recurring studies and recommendations, enough problems have persisted that in January, 1989, the Speaker of the House appointed a Special Ad Hoc Committee on Physician Licensure to examine the current physician licensure and discipline process in Michigan and to recommend legislation that might improve this process. The committee's charge specifically did not include looking at such issues as tort reform or affordability and availability of medical malpractice insurance. The committee heard testimony from a number of groups on aspects of physician licensure and discipline. Representatives from the Department of Licensing and Regulation described the current licensing and disciplinary process as well as budget and staffing in the department for the process. Representatives of the Michigan Bar Association described the attorney discipline process. The medical, osteopathic, and podiatric licensing boards (and the three physician professional groups) testified, as did representatives from other professional groups (pharmacists, nurses, and trial lawyers), the attorney general's office, and a major medical insurer. In addition, a number of hospitals testified on the current peer review process. After the committee reviewed testimony and recommendations concerning current practices, it decided to address the licensing and disciplining of all health care professionals, not just that of physicians. The committee decided that the current disciplinary process should be streamlined and made consistent for all of the 15 currently licensed or registered health care professionals, that public participation in the process should be increased, and that participation in the process by licensed health care professionals should be ensured. The present package of bills (including one bill sent to the House Committee on Insurance and four bills sent to the House Judiciary Committee) is a result of the special ad hoc committee's recommendations.

THE CONTENT OF THE BILLS:

The bills would revise the current system under which health care professionals are licensed and disciplined, separating the two processes and combining the discipline process for all health care professions. At present, the licensing boards of the fifteen different licensed or registered health care professions perform both certification and disciplinary functions. That is, the licensing or registration board both grants licenses or registrations and takes disciplinary action (ranging from license limitation, denial, suspension and revocation to fines, restitution, and probation) against health care professionals who violate the Public Health Code or who are convicted of certain criminal offenses.

The bills would split these certification and disciplinary functions between (a) the existing licensing or registration boards, which would continue to function separately for each licensed or registered health care profession, and (b) a single, newly created "health professionals disciplinary board," which would be the

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disciplinary board for all 15 licensed or registered health care professions.

The bills also would make various other necessary changes in the Public Health Code, the peer review act, and the State License Fee Act. (Other bills, in the Judiciary Committee and the Insurance Committee, would amend a number of other state laws — including the Freedom of Information Act, the Open Meetings Act, the Administrative Procedures Act, the Code of Criminal Procedure, the Revised Judicature Act, and the Insurance Code — to conform to the changes made in the main bills in the package.)

House Bills 5903 and 5904 are the main bills in the eleven-bill package (an additional, related bill, House Bill 4712, would create an impaired health care provider program to help health care professionals who were at risk of alcohol or other drug abuse and to divert them from the disciplinary process). The two bills would amend the Public Health Code (MCL 333.7311 et al. and MCL 333.16103 et al.) to create the new disciplinary board and process for health care professionals and to separate the disciplinary process from the licensing process.

House Bill 5903 would:

- create a health professionals disciplinary board in the Department of Licensing and Regulation (DLR) which would take over the disciplinary functions currently carried out by each of the licensing or regulation boards;
- add "whistleblower" provisions to the health code which would require health care professionals to report other health care professionals under certain conditions and which would protect the "whistleblower" against retaliatory action by his or her employer institution;
- require health facilities and licensed health care professionals in private practice to provide patients with information regarding the new complaint procedures;
- require licensed or registered health care professionals who had their licenses or registrations revoked or suspended to notify all patients they had treated in the year immediately preceding the revocation or suspension;
- require hospitals to release, under certain circumstances, information on disciplinary actions against licensed or registered employees that involved safety and competency to practice;
- require the DLR to report to the legislature on the effectiveness of the new disciplinary process; and
- repeal two sections of the health code pertaining to physician's assistants.

The Health Professional Disciplinary Board. The bill would create a five-member health professional disciplinary board in the Department of Licensing and Regulation (DLR). Two permanent members would be appointed from the public by the governor (each from a different political party). The governor also would appoint one of these two public members to serve as chairperson of the board. The other three board members would be licensed or registered health care professionals who were members of the licensing or registration board of the health professional under investigation. These professional members would be appointed for two-year terms by their respective licensing boards. If possible, the professional members would serve for the duration of a particular case.

Board decisions concerning violations would have to be by a majority vote, while other final decisions (including those imposing penalties) would have to have the vote of at least one of the permanent, public members.

The board would be authorized to hold hearings and administer oaths, and would impose sanctions, including requiring licensees or registrants to perform community service, in addition to being able to impose the existing penalties (probation, license or registration actions, and requiring licensees or registrants to pay restitution or fines). The board also could require licensees or registrants to be tested for substance abuse (and for mental or physical competence), as well as being able to require them to satisfactorily complete educational, training, or treatment programs. Finally, the board would develop and recommend to the DLR specific criteria by a licensee seeking to be reinstated.

"Whistleblower" provisions. Licensed or registered health care providers who knew that another licensed or registered provider had violated the health code would be required to report that person to the Department of Licensing and Regulation. (Currently, reporting is on a voluntary basis.) However, a licensed health care professional could not be sued for damages if he or she failed to fulfill this requirement. The identity of the provider doing the reporting would be kept confidential unless he or she agreed in writing or was required to testify in disciplinary proceedings.

Licensed health care professionals who had criminal convictions or disciplinary actions taken against them by another state would have to report these to the DLR within 15 days of the conviction or action, even if a disciplinary action were stayed pending appeal.

The bill also would prohibit hospitals (or other health facilities or agencies) from punishing employees who reported health care professionals to the DLR or who acted as expert witnesses in malpractice lawsuits. Hospitals could be fined up to $10,000 for each violation of this prohibition. Confidential information regarding clients or patients, which now may be disclosed only with the consent of the client or patient, could be disclosed by health care professionals if they believed it was necessary in order to comply with the bill's mandatory reporting requirements.

Patient information pamphlets. Hospitals and private practitioners would be required to make available to patients pamphlets describing how a patient could file complaints with the DLR against licensed or registered practitioners. The Department of Public Health would provide the pamphlets and prepare them in cooperation with the appropriate professional associations.

Practitioner notification of patients. The bill would require health care professionals who had their license or registration revoked or suspended to notify in writing each patient or client the health care professional had treated in the year immediately preceding the revocation or suspension. The notice would have to be sent within thirty days after the revocation or suspension took effect, and would have to include at least the name, address, license or registration number, the fact that the license or registration had been revoked or suspended, and the effective date and term of the revocation or suspension. A copy of the notice would have to be sent to the Department of Licensing and Regulation when copies were sent to patients or clients.

Release of disciplinary information by health facilities. Hospitals (and other health facilities or agencies) would have to report whenever they took disciplinary action pertaining to safety and competency to practice against any of their licensed or registered employees:

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(a) To the DLR within 15 days of taking the action or face a fine of $5,000, and
(b) upon request from another hospital in the process of deciding whether or not to grant staff privileges, credentials, or employment to a licensed or registered health professional.

Hospitals (health facilities, or health agencies) also would be required (upon request) to "assist" the DLR or the disciplinary board in getting information pertaining to disciplinary action pertaining to safety or competency to practice taken by the hospital against any of its licensed or registered workers.

Practitioner record reviews. The DLR currently keeps records for each licensed health care practitioner. The record includes written allegations against practitioners that have been investigated and substantiated, and it may include other information on a provider's practice that the licensing board considers useful for periodic review. A licensing board is required to review a provider's file whenever it receives certain information: notification from a hospital that it has revoked, suspended, or limited the provider's staff privileges; a written allegation that was substantiated after an investigation; notice of disciplinary action by a health professional society; or an adverse malpractice settlement, award, or judgment.

The bill would transfer the responsibility for reviewing a file from the licensing boards to the department. It would strike the requirement that a review be triggered by an adverse malpractice settlement, award, or judgment, and would require that a written allegation be only of a violation and not "substantiated after investigation." The bill would, in addition, require the department to review a practitioner's records if it (a) received a report under the bill's mandatory peer reporting requirement, (b) was notified of certain misdemeanor convictions (those with two-year sentences or for illegal delivery, possession, or use of alcohol or other controlled substances); or (c) was notified that a provider had become ineligible to participate in federal Medicare or Medicaid programs because he or she failed to meet the program's standards of professional practice.

Departmental powers and duties. The Department of Licensing and Regulation would be able to establish a special "paralegal unit" to assist the department in its activities. The department could order a practitioner to cease and desist from a violation, and could summarily suspend a license or a registration if the public health, safety, or welfare required "emergency action." The definition of situations calling for "emergency action" would be defined by rules promulgated by the department but, at the very least, would include felony convictions, two-year misdemeanor convictions, or misdemeanor convictions involving alcohol or other controlled substances.

After administrative disciplinary action is final, the department currently publishes a list of the names and addresses of health care professionals who have been disciplined and reports disciplinary action to the Department of Public Health, to the insurance commissioner, to the appropriate professional associations and to the state and federal agencies in charge of federal health care programs. Under the bill, the department also would be required to report annually to each county clerk a list of licensees who had been disciplined in the preceding three years.

The department also would be required to report annually to the legislature and each licensure or registration board on disciplinary actions that had been taken, and within two years after the bills took effect the DLR would have to report to the legislature on the effectiveness of the new process.

Based on recommendations from the disciplinary board for each health profession, the department would establish by rule specific criteria for reinstatement of a license or registration.

Other provisions. The bill would remove from the Board of Pharmacy its present authority to take license action (denial, revocation, suspension) against controlled substances license holders. Instead it would give that authority to the disciplinary board, which also could restrict such licenses. In emergencies, however, the DLR (instead of, as currently, the Board of Pharmacy) could suspend, without an order to show cause, a controlled substances license. A hearings examiner, rather than the board, would be the agency authorized to withdraw a suspension prior to the completion of a judicial review.

Licenses or registrations suspended or revoked for illegal drug diversion or for criminal sexual conduct convictions could not be reinstated for five years (otherwise, reinstatement could be granted after three years, as currently is the case for all suspensions or revocations).

When a physician licensed in another state applied for licensure in Michigan under the provisions of the health code that allow licensure without taking the licensing examination, the Board of Medicine could not require graduates of medical schools from countries other than the United State or Canada to meet higher requirements than are required of graduates from American or Canadian medical schools.

The disciplinary process. The present disciplinary process for health care professionals begins when the DLR receives a written complaint against a licensed or registered health care professional. Though complaints most commonly are filed by patients, they also can come from hospital disciplinary reporting, criminal conviction reporting from the state and federal courts, professional associations, and other law enforcement agencies. The department notifies the appropriate licensing board of the allegation, and the board then reviews the allegation and decides whether or not a violation of the Public Health Code has occurred. (The code lists a variety of actions which can be investigated by the department, including incompetency, negligence, criminal convictions, substance abuse, fraud, and so forth.) If the board (or, under certain circumstances, the department) decides that a violation may have occurred, the department investigates the allegation, gathering facts, evidence and testimony. If the department decides that the evidence establishes that a violation has occurred, it sends an investigation report to the attorney general's office, which reviews the report to decide whether there is sufficient evidence to support prosecution. If so, the attorney general's office files a formal complaint with the Department of Licensing and Regulation and the complaint is served on the health care professional in question, who then can respond to the charges and request an informal conference. If the informal conference does not result in a settlement, the case enters the administrative hearing process, a trial-like procedure where evidence is presented and testimony is taken before an administrative law judge. The administrative law judge issues findings of fact and conclusions of law, and sends the hearing records to the appropriate licensing board for review. After reviewing the hearing records, the board decides on the appropriate action: either dismissal or the imposition of disciplinary sanctions ranging from reprimand, probation, fines, or restitution, to license limitation, suspension or revocation. (The licensing board also reviews all settlements reached at informal

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conferences and may accept or reject these settlements.) The health care professional in question can appeal his or her board's action to the circuit court and, if necessary, to the court of appeals.

Under the bill, the disciplinary process would be combined for all 15 currently existing licensing or registration boards. It would consist of the following stages: receipt of allegations by the DLR; an informal regulatory review conference; investigation by the department; issuance of a formal complaint by the department; an informal settlement conference; a formal administrative hearing by a hearings examiner; and a final hearing by the disciplinary board. The attorney general would represent the department and serve as legal counsel to the disciplinary board (though the same attorney could not act as prosecutor and advisor). Throughout the process, information would be kept confidential with the exception of complaints, agreements resulting from informal regulatory reviews, and stipulations and final orders approved by the disciplinary board. Failure to respond to a formal complaint or to appear or be represented at a scheduled conference (whether a regulatory review conference or a settlement conference) or hearing (whether before a hearings examiner or the disciplinary board) would be considered an admission of the allegations in the complaint, and the disciplinary board could proceed to impose sanctions on the subject of the complaint. The subject of a complaint could request a single continuance ("for good cause shown") for each of the conferences (both the regulatory review conference and the settlement conference) and for each of the hearings (i.e., that before a hearings examiner and that before the disciplinary board). The entire process, once a formal complaint had been issued, ideally would take no more than nine months (though the disciplinary board could, with good cause shown, extend the process).

The DLR would continue to receive allegations of violations, but also would evaluate the allegations, instead of sending them to a licensing board for review. If the department believed that a violation had occurred, it could schedule an informal regulatory review conference, consisting of the health professional in question, his or her attorney, a department staff member, and anyone else approved by the department. Transcripts of these informal conferences could not be made and all conference records and documents would be confidential (except complaints, agreements, and stipulations and final orders approved by the disciplinary board).

(Under current law, the department must investigate certain cases involving malpractice litigation. When a licensing board notifies the department of three or more malpractice settlements, awards, or judgements — or one or more such settlement, award, or judgment of more than $200,000 — against a licensed health care professional in ten consecutive years the department is required to investigate. The bill would keep the $200,000 threshold, but would shorten the period from ten to five years.)

If an agreement were reached at an informal regulatory review conference, the department would submit one of three alternatives to the disciplinary board for approval: a written statement outlining the terms of the agreement; a stipulation and final order, if applicable; or a request for dismissal. If the disciplinary board rejected the department's recommendation, an investigation into the allegations by the department would automatically be done.

If an agreement were not reached at the informal regulatory review conference, the department could request authorization from the chairperson of the appropriate licensing or registration board to conduct an investigation. (If the chair did not respond to the request within ten days the department would proceed with the investigation.)

Within 45 days after an investigation were authorized (or were completed after an informal regulatory review conference), the department would have to take one or more of the following actions (though the department also could request a 30-day extension from the disciplinary board):

- request authorization from the appropriate board chairperson to issue a complaint (the board would have ten days to authorize or dismiss the complaint, after which time the department could decide to issue a complaint or dismiss the matter);
- issue a summary suspension;
- issue a cease and desist order; or
- request authorization from the board to dismiss the matter.

If a complaint were authorized, the DLR would issue a formal complaint and serve it (or make a reasonable attempt to serve it) upon the health care professional (either directly or by certified mail), informing the person that he or she had 30 days to respond in writing. Before preparing a complaint, the department could consult with the attorney general.

The DLR would hold a settlement conference, at which the subject could have an attorney. If a settlement were reached, the department would prepare a complaint and a "stipulation and final order," and submit them to the disciplinary board for approval. As with the informal regulatory review conference, no transcripts could be made of the settlement conference and all conference records and documents (except complaints and stipulations and final orders approved by the disciplinary board) would be confidential.

If a settlement were not reached or the subject of a complaint did not attend a settlement conference, the complaint would be referred to a hearings examiner (who would be either an employee of, or under contract to, the department), who would hold a hearing within 45 days of receiving the referral to decide whether a violation of the health code had occurred. The subject of the complaint could have an attorney present at the hearing, and the department would be represented by the attorney general's office. The hearings examiner would prepare recommended findings of fact and conclusions of law to send to the disciplinary board, but would neither recommend nor impose penalties.

Within 60 days of receiving a report from a hearings examiner that a licensed or registered health care professional had committed a violation, the disciplinary board would hold a formal hearing, reviewing the recommended findings of fact and conclusions of law of the hearings examiner. The disciplinary board hearing would not start all over again ("de novo"), unless a majority of the board believed that were necessary. However, the board could request additional testimony or evidence on specific issues, and could, if it thought necessary, revise the recommended findings of fact and conclusions of law. An independent special assistant attorney general, under contract to the attorney general and who had not represented the department before a hearings examiner, would advise the disciplinary board on legal matters. If the disciplinary board agreed with the hearing examiner's findings, the board would impose the appropriate penalties.

After issuing its decision, the disciplinary board would send a copy of the final order to the appropriate licensing board. A disciplinary board decision could be appealed to the court of

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appeals, but the appeal would be by leave of the court of appeals rather than automatic ("by right"). The entire new disciplinary process would have to be completed within nine months after a formal complaint was issued, though the board could, with good cause shown, extend the nine-month deadline.

House Bill 5904 would separate the licensing and registration of health care professionals (which would continue to be handled by the fifteen existing health care professional licensing or registration boards) from the disciplining of health care professionals (which would be handled by the health professionals disciplinary board created in House Bill 5903).

Licensing and registration boards. The existing licensing and registration boards would continue to be responsible for licensing and registration criteria, testing, and granting or denying licenses or registrations to practice (including renewals). The bill also would allow the Department of Public Health to monitor continuing education courses and to promulgate rules requiring that continuing education credit be granted only to courses approved by a licensure board.

The bill also would increase membership on thirteen of the existing fifteen licensing or registration boards: chiropractic, medicine, nursing, optometry, osteopathic medicine and surgery, pharmacy, physical therapy, podiatric medicine and surgery, counseling, psychology, occupational therapists, sanitarians, and veterinary medicine. The boards would continue to have a majority of licensees as members, but the bill would increase public membership on most of the existing boards (with the exception of the boards for dentistry and physical therapy), as well as increasing professional membership on three of the thirteen boards (podiatric medicine and surgery, occupational therapists, and sanitarians). The increases would be as follows:

	Public members		Professional members	
	Current:	Proposed:	Current:	Proposed:
Chiropractic	2	4	5	(no change)
Medicine	3	8	11	(no change)
Nursing	2	8	15	(no change)
Optometry	2	4	5	(no change)
Osteopathic Medicine	2	4	5	(no change)
Pharmacy	2	5	6	(no change)
Physical therapy	2	4	5	(no change)
Podiatrists	2	4	3	5
Counseling	2	4	7	(no change)
Psychology	3	4	5	(no change)
Occupational Therapy	2	4	3	5
Sanitarians	2	4	3	5
Veterinarians	2	3	5	(no change)

The bill also would:

- eliminate the "retiree's limited license" (a license which authorizes the use of protected titles but which does not allow the licensee to practice the health profession in question);
- change the definition of "limited license" (by deleting reference to "scope of practice" and to "type or condition of patient or client served");
- allow licensure boards to continue to "limit" (impose conditions on) licenses, while transferring to the disciplinary board the power to "restrict" (impose conditions on) licenses;
- require licensed or registered health care professionals to report to the DLR felony convictions, two-year misdemeanor convictions, and misdemeanors involving alcohol or controlled substances convictions;
- require physicians to report to DLR the name of each hospital at which they are employed or have practice privileges;
- allow licensure or registration boards to inform the disciplinary board if they discovered that a licensee or registrant was under sanctions from a similar board elsewhere (in which case, the disciplinary board could then impose appropriate sanctions);
- add the newly created health professionals disciplinary board to the general provisions currently governing licensing or registration boards; and
- repeal three sections of the health code which deal with licensing boards' ability to reclassify licenses (333.16134), appointment of health profession subfield licensees (333.16134), and general provisions governing the physician's assistant task force (333.17058).

House Bill 5905 would amend the health professional peer review act (MCL 331.532) to allow the release of certain confidential information given to health care professional peer review bodies in the course of licensing or disciplining health care professionals. More specifically, the bill would require that the "proceedings, reports, findings, and conclusions" of a peer review body be released or published in order to comply with the requirements of House Bill 5903, to which the bill is tie-barred. (Among other things, House Bill 5903 would require hospitals that had taken disciplinary action under a peer review process against licensed or registered employees to "assist" the disciplinary board or the health department "in obtaining information pertaining to the disciplinary action.")

House Bills 5912 and 5913 would amend the State License Fee Act (MCL 338.2203 et al.) to raise health care professionals' annual license fees and to credit these fees (and not just the increases) to a newly created health professionals regulatory fund. In addition, House Bill 5912 would add fees for audiologists and speech-language pathologists, whose licensure would be created by House Bill 5748.

House Bill 5912 would create the health professions regulatory fund in the state treasury and make the Department of Licensing and Regulation (DLR) responsible for administering the fund. The fund would be used for the health professionals' disciplinary process proposed in House Bills 5903 and 5904. The bill also would allow the DLR to increase health professionals' fees by a percentage tied to the average increase granted to classified civil service employees in the department. House Bill 5913 would raise the annual license fees of health professionals not covered under House Bill 5912. The bills are tie-barred to each other and to House Bill 5903.

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Proposed fee increases:	Current fee	Proposed fee
(House Bill 5912)		
Drug dispensing license	$50	$75
Chiropractors	$50	$90
Counselors	$50	$55
Dentists	$40	$90
Dental assistants	$ 5	$15
Dental hygienists	$10	$20
Medical doctors	$40	$90
(House Bill 5913)		
Nurses	$10	$20
Optometrists	$40	$90
Osteopathic physicians	$40	$90
Pharmacists	$10	$40
Pharmacies	$25	$50
Physical therapists	$25	$50
Physician's assistants	$25	$50
Podiatrists	$50	$90
Psychologists		
Full doctoral	$40	$90
Masters limited	$30	$80
Sanitarians	$30	$50
Occupational therapists	$55	$60
Veterinarians	$25	$65
Veterinary technicians	$10	$20
(House Bill 5912)		
Proposed fees for audiologists and speech-language pathologists:		
Application fee	$55	
Annual license fee	$50	
Limited license fee	$25	

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation says that the fee increases would cover the costs of the program. DLR estimates that first year costs would be $5,358,100, with subsequent years costs at $4,978,100. It estimates that the fees would generate $5.3 million a year. (9-20-90)

ARGUMENTS:

For:

As the fifteen-year history of special legislative committees and other state agency reports on health care professional regulation suggests, adequately disciplining, or otherwise protecting the public from, "problem" health care providers has been an ongoing problem. Part of the problem has been the result of underfunding of the agencies charged with overseeing and investigating the practice of health care professionals. Despite the fact that, as public testimony over time has pointed out, revenue from health care professional licensing fees would be able to adequately fund oversight and investigatory activities, these fees have gone into the state general fund and have not been dedicated to regulating and disciplining the licensees paying the fees. Another ongoing problem in regulating health care professionals has been what one committee report called the "interminability of the investigative and disciplinary process". Even when allegations are brought against a licensed or registered health care professional (and evidence exists which suggests that incompetent professionals are underreported), the amount of time the process takes, and the uncertain outcome, often mean that clearly incompetent health care professionals wind up being able to continue to practice, much to the detriment of the public health and safety. For example, reportedly one physician has continued to practice for seven years while appeal of disciplinary action against him remains pending.

In recent years, the legislature has taken some steps to correct parts of the many problems involved in this complex question. For example, the ease with which prescription drugs can be illegally diverted has long been identified as part of the overall problem, and the legislature responded by passing a package of legislation known as the "triplicate prescription" program, designed to address this very issue. The legislature also enacted a comprehensive malpractice litigation package which included addressing the issue of medical malpractice.

This package of bills would continue to move toward addressing the problem provider, both by adequately funding the disciplinary process and by consolidating and streamling the process so that it would be consistent for all fifteen licensed or registered health professions and, ideally, would take no longer than nine months to complete. The bills would ensure both public and professional participation in the process and would provide plenty of opportunity for informally settling allegations while at the same time ensuring that due process and the full protection of the law would be in operation. In addition, House Bill 4712 would provide a humane and potentially cost effective way of dealing with health care professionals who were chemically impaired, by creating a treatment alternative to the disciplinary process.)

Against:

Although the proposed disciplinary process appears very promising, given the current uncertainty over the state budget it would appear to be unwise to remove money from the general fund and to earmark this money for a specific program.

Response: According to a number of state and national studies, the diversion of licensing revenues from their intended purpose (namely, to regulate the professions and thereby protect the public health and welfare) has been an on- going problem and has been an important factor in the failure of the regulatory system to adequately protect the public from "bad" (incompetent, impaired, or even criminal) health care practitioners. By "dedicating" license fees to the DLR to carry out its duties to enforce the law, the bills would go a long way toward addressing regulatory problems resulting from inadequate funding.

Against:

House Bill 5903 would allow appeal from a final decision by the health professionals disciplinary board to the court of appeals by leave only and not by right. That is, appeal would not be automatic but would have to be granted by the court. This would constitute an unacceptable infringement on an individual health professional's right of access to his or her day in court. The right to appeal should be left as it currently exists.

Response: Part of the problem with the present system is that it can be manipulated by unethical health professionals who seek only to delay as long as possible judgments fairly made against them concerning their unethical or unsafe professional practice. The bills provide plenty of opportunities for health care professionals who have allegations brought against them to respond to these allegations with the full protection of the law. Besides, the present provision for appeal by leave would tend to discourage such "frivolous" appeals, since the health care professional in question would recognize that only appeals that could be supported would be accepted. Finally, even if the court of appeals did reject an appeal, the professional would always have recourse to the supreme court.

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POSITIONS:

The Department of Licensing and Regulation supports the bills. (9-18-90)

The Michigan Association of Osteopathic Physicians and Surgeons supports the bills. (9-18-90)

The Michigan Podiatric Medical Association supports House Bill 5903. (9-19-90)

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