



**House  
Legislative  
Analysis  
Section**

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## HEALTH PROFESSIONALS' DISCIPLINE

**House Bill 5906 (Substitute H-2)**  
Sponsor: Rep. Bart Stupak

**House Bill 5907 (Substitute H-1)**  
Sponsor: Rep. Frank M. Fitzgerald

**House Bill 5908 (Substitute H-3)**  
Sponsor: Rep. Nelson W. Saunders

**House Bill 5909 (Substitute H-1)**  
**House Bill 5910 (Substitute H-1)**  
Sponsor: Rep. Roland G. Niederstadt

**Committee: Public Health**

**First Analysis (11-13-90)**

### ***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. A package of bills (including one bill pending before the House Committee on Insurance and five bills recently passed by the House) is a result of the special ad hoc committee's recommendations. (For further information, please see House Legislative Analysis Section analysis of House Bill 5903 et al. dated 11-8-90.)

### ***THE CONTENT OF THE BILLS:***

The bills are part of a larger package of bills (House Bills 5903 through 5913) which would reorganize the existing process for licensing and disciplining health professionals in the state. With the exception of House Bill 5911, which is in the House Committee on Insurance, the other bills already have passed the House. The main bill in the package, House Bill 5903, would establish a new health professionals' disciplinary board with jurisdiction over all of the 15 health professions now licensed or registered in the state.

House Bill 5906 would amend the Freedom of Information Act (MCL 15.243) to exempt from disclosure information regarding an investigation or informal regulatory review conference (as conducted under House Bill 5903). The bill would not exempt records and information regarding the fact that either (1) an allegation had been received and investigation was being conducted or (2) an allegation was received but no complaint was issued and it had been dismissed. The bill could not take effect unless House Bill 5903 was enacted.

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House Bill 5907 would amend the Open Meetings Act (MCL 15.267 and 15.268) to exempt from disclosure settlement conferences and informal regulatory review conferences (prior to issuance of a complaint) held under House Bill 5903. The bill could not take effect unless House Bill 5903 was enacted.

House Bill 5908 would amend the Administrative Procedures Act (MCL 24.285 and 24.315) to exempt final decisions or orders rendered under the new health professionals' disciplinary process (set up by House Bill 5903) from the act's provisions for judicial review. The bill also would require that findings of fact and conclusions of law included in a final decision or order issued in a contested case hearing be separated into separate, captioned sections. The bill could not take effect unless House Bill 5903 was enacted.

House Bill 5909 would amend the Code of Criminal Procedure (MCL 769.1 et al.) to require the Department of Licensing and Regulation to be notified when a health professional was convicted of a felony or of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance. Whether a person convicted of one of these offenses was a health professional would have to be noted in the presentence investigation report. Within 21 days after conviction of a health professional, the clerk of the court would report the conviction to the Department of Licensing and Regulation on a form prescribed and furnished by the department. At sentencing, the court would check whether the conviction had been reported as required; if not, the court would order the report to be made immediately.

House Bill 5910 would amend the Revised Judicature Act (MCL 600.2507). At present, the act allows certain public officials (the secretary of state, the auditor general, the state treasurer, and the attorney general) to search each others' offices and the offices of the clerk of any court of record or of any register of deeds for any documents necessary to the discharge of their respective duties, and to obtain certified copies of those documents without charge. The bill would amend the act to allow the director of the Department of Licensing and Regulation to request without charge searches and copies of such records (including those pertaining to criminal matters and to medical malpractice) from the secretary of state, the auditor general, the state treasurer, the clerks of any court of record (including the supreme court and the probate court), and registers of deed.

## ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

## ***ARGUMENTS:***

### ***For:***

The bills would make changes in a number of laws that would allow the rest of the package of bills to be carried out, both in terms of legal and administrative procedures. For example, the proposed amendments to the Freedom of Information Act and the Open Meetings Act would protect the confidentiality of settlement conferences and informal regulatory review conferences, which would help facilitate informal resolutions to complaints against health professionals while yet allowing reasonable public access to information pertinent to protecting the health and safety of health care patients or clients.

## ***POSITIONS:***

The Department of Licensing and Regulation supports the bills. (11-13-90)

The Michigan Association of Osteopathic Physicians and Surgeons supports the bills. (11-12-90)

The Michigan State Medical Society supports the bills. (11-13-90)