**House Legislative Analysis Section**

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## HEALTH PROFESSIONAL DISCIPLINARY BD

**House Bill 5903**
Sponsor: Rep. David M. Gubow

**House Bill 5904**
Sponsor: Rep. Richard Bandstra

**House Bill 5905**
Sponsor: Rep. Gerald H. Law

**House Bill 5912**
Sponsor: Rep. Francis R. Spaniola

**House Bill 5913**
Sponsor: Rep. Lad S. Stacey

Committee: Public Health

**House Bill 5906**
Sponsor: Rep. Bart Stupak

**House Bill 5907**
Sponsor: Rep. Frank M. Fitzgerald

**House Bill 5908**
Sponsor: Rep. Nelson W. Saunders

**House Bills 5909 and 5910**
Sponsor: Rep. Roland G. Niederstadt

Committee: Judiciary

**House Bill 5911**
Sponsor: Rep. Nelson W. Saunders

Committee: Insurance

Complete to 9-5-90

H.B.s 5903-5913 (9-5-90)

## *A SUMMARY OF HOUSE BILLS 5903 TO 5913 AS INTRODUCED 6-21-90*

The bills would revise the current system under which health care professionals are disciplined. At present, the licensing or registration boards of health care professionals perform both certification and disciplinary functions. That is, the licensing or registration board both grants licenses and takes disciplinary action (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 and registration boards and (b) a single, newly created "health professionals disciplinary board." The bills also would make various other necessary changes in the Public Health Code and in a number of other acts (including the peer review act, the State License Fee Act, 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).

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). 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 the licensing and regulation boards;

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- create regional disciplinary panels, which would make recommendations to the disciplinary board but which would not themselves impose penalties;
- 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; and
- require hospitals to notify patients when the license of a physician employed by the hospital was suspended or revoked.

The Health Professional Disciplinary Board. The bill would create a seven-member health professional disciplinary board in the Department of Licensing and Regulation (DLR). Five members would be appointed from the public by the governor (with not more than three of them from the same political party), who also would appoint the chairperson of the board. The two temporary members would be appointed by the director of the DLR and would be licensed or registered health care professionals who were members of the licensing or registration board of the person under investigation. If possible, the temporary members would serve for the duration of a particular case.

Regional disciplinary panels. The bill would create regional disciplinary panels to conduct hearings (which would not result in disciplinary action by the panel) on health care provider complaints in cases where a settlement conference between DLR staff and the subject of the complaint was unsuccessful. The three-member panels would consist of two people licensed or registered in the same health profession as the subject of the complaint and a licensed attorney. The Department of Licensing and Regulation would contract with the attorney member of such panels and the director of the department would appoint the health provider members. (The bill would require, as a condition of licensure or registration, that health care professionals agree to serve on such panels upon request.) Panel members would be reimbursed for expenses but would not receive per diem payments. The regional disciplinary panel would decide whether or not the subject of the complaint had violated the health code (or whether or not there were grounds for disciplinary action as listed in the code), but could not impose penalties. The attorney on the panel would prepare findings of fact, conclusions of law, and recommendations for action by the disciplinary board. Final action by the panel would have to be by a majority of the members. Subjects of complaints brought before a panel could request one continuance and could be represented by legal counsel. Unless a continuance were granted, if a subject failed to appear for a hearing he or she would be considered to have admitted to the allegations in the complaint, and the regional panel would notify the disciplinary board, which then could impose appropriate sanctions. The DLR could promulgate rules to establish geographic regions for the regional disciplinary panels, to provide for facilities and support staff, and to govern hearings and related preliminary proceedings.

"Whistleblower" provisions. Licensed or registered health care providers who had "reasonable cause" to believe that another provider had done something to violate the health code or that would be grounds for disciplinary action would be required to report that person to the Department of Licensing and Regulation. The identity of the person doing the reporting would be kept confidential unless he or she agreed in writing or was required to testify in disciplinary proceedings. 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. 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.

Public posting of the new complaint process. Hospitals and private practitioners would be required to tell patients how they could file complaints with the DLR against practitioners and, in the case of health facilities, with the Department of Public Health (DPH) against facilities. This information would have to be both in the form of a sign ("conspicuously" displayed in the patient waiting area) and pamphlets provided by the Departments of Licensing (in the case of practitioners) and of Public Health (in the case of facilities).

Release of disciplinary information by health facilities. Hospitals and other health facilities or agencies would be required to release certain information from their peer review process and to tell certain institutions and patients when the hospital (facility, or agency) took disciplinary action against its licensed or registered employees. 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, a hospital would be required to disclose any disciplinary action it had taken against the health care professional in question. Hospitals also would have to notify, within 30 days after a physician's license was revoked or suspended, patients who had been treated by that physician in the year immediately preceding the license revocation or suspension. Finally, hospitals, health facilities, or health agencies would be required (upon request) to "assist" the DLR or the disciplinary board in getting information pertaining to disciplinary action taken by the hospital after a peer review.

Other provisions. The DLR presently keeps records for each licensed health care practitioner that contains information about the individual's record of practice and reviews these files when it receives certain malpractice information or is notified of felony convictions or of disciplinary action taken by a hospital or a professional association. The bill would also require a review if the department was notified of certain misdemeanor convictions (with two-year sentences or for illegal delivery, possession, or use of alcohol or other controlled substances) or 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.

Currently, depending on the violation, licensing boards may impose sanctions ranging from probation, restitution, fines, or license actions including limitation, denial, suspension, or revocation. The disciplinary board would be able to impose these sanctions (license limitation would be changed to license "restriction") plus community service and would be able to require satisfactory completion of education, training, or treatment programs.

Licenses or registrations suspended or revoked for illegal drug diversion or for certain criminal convictions could not be reinstated for five years (otherwise, reinstatement could

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be granted after three years, as currently is the case for all suspensions or revocations)

Disciplinary process Both the present and proposed disciplinary processes would consist of basically the same steps The receipt of allegations by the Department of Licensing and Regulation (DLR), an investigation into the charges, a review of the investigation report by the attorney general's office, the issuing of a formal complaint, an informal hearing, a formal administrative hearing, and a final review of the hearing's findings

The present disciplinary process for health care professionals begins when the DLR receives a written complaint against a licensed 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, restitution, to license limitation, suspension or revocation (The licensing board also reviews all settlements reached at informal 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 boards The DLR would continue to receive allegations of violations, but instead of having a licensing board review the allegation, the department would evaluate allegations and recommend to the disciplinary board whether or not to take further action A public member of the disciplinary board, appointed on a rotating basis by the board chairperson, would review the department's recommendations and either recommend that no further action be taken or authorize the issuance of a complaint If an investigation were authorized, the department would conduct the investigation and then recommend action to the public member of the disciplinary board, who would review the department's recommendation and either authorize the issuance of a complaint or would recommend that the disciplinary board take no further action on the allegation

If a complaint was authorized, the DLR would prepare the complaint and mail it by certified mail to the health care professional in question, informing him or her that he or she had 30 days to respond in writing The DLR would hold a settlement conference, at which the subject could be represented by legal counsel If a settlement were reached, the DLR would prepare a "stipulation and final order" and submit it to the disciplinary board for approval and action If the subject of a complaint did not respond to the complaint within 30 days of receiving it or did not attend the settlement conference, the failure could be treated as an admission by the subject of the allegations in the complaint and the department would notify the disciplinary board, which then could impose sanctions

If a settlement were not reached, the complaint would go before a regional disciplinary board for a hearing (within 45 days of receiving the referral) in the region in which the subject lived or did business The panel would decide whether or not the subject violated the health code or if there were grounds for disciplinary action, and the attorney member would prepare the panel's findings of fact, conclusions of law, and recommendations for further action (including dismissing the charges or proposed penalties) by the disciplinary board The panel itself would not impose penalties

The disciplinary board would hold a formal hearing within 60 days of receiving a report from a regional panel, but would not conduct a new hearing from scratch (unless a majority of the board felt that such were necessary), though it could request additional testimony or evidence on specific issues The attorney general would advise the disciplinary board on legal matters, but the particular assistant attorney general assigned to the board would not be the same one who represented the DLR before a regional panel If the disciplinary board agreed with the regional panel s findings, the board would impose the appropriate penalties After issuing its decision, the disciplinary board would send a copy of its final order to the appropriate licensing board A board decision could be appealed to the court of 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 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 and regional panels created in House Bill 5903

The bill also would

- require, as a condition of licensure or registration, licensed or registered health care professionals to serve on regional disciplinary panels or as expert witnesses for the Department of Public Health, upon request, at least once every two years,
- require applicants for licensure or registration to provide, in addition to the existing information required of applicants, information on certain criminal convictions (all felony convictions and misdemeanors involving up to two years imprisonment or illegal delivery, possession, or use of alcohol or a controlled substance) and, in the



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case of physicians, the names of each hospital at which they are employed or have practice privileges;

- 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;
- 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);
- involve the Department of Public Health in monitoring continuing education courses and allow it to promulgate rules requiring that continuing education credit be granted only to courses approved by a licensure board;
- allow the department to notify licensees or registrants by certified mail of actions or proceedings for violations under either the occupations article or the controlled substances article of the health code;
- 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 Bill 5906 would amend the Freedom of Information Act (MCL 15.243) to exempt from disclosure information on disciplinary investigations that is to be held confidential under House Bill 5903. The bill could not take effect unless House Bill 5903 was enacted.

House Bill 5907 would amend the Open Meetings Act (MCL 15.267 and 15.268) to exempt settlement conferences and hearings of regional disciplinary panels and the disciplinary board 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 health professional settlement conferences, regional disciplinary panel hearings, and disciplinary board hearings from the act's provisions for contested case hearings and judicial review. The bill also would require a final decision or order issued in a contested case hearing to be written in a clear and coherent manner. 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, a two-year misdemeanor, or 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) to include the director of the Department of Licensing and Regulation among the officials authorized to search the offices of each other, the clerk of any court of record, or 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 other officials so authorized are the secretary of state, the auditor general, the state treasurer, and the attorney general.)

House Bill 5911 would amend the Insurance Code (MCL 500.2477a et al.) to make certain information concerning medical malpractice, which now is confidential, a matter of public record and to have professional liability claims reported to the appropriate licensing boards in the Department of Licensing and Regulation.

The Insurance Code currently keeps certain medical malpractice information filed with the insurance commissioner confidential and allows its release only for certain specified purposes ("bona fide research, educational, licensing, actuarial, Department of Social Services subrogation, or legislative purposes"). The code also currently prohibits releasing the names of any party that is part of the information filed under this part of the code and gives the commissioner (and, in the case of insurers, the chairs of the licensing boards and the director of the Department of Public Health) the sole discretion to decide the validity of requests for information. The bill would strike these sections of the code and make this information a matter of public record.

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 to a newly created health professionals regulatory fund.

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 certain health professionals' annual license fees. The bills ares tie-barred to each other and to House Bill 5903.

| 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 |

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| 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 |