

Senate Bill 234 (Substitute S-1 as reported from Committee)
Senate Bills 235 and 236 (as reported without amendment)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 5-23-11

RATIONALE

The Public Health Code authorizes the investigation of health professionals' activities, and lists administrative sanctions that may be imposed for specific violations. Typically, the sanctions include a fine, restitution, probation, and the suspension, denial, revocation, or limitation of a license or registration. If a license or registration is suspended or revoked, the health professional may apply for reinstatement after three or five years, depending on the violation. An applicant for reinstatement has the burden of proving, by clear and convincing evidence, that he or she is of good moral character, is able to practice with reasonable skill and safety to patients, has met criteria in rules, and should be permitted in the public interest to practice. Despite these requirements, it is reported that licenses have been inappropriately reinstated for some health professionals who were convicted of criminal sexual conduct (CSC), exacerbating the trauma experienced by their victims and potentially endangering other patients or clients. To address this, it has been suggested that the administrative sanctions should include the *permanent* revocation of a license or registration if a health professional is convicted of a serious CSC offense.

CONTENT

The bills would amend the Public Health Code to do all of the following:

- **Allow a health profession disciplinary subcommittee to permanently revoke the license or registration of a health professional who was convicted of first-, second-,**

or third-degree criminal sexual conduct.

- **Specify that a health professional whose license or registration was permanently revoked would be ineligible for reinstatement of his or her license or registration.**
- **Specify that the Department of Licensing and Regulatory Affairs (LARA) would not have to give an ineligible applicant for reinstatement an opportunity for a hearing before final rejection.**

The bills are tie-barred.

Senate Bill 234 (S-1)

The Code authorizes 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 Department may hold hearings, administer oaths, and order relevant testimony to be taken and must report its findings to the appropriate disciplinary subcommittee. After finding that one or more grounds for disciplinary action exist, the disciplinary subcommittee must impose certain sanctions for each violation.

For a conviction of first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC, a disciplinary subcommittee must impose one or more of the following sanctions:

- Probation.
- Limitation, denial, suspension, or revocation of a license or registration.
- Restitution.

- Community service.
- A fine.

Under the bill, a disciplinary subcommittee would have to impose one or more of those sanctions for a conviction of fourth-degree CSC or assault with intent to commit CSC. For a conviction of first-, second-, or third-degree CSC, a disciplinary subcommittee would have to impose one of the sanctions listed above or permanent revocation. Permanent revocation could not be imposed, however, unless the violation occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered.

Senate Bill 235

The Code lists grounds for sanctions by a health profession disciplinary subcommittee. The list includes a conviction for first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC. Under the bill, a conviction of fourth-degree CSC or assault with intent to commit CSC would be categorized separately from a conviction of first-, second-, or third-degree CSC.

Senate Bill 236

Under the Code, an individual whose license or registration is limited, suspended, or revoked may apply to his or her board or task force for reinstatement of the license or registration. Typically, an individual may not apply for reinstatement of a revoked license or registration until three years after the effective date of the revocation. In the case of revocation for specific violations, including any CSC offense, an applicant may not apply for reinstatement until five years after the effective date of revocation.

Under the bill, the five-year waiting period would apply to revocation for a conviction of fourth-degree CSC or assault with intent to commit CSC. In the case of a license or registration that was permanently revoked for a conviction of first-, second-, or third-degree CSC, the former licensee or registrant would be ineligible for reinstatement.

The Code requires LARA to return an application for reinstatement received before the end of the waiting period for reinstatement. The bill also would require LARA to return an application if the applicant

were ineligible for reinstatement because of permanent revocation for a first-, second-, or third-degree CSC conviction.

The Code requires LARA to provide an opportunity for a hearing before final rejection of an application for reinstatement. Under the bill, this would not be required if the application were returned because the applicant was ineligible for reinstatement.

- MCL 333.16226 (S.B. 234)
- 333.16221 (S.B. 235)
- 333.16245 (S.B. 236)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Senate Judiciary Committee heard testimony by a woman who had been victimized by a dentist, Dr. Donald Quinn, in 2001. According to the testimony and media reports, after the woman became a patient of Dr. Quinn and began to date him, Quinn repeatedly sexually assaulted the woman, beat her, kept her in a drug-induced state for more than six weeks by injecting her with legal and illegal medication, and took videos of his sexual activity with her. In 2002, Quinn pleaded guilty to various offenses, including two counts of second-degree CSC, and he was sentenced to one year in jail and five years' probation (mlive.com, "Bills pushed after Michigan dentist gets license back", 2-25-09). Quinn's license to practice dentistry was suspended in 2002 but, in 2007, the Michigan Board of Dentistry restored the license subject to limitations. According to committee testimony, Quinn's victim was diagnosed with post-traumatic stress disorder (PTSD) and other afflictions, including depression and bipolar disorder, following his court case, and her condition escalated when she learned about the license reinstatement.

Although this is a description of one egregious case, it is not unique. The Judiciary Committee also heard testimony from a psychiatrist, Dr. Frank Ochberg, who is an expert in PTSD and a former director of the Michigan Department of Mental Health. Evidently, Dr. Ochberg accompanied Quinn's victim to a hearing of the Board of Dentistry

following the license restoration, and learned that the board had not been not fully aware of Quinn's background when it decided to reinstate his license. According to Dr. Ochberg, he has served in many cases like the one involving Donald Quinn.

Many people find it outrageous and unacceptable that a health professional who has been convicted of a serious CSC offense can be allowed to practice again. In addition to dentists, the health professionals regulated under the Public Health Code include physicians, nurses, psychologists, marriage and family therapists, chiropractors, physical therapists, and others. These individuals have patients and clients who are vulnerable and place their trust in the health professionals. When that trust is violated and a patient or client is victimized, there should be appropriate recourse.

In some cases, permanently revoking the offender's license or registration may be the best sanction. By authorizing licensing boards to impose permanent revocation for health professionals who were convicted of first-, second-, or third-degree CSC, the bills would help prevent the health professionals' victims from being retraumatized when a license or registration was reinstated, and would protect future patients or clients from being victimized. If a board chose to impose permanent revocation, the health professional would have no opportunity to reapply for reinstatement, which could prevent future incidents such as the one involving Dr. Quinn.

Response: Under Senate Bill 234 (S-1), permanent revocation would be authorized only if a violation occurred "while the licensee or registrant was acting within the health profession for which he or she was licensed or registered". This language is ambiguous. It is not clear whether permanent revocation would be allowed only if a health professional committed the CSC offense against a patient or client in the course of practice, or under other circumstances as well.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

A1112\s234a.

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.