

Legislative Analysis



IMPOSE LICENSE SANCTIONS FOR CRIMINAL SEXUAL CONDUCT UNDER PRETEXT OF MEDICAL TREATMENT

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House Bill 4121 as reported from committee
Sponsor: Rep. Kelly Breen

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4122 as reported from committee
Sponsor: Rep. Kara Hope

Committee: Judiciary
Complete to 5-16-23

(Enacted as Public Acts 47 and 48 of 2023)

SUMMARY:

House Bill 4121 would include a conviction for sexual penetration under the pretext of medical treatment among the grounds requiring sanctions to be imposed on a person licensed or registered under the Public Health Code. House Bill 4122 would require a health professional license or registration to be permanently revoked for a violation involving sexual penetration under the pretext of medical treatment.

House Bill 4121 would amend section 16221 of the Public Health Code, which requires the Department of Licensing and Regulatory Affairs (LARA) to investigate an allegation involving a licensee, registrant, or applicant for licensure or registration under the code¹ that one or more grounds for disciplinary subcommittee action exist. The investigation includes conducting hearings, administering oaths, and ordering relevant testimony to be given, and its findings are then reported to the appropriate disciplinary subcommittee. Disciplinary subcommittees are required to impose one or more of the sanctions listed in section 16226 that apply to a specific violation. Sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

Under the bill, a conviction for a violation of section 90 of the Michigan Penal Code or a violation of a state or federal law that is substantially similar to that section would constitute grounds requiring a disciplinary subcommittee to proceed with license sanctions as applicable under section 16226 of the Public Health Code. A certified copy of the court record would be conclusive evidence of the conviction.

Section 90 of the Michigan Penal Code currently provides that any person who undertakes to medically treat any female person and, while treating her, represents that it is or will be necessary or beneficial to her health that she have sexual intercourse with a man, and thereby induces her to have intercourse with a man, is guilty of a felony punishable by up to 10 years' imprisonment. A man who is not the woman's husband who has intercourse with her by reason of such representation is also guilty of a felony and subject to the same penalty.

MCL 333.16221

¹ Health care professions licensed or registered under Article 15 of the Public Health Code include acupuncturists, athletic trainers, audiologists, behavior analysts, chiropractors, counselors, dental assistants, dental hygienists, dentists, genetic counselors, marriage and family therapists, massage therapists, midwives, nurses, nursing home administrators, occupational therapists and occupational therapy assistants, optometrists, pharmacists and pharmacy technicians, physical therapists and physical therapy assistants, physician's assistants, physicians, podiatrists, psychologists, respiratory therapists, sanitarians, social workers and social service technicians, speech-language pathologists, and veterinarians and veterinarian technicians.

House Bill 4122 would amend section 16226 of the Public Health Code, which requires that, after finding the existence of one or more of the grounds for action by a disciplinary subcommittee listed in section 16221, a disciplinary subcommittee must impose on a licensee, registrant, or applicant one or more of the specified sanctions for each violation. As described above, sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

House Bill 4122 would require that a license or registration issued under the Public Health Code be permanently revoked if the licensee or registrant had been convicted of a violation of section 90 of the Michigan Penal Code.

Currently under the Public Health Code, a disciplinary subcommittee is restricted from imposing permanent revocation unless it finds that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit that resulted in personal financial gain to the licensee or registrant and resulted in harm to the health of patients under the licensee's or registrant's care. An exemption from this restriction is provided for cases involving female genital mutilation. The bill also would exempt from this restriction a conviction for sexual contact or sexual penetration under the pretext of medical treatment.

MCL 333.16226

The bills are tie-barred to each other, which means that neither could take effect unless both were enacted. Each bill would take effect 90 days after being enacted.

BACKGROUND:

The bills are reintroductions of House Bills 4857 and 4858 of the 2021-22 legislative session, House Bills 4372 and 4373 of the 2019-20 legislative session, and House Bills 5789 and 5790 of the 2017-18 legislative session, all of which were passed by the House of Representatives. The bills were originally introduced following the revelation of hundreds of instances in which Larry Nassar, a nationally known physician employed by Michigan State University who also provided medical treatments to members of the USA Olympics women's gymnastics team, was found to have engaged in practices that constituted criminal sexual conduct.

BRIEF DISCUSSION:

House Bills 4121 and 4122 specifically address the egregious practice by some health professionals of using the pretext of performing a medical procedure to instead engage in conduct that constitutes sexual contact or sexual penetration. The bills are part of a larger package of bills to address sexual assault that were originally introduced following the revelation of hundreds of instances in which Larry Nassar, a nationally known physician employed by Michigan State University who also provided medical treatments to members of the USA Olympics women's gymnastics team, was found to have engaged in practices that constituted criminal sexual conduct. The former physician is not alone in preying on patients, as has been shown by a former physician at the University of Michigan and instances in other states that have also recently come to light.

Under the bills, should a physician or other licensed or registered health professional be convicted—whether under Michigan law or under federal law or another state's law—for sexually assaulting a patient under the guise of performing a medical treatment or procedure,

the appropriate licensing board and the state's regulatory agency would have the authority, and would be required, to permanently revoke that person's state-issued health profession license or registration. The bills would also, in effect, prevent the state from issuing a medical or health profession license or registration to anyone relocating to Michigan who had been convicted of such conduct in another state or under federal law.

Because of the nature of the patient/health provider relationship, it is particularly devastating when a provider uses their position of trust, authority, and medical expertise to prey on unsuspecting, and therefore vulnerable, patients. The bills, if enacted, have the potential to add a layer of protection to patients by weeding out anyone who had been convicted previously of using their position to mislead a patient to believe that a sexual assault was an accepted medical practice.

FISCAL IMPACT:

House Bills 4121 and 4122 would not have an appreciable impact on the Department of Licensing and Regulatory Affairs or on other units of state or local government. The bills would likely increase the instances where the department would need to conduct investigations, but given the limited number of situations that would likely arise, the bill would not create any noteworthy costs for the department.

POSITIONS:

A representative of the Michigan Coalition to End Domestic and Sexual Violence testified in support of the bills. (4-12-23)

The following entities indicated support for the bills:

- Michigan Domestic and Sexual Violence and Prevention Treatment Board (4-12-23)
- Michigan Academy of Family Physicians (4-12-23)
- Junior League of Michigan (4-12-23)
- Michigan Nurses Association (4-12-23)
- Michigan Catholic Conference (4-19-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.