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House Bills 5839 through 5842 (as passed by the House)

Sponsor: Representative Klint Kesto (H.B. 5839)
Representative Pat Somerville (H.B. 5840)
Representative Jeff Farrington (H.B. 5841)
Representative Peter Pettalia (H.B. 5842)

House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 11-12-14

CONTENT

House Bill 5841 would amend the Public Health Code to include revocation and permanent revocation among the administrative sanctions that a disciplinary subcommittee may impose for certain actions by a licensed or registered health professional.

House Bill 5840 would amend the Code to do the following:

- Include convictions for murder, manslaughter, and certain assaults among the grounds for disciplinary action.
- Provide that certain grounds for disciplinary action against a licensed health professional also would apply to a registered health professional.

House Bill 5842 would amend the Code to do the following:

- Provide that an individual whose license, registration, or authorization to engage in the practice of a health profession had been permanently revoked would be permanently ineligible for such a license, registration, or authorization.
- Prohibit the Department of Licensing and Regulatory Affairs (LARA) or a regulatory board or task force from issuing a license or registration to a person whose license, registration, or authorization had been permanently revoked, or otherwise authorizing such a person to engage in the practice of a health profession.
- Prohibit a board or task force from reinstating the license or registration of, or issuing a limited license or registration to, a person whose license or registration had been permanently revoked.

House Bill 5839 would amend the Code to define "permanent revocation" as the permanent cancellation or withdrawal of a license, registration, or authorization to engage in the practice of a health profession that is issued by LARA, a board, or a task force. The bill also would refer to a registrant in addition to a licensee in the definition of "probation".

All of the bills are tie-barred and would take effect 90 days after the date they were enacted. House Bills 5840, 5841, and 5842 are described below in further detail.

House Bill 5841

Part 161 of Article 15 (Occupations) of the Code prescribes grounds for disciplinary action against a licensed or registered health professional or an applicant for licensure or registration. The Department of Licensing and Regulatory Affairs must investigate any allegation that one or more of the listed grounds exists. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee.

After finding that one or more of the grounds for action exist, a disciplinary subcommittee must impose one or more of the sanctions prescribed in Part 161. For the following grounds, the sanctions include probation, limitation, denial, suspension, revocation, restitution, or a fine:

- A violation of general duty, consisting of negligence or failure to exercise due care or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession.
- Incompetence.
- Substance use disorder.
- Mental or physical inability reasonably related to and adversely affecting the person's ability to practice in a safe and competent manner.
- Declaration of mental incompetence by a court.
- Conviction of a misdemeanor punishable by a maximum of two years' imprisonment; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or any felony for which sanctions are not specifically prescribed.
- Lack of good moral character.
- A criminal conviction involving fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC.
- Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession.
- Final adverse administrative action by a regulatory board involving the holder of, or an applicant for, a license or registration regulated by another jurisdiction.
- Conviction of a misdemeanor that is reasonably related to or that adversely affects the person's ability to practice in a safe and effective manner.
- Conviction of a violation involving engaging in the practice of a health profession while under the influence alcohol or while impaired due to the illegal or improper use of a controlled substance.

The bill would include permanent revocation among the sanctions that a disciplinary subcommittee may impose.

For the intentional, willful, or reckless placement in a patient's medical record or chart of misleading or inaccurate information regarding the diagnosis, treatment, or cause of a patient's condition, the sanctions include revocation and denial. Under the bill, the sanctions also could include permanent revocation.

Potential sanctions include a fine, probation, denial, suspension, revocation, or restitution for the following:

- Illegally obtaining or possessing a controlled substance or drug, or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.
- Engaging in unethical business practices consisting of fraud or deceit in obtaining or attempting to obtain third-party reimbursement.

Under the bill, the possible sanctions also would include permanent revocation.

Reprimand, a fine, probation, limitation, suspension, denial, and restitution are among the sanctions prescribed for the following:

- Unprofessional misconduct consisting of misrepresentation to a consumer or patient or in obtaining or attempting to obtain third-party reimbursement in the course of professional practice.
- Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.
- A requirement by a licensee or registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest.
- A referral by a physician for a designated health service that violates 42 USC 1395nn (which limits referrals under Medicare).
- For a physician who makes referrals under 42 USC 1395nn, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicaid or Medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest.
- A violation, or aiding and abetting in a violation, of Article 15 or of a rule promulgated under it.
- A violation of the Medical Records Access Act.

Under the bill, the allowed sanctions would include revocation and permanent revocation.

For the following actions, the sanctions include reprimand, probation, suspension, restitution, denial, or a fine:

- Unprofessional conduct consisting of betrayal of a professional confidence.
- Failure to comply with a subpoena issued under Part 161.
- Failure to respond to a complaint issued under Article 15, Article 7 (Controlled Substances) or Article 8 (Pharmaceutical-Grade Cannabis).
- Failure to appear at a compliance conference or an administrative hearing.
- Failure to report to LARA a violation by or impairment of a licensee, registrant, or applicant.

The bill would include revocation and permanent revocation among the sanctions.

Part 161 prescribes reprimand or a fine for a violation of Code provisions requiring a physician to provide certain information regarding treatment options and patient rights in the case of a patient who has been diagnosed with breast cancer or as having a reduced life expectancy due to an advanced illness, and to obtain informed consent before ordering a presymptomatic or predictive genetic test. Under the bill, the sanctions also would include probation, suspension, revocation, and permanent revocation.

For knowingly or recklessly doing either of the following, the prescribed sanctions include revocation, a fine, or restitution:

- Adulterating, misbranding, removing, or substituting a drug or device knowing or intending that it be used.
- Selling, offering for sale, possessing for sale, causing to be sold, or manufacturing for sale an adulterated or misbranded drug.

Under the bill, the sanctions also could include permanent revocation.

Part 161 requires a disciplinary subcommittee to impose the sanction of permanent revocation for a violation of Section 16221(b)(xiii) if the violation occurred while the

licensee or registrant was acting within the health profession for which or he or she was licensed or registered. (That section provides that a conviction for first-, second-, or third-degree CSC or a subsequent CSC conviction is grounds for disciplinary action. House Bill 5840 also would include murder, manslaughter, and certain assault convictions in this section.) Under the bill, under all other circumstances, a disciplinary subcommittee could not impose the sanction of permanent revocation without a finding that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit resulting in his or her personal financial gain and harm to the health of patients under his or her care.

House Bill 5840

The grounds for disciplinary action against a health professional include the following:

- Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner.
- Unprofessional conduct consisting of a requirement by a licensee other than a physician that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

The bill would refer to a registrant in addition to a licensee in these provisions.

Additionally, the bill would include among the grounds for disciplinary action conviction for the following criminal offenses:

- Assault with intent to commit murder.
- Assault with intent to do great bodily harm less than murder.
- Assault by strangulation or suffocation.
- First- or second-degree murder.
- Manslaughter.

The current grounds also include unprofessional conduct, unprofessional business practices, and a violation of general duty. Under the bill, these would be grounds for disciplinary action except as otherwise specifically provided.

House Bill 5842

The bill would add Section 16245a to the Public Health Code to provide that, in addition to any other penalty, remedy, or sanction under the Code, an individual whose license, registration, or authorization to engage in the practice of a health profession was permanently revoked would be permanently ineligible for a license, registration, or authorization to engage in the practice of a health profession by LARA or a board or task force.

Also, LARA or a board or task force could not issue a license or registration to an individual whose license, registration, or authorization had been permanently revoked, or otherwise authorize such an individual to engage in the practice of a health profession.

Subject to specific exceptions, the Code allows an individual whose license is limited, suspended, or revoked to apply to his or her board or task force for a reinstatement of a revoked or suspended license or reclassification of a limited license. An individual whose registration is suspended or revoked also may apply for a reinstatement. Under the bill, these provisions would apply except as otherwise provided in proposed Section 16245a.

Currently, an individual whose license or registration was permanently revoked under Section 16221(b)(xiii) is ineligible for reinstatement. Under the bill, instead, an individual whose license was permanently revoked for any reason would be ineligible for reinstatement. The Department would have to return an application for reinstatement if the applicant were ineligible.

The Code prescribes procedures by which a license or registration board or task force may reinstate a license or registration or issue a limited license to an individual whose license or registration has been suspended or revoked. The bill would prohibit a board or task force from reinstating a license or registration or issuing a limited license or registration to an individual whose license had been permanently revoked.

The Code also allows a disciplinary subcommittee to reclassify a limited license to alter or remove the limitations, under certain conditions. Under the bill, this would apply except as otherwise provided in proposed Section 16245a.

MCL 333.16107 (H.B. 5839)
333.16221 (H.B. 5840)
333.16226 (H.B. 5841)
333.16245 et al. (H.B. 5842)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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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.