

Legislative Analysis



HEALTH PROFESSIONALS: EXPAND ACTS REQUIRING LICENSE SANCTIONS

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<http://www.house.mi.gov/hfa>

House Bill 4372 (H-1) as reported from committee
Sponsor: Rep. Annette Glenn

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

House Bill 4373 as reported from committee
Sponsor: Rep. Daire Rendon

Committee: Judiciary
Complete to 9-3-19

BRIEF SUMMARY:

House Bill 4372 would include a conviction for sexual penetration under the pretext of medical treatment in the list of grounds requiring sanctions to be imposed on a person licensed or registered under the Public Health Code.

House Bill 4373 would require a health professional license or registration to be permanently revoked for a violation involving sexual penetration under the pretext of medical treatment.

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

DETAILED SUMMARY:

House Bill 4372 would amend section 16221 of the Public Health Code. Section 16221 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 Public Health Code¹ that one or more grounds for disciplinary subcommittee action exist. This includes conducting hearings, administering oaths, and ordering relevant testimony to be given. The findings of the investigation 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 House Bill 4372, a conviction for a violation of section 90 of the Michigan Penal Code (MCL 750.90), 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.

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

Currently, section 90 of the Penal Code specifies 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 of 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.

[Note: A bill currently introduced in the Senate would revise section 90 to instead prohibit a person who is undertaking medical treatment of a patient from engaging in sexual contact or sexual penetration with the patient by means of misrepresenting that contact or penetration as necessary or beneficial to the patient's health (Senate Bill 219, a reintroduction of House Bill 5787 of the 2017-18 legislative session).]

MCL 333.16221

House Bill 4373 would amend section 16226 of the Public Health Code. Section 16226 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 discussed above, sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

House Bill 4373 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 would also exempt from this restriction a conviction for sexual contact or sexual penetration under the pretext of medical treatment.

MCL 333.16226

BACKGROUND INFORMATION AND BRIEF DISCUSSION:

House Bills 4372 and 4373 are reintroductions of House Bills 5789 and 5790, respectively, of the 2017-18 legislative session. Both bills were passed by the House of Representatives.

The bills are part of a larger bill package to address sexual assaults. House Bills 4372 and 4273 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 were originally introduced last session 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 instances in other states 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 his or her 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 his or her position to mislead a patient to believe that a sexual assault was an accepted medical practice.

FISCAL IMPACT:

House Bill 4372 would not have a significant fiscal impact on LARA. The bill would add a conviction under MCL 750.90, or a violation of a similar state or federal crime, to the list of activities that LARA would investigate and report to the appropriate disciplinary subcommittee when the conduct is alleged to have been committed by a licensee, registrant, or licensure applicant. This activity would be added to responsibilities already undertaken by the department and would not increase or decrease expenditures or revenues.

House Bill 4373 would not have a significant fiscal impact on LARA. The bill would require disciplinary subcommittees to permanently revoke a licensee’s or registrant’s license or registration if the subcommittee found that a licensee or registrant violated MCL 750.90 or a similar state or federal law. Given the relatively small number of licensees and registrants that are likely to be found guilty of this violation, the bill would not significantly affect revenues for the department and would not require additional expenditures.

POSITIONS:

The following entities indicated support for the bills (4-30-19):

- Michigan Domestic Violence Prevention and Treatment Board
- Michigan Coalition to End Domestic and Sexual Violence
- American Association of University Women

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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.