

Legislative Analysis



EXPAND ACTS REQUIRING HEALTH PROFESSIONAL LICENSE SANCTIONS

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House Bill 4857 as introduced
Sponsor: Rep. Annette Glenn

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

House Bill 4858 as introduced
Sponsor: Rep. Daire Rendon

Committee: Judiciary
Revised 10-19-21

SUMMARY:

House Bill 4857 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 4858 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 4857 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 4858 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 4858 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 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 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.

FISCAL IMPACT:

House Bills 4857 and 4858 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 increase the instances where the department would need to conduct investigations, but given the limited situations that would likely arise, the bill would not create any noteworthy costs for the department.

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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.