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House Bill 4121 and 4122 (as passed by the House)
Sponsor: Representative Kelly Breen (H.B. 4121)
Representative Kara Hope (H.B. 4122)
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 6-7-23

INTRODUCTION

Taken together, the bills would include a conviction for engaging in sexual contact or sexual penetration under the pretext of medical treatment among the grounds for disciplinary action against a health professional. They would require a disciplinary subcommittee to permanently revoke the license of an individual convicted of such.

The bills are tie-barred and each bill would take effect 90 days after its enactment.

FISCAL IMPACT

The bills would not have a significant fiscal impact on State or local government.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

House Bill 4121 and House Bill 4122 are reintroductions of House Bill 4372 and House Bill 4373, respectively, of the 2019-2020 Legislative Session. House Bills 4372 and 4373 passed the House and were reported by the Senate Committee on Judiciary and Public Safety but received no further action.

MCL 333.16221 (H.B. 4121)
333.16226 (H.B. 4122)

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CONTENT

House Bill 4121 would amend the Public Health Code to include a conviction for engaging in sexual contact or sexual penetration under the pretext of medical treatment among the grounds for disciplinary action against a health professional.

House Bill 4122 would amend the Public Health Code to require a disciplinary subcommittee to revoke permanently the license of an individual convicted of engaging in sexual contact or sexual penetration under the pretext of medical treatment.

House Bills 4121 & 4122

Grounds for Discipline; Sexual Contact or Penetration under Pretext of Treatment

Section 16221 of the Public Health Code requires the Department of Licensing and Regulatory Affairs (LARA) to investigate allegations that grounds exist for disciplinary action against a licensee or registrant and authorizes LARA to investigate activities related to the practice of a health profession licensee, registrant, or applicant for licensure or registration. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee.

The grounds for disciplinary action relate to one or more categories, including a violation of a general duty consisting of negligence or failure to exercise due care, a personal disqualification (such as incompetence, lack of good moral character, or substance use disorder), a prohibited act, an unethical business practice, or unprofessional conduct.

Section 90 of the Penal Code prohibits a person from undertaking to medically treat any female person and, while treating her, represent to her that it is necessary or beneficial for her health that she have sexual intercourse with a man, and thereby induce her to have sexual intercourse. A violation is a felony punishable by up to 10 years' imprisonment.

Under House Bill 4121, a personal disqualification would include a conviction for a violation of Section 90 of the Michigan Penal Code, or for a violation of any other State or Federal law that was substantially similar to Section 90. A certified copy of the court record would be conclusive evidence of the conviction.

Sanction for Violation

If a disciplinary subcommittee finds that one or more of the grounds for disciplinary action in Section 16221 exist, it must impose one or more of the sanctions described in the Public Health Code. The sanctions vary depending on the nature of the grounds for disciplinary action. For a conviction of a violation of Section 90 of the Michigan Penal Code, House Bill 4122 would require permanent revocation of a health profession license or registration.

Except as otherwise provided for certain criminal offenses, a disciplinary subcommittee may 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 personal financial gain to the licensee or registrant and harm to the health of patients under the licensee's or registrant's care. Under House Bill 4122, this provision would not apply if the disciplinary subcommittee found that a licensee had been convicted of violating Section 90 of the Michigan Penal Code.

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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.