

SENATE BILL REPORT

EHB 1256

AS REPORTED BY COMMITTEE ON HEALTH & HUMAN SERVICES,
APRIL 2, 1993

Brief Description: Modifying disciplining of health professionals under the uniform disciplinary act.

SPONSORS: Representatives Dellwo, Morris and Dyer; by request of Department of Health

HOUSE COMMITTEE ON HEALTH CARE

SENATE COMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: Do pass as amended.

Signed by Senators Talmadge, Chairman; Wojahn, Vice Chairman; Deccio, Franklin, Fraser, McAuliffe, McDonald, Moyer, Niemi, Sheldon, and Winsley.

Staff: Scott Plack (786-7409)

Hearing Dates: March 23, 1993; April 2, 1993

BACKGROUND:

The Uniform Disciplinary Act (UDA) provides disciplinary procedures and sanctions for unprofessional conduct, unsafe practice and unlicensed practice for most of the health professions regulated by the state. Health care assistants and the practice of pharmacy are not covered by the UDA.

A disciplinary authority may enter into an assurance of discontinuance with a license holder under the UDA in lieu of issuing a statement of charges, or conducting a hearing on any complaint. This consists of a statement of the law and an agreement by the license holder not to violate it. An assurance of discontinuance is not to be construed as an admission of any violation of the UDA. There is no provision for the parties to enter into either a formal or informal stipulated agreement in disposing of disciplinary complaints.

Currently, a disciplinary authority may levy a civil fine for unprofessional conduct not to exceed \$1,000 per violation.

Liability insurers are required to report to the Medical Disciplinary Board any physician's malpractice settlement, award or payment in excess of \$20,000. They must also report to the board when there are three or more claims against a physician in a given year regardless of the amount of the claims.

Physicians are required to pay an annual medical disciplinary assessment equal to the license renewal fee. The assessment

is used to finance the cost of the Medical Disciplinary Board's disciplinary activities. The assessment is not currently charged to physician assistants who are also disciplined by the board.

The Secretary of Health is required to investigate complaints against persons for unlicensed practice, and may issue cease and desist orders after notice and hearing. However, the secretary has no authority to fine persons for unlicensed practice.

The secretary may also issue temporary cease and desist orders to persons practicing without a license after notice and hearing, and upon the determination that the person has actually practiced without a license.

Most of the disciplinary authorities do not have the ability to establish panels of board members to delegate their duties. The disciplinary authorities also do not have the authority to review and audit records of hospital quality assurance committee decisions terminating or restricting the practice privileges of health practitioners.

The secretary is required to appoint a medical practice investigator to inspect the registration and utilization of physician assistants.

SUMMARY:

Health care assistants and the practice of pharmacy are covered by the Uniform Disciplinary Act (UDA).

The use of the assurance of discontinuance for a disposition of a complaint is repealed and replaced with the stipulated agreement. A disciplinary authority may enter into a formal or informal stipulated agreement with a license holder where the license holder elects to forego a hearing. The formal stipulated agreement can be entered into after the filing of any charges against the license holder and contains findings of unprofessional conduct and sanctions.

An informal stipulated agreement can be entered into prior to the filing of charges and contains a statement of allegations and facts. A stipulation is not a finding of unprofessional conduct. It alleges that unprofessional conduct or unsafe practice has occurred and, if proven, would constitute grounds for discipline. The stipulation includes an agreement that specified sanctions may be imposed. The license holder may agree to reimburse the costs of the investigation up to \$1,000 per violation. Under a stipulated agreement the disciplinary authority may agree to forego further disciplinary proceedings.

The maximum amount of civil fines that a disciplinary authority may assess to a violator of the UDA is raised to \$5,000.

Liability insurers are required to report to the Medical Disciplinary Board any physician's malpractice settlement, award or payment in excess of \$100,000. They must also report to the board if any physician has three or more malpractice claims of any monetary amount in a five-year time period.

Physician assistants are required to pay an annual medical disciplinary assessment.

The authority of the Secretary of Health to issue cease and desist orders for unlicensed practice is clarified. The secretary may issue a notice of intention to issue a cease and desist order. The alleged violator may request an adjudicative hearing. The request must be made within 20 days after service of the notice. Failure to request a hearing constitutes a default and may result in a permanent cease and desist order, and may include a fine of up to \$1,000 for each day of unlicensed practice. The secretary may also issue an immediate temporary cease and desist if the public interest will be irreparably harmed by a delay. The alleged violator shall be given the opportunity to a prompt hearing following issuance of the order.

The disciplinary authorities may establish panels of three or more board members to perform the duties of the board. They are also authorized to review and audit the decisions of quality assurance committees terminating or restricting the practice privileges of health practitioners. Health facilities are required to produce these records to facilitate the audit. These records may not be introduced into evidence in any civil action.

The position of medical practice investigator is repealed.

Changes of a technical nature are made involving statutory references, language corrections, and the repeal of conflicting statutes.

SUMMARY OF PROPOSED SENATE AMENDMENT:

The monetary threshold which malpractice awards must be reported to the medical disciplinary board is reduced to \$50,000. Three or more malpractice claims of any monetary amount must also be reported if they occur within a three-year period.

To the extent possible, certification fees for the different categories of health care assistants will be adjusted to reflect the actual costs of disciplinary activities for each category.

Individuals charged with a violation of the UDA may be granted up to an additional 60 days to request a hearing on the charges. The disciplinary authority may grant such requests for good cause.

Modifications are made in the substance abuse treatment programs. The secretary will adopt uniform rules for

evaluating cases where program participants suffer a relapse. The evaluation will encourage participants to continue in the program, without disciplinary action, but may require additional restrictions on their practice.

The Secretary of Health shall develop uniform procedural rules to respond to public inquiries about complaints, investigations and final actions in disciplinary cases. Uniform procedures for conducting investigations are also required. Persons under investigation for a violation of the UDA shall be informed of the nature of the complaint, their right to legal counsel prior to making statements, and that statements made by them may be used in adjudicative proceedings. Witnesses may also be informed that statements they make to investigators may be used in filing charges against the license holder, applicant or unlicensed person under investigation.

Representatives of a disciplinary authority may enter into a written settlement agreement with a person charged with a violation of the UDA. They may impose any lawful sanctions against such person without issuing a finding of unprofessional conduct or inability to practice. Such settlement agreements must be approved by the disciplinary authority. If a settlement agreement is not approved, and the case proceeds to a hearing, any person who participated in the decision to not approve the settlement may not serve as a hearing officer or board panel member during the hearing.

The Secretary of Health, or his or her designee, shall serve as the presiding officer during all proceedings involving disciplinary actions for violations of the UDA. This does not apply to violations of the Funeral Directors' and Embalmers' Practice Act. When the disciplinary authority for the profession involved in the proceeding is a regulatory board the presiding officer shall not have a vote on the final decision.

The separate disciplinary and licensing boards for medicine, chiropractic and dentistry are merged to create a single board for each of these professions. The membership of the Board of Medicine includes 18 members (11 physicians, two physician assistants and five consumers). The membership of the Board of Dentistry includes 16 members (12 dentists and four consumers). The membership of the Board of Chiropractic includes 10 members (seven chiropractors and three consumers).

The definition of a rule subject to Joint Administrative Rules Review Committee review is expanded to include guidelines, interpretative statements, policy statements, declaratory judgments, advisory opinions and other orders of an administrative agency.

The state Board of Funeral Directors and Embalmers is required to report to the Legislature by November 15, 1993 with recommendations concerning incorporation provisions of the UDA into their practice act.

The Secretary of Health is to report to the Legislature by December 1, 1993 concerning implementation of the provisions of the bill.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Changes made in the UDA will help improve the disciplinary authorities' ability to discipline health professionals. The pharmacy profession and health care assistants are the only two professions not subject to discipline by the UDA. They should be covered by the act.

TESTIMONY AGAINST:

There is no need to make health care assistants subject to the UDA. They do not have the authority to handle drugs and will not be able to divert them for other than legal uses. If the health care assistants are made subject to the UDA, the regulatory costs of discipline should be spread among the different categories of health care assistants according to the number of disciplinary cases.

TESTIFIED: Pat Pierce, Eastside Medical Lab (con); Dorothy Canavan, LASSA Laboratory of Pathology (con); Ron Weaver, Department of Health (pro)