



Ohio Legislative Service Commission

Bill Analysis

Lisa Musielewicz

Am. H.B. 40

131st General Assembly
(As Passed by the House)

Reps. Gonzales and Dever, Blessing, Grossman, Brown, Green, Anielski, Baker, Burkley, Duffey, Hackett, Huffman, Kraus, Kunze, McClain, Patterson, Rezabek, Schaffer, Schuring, Slaby, R. Smith, Young

BILL SUMMARY

- Authorizes the State Medical Board to impose a civil penalty on an individual who violates the law administered by the Board, except in certain circumstances.
- Requires the Board to adopt guidelines regarding the amounts of civil penalties to be imposed and prohibits the amount of any civil penalty from exceeding \$20,000.
- Provides that an adjudication hearing is not required if the Board imposes a civil penalty for failure to complete continuing education requirements but does not take any other action.
- Eliminates provisions that result in the automatic suspension of a certificate to practice for failure to renew or register the certificate, including failure to complete continuing education requirements, and instead permits the Board to suspend the certificate.
- Permits the Board to require skills assessments before restoring or issuing certain certificates to practice.

CONTENT AND OPERATION

Civil penalties imposed by the State Medical Board

The State Medical Board, in its regulation of various health care professionals, has the authority to take a number of disciplinary actions against those who violate the laws it administers. Under those laws, the Board issues certificates to practice to the following: physicians (including podiatrists), physician assistants, massage therapists,

cosmetic therapists, naprapaths, mechanotherapists, anesthesiology assistants, oriental medicine practitioners, acupuncturists, and radiologist assistants. The board also issues licenses to genetic counselors.

Existing law authorizes the Board to limit, revoke, or suspend an individual's certificate or license, refuse to register an individual, refuse to reinstate a certificate or license, or reprimand or place on probation a certificate or license holder for violations. It does not generally authorize a civil penalty.

The bill authorizes the Board to impose a civil penalty on a certificate or license holder who violates the applicable laws administered by the Board, except in certain circumstances (see "**Exceptions**," below).¹

If the Board imposes a civil penalty, it must do so pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). An affirmative vote of at least six Board members is required.

Guidelines for penalty amounts

The bill requires the Board to adopt guidelines regarding the amounts of civil penalties to be imposed and permits the Board to amend the guidelines. At least six Board members must approve the adoption or amendment of the guidelines. The amount of the penalty may not exceed \$20,000.²

Deposit and use of penalties

The bill requires that the Board deposit any civil penalties it receives in the state treasury to the credit of the existing State Medical Board Operating Fund. With respect to civil penalties imposed for violations involving drug, alcohol, and substance abuse, the bill specifies that the Board must use the amounts received solely for investigation, enforcement, and compliance monitoring.³

Exceptions

There are two exceptions to the Board's authority to impose a civil penalty under the bill. Both involve circumstances in which a civil penalty is already specified in existing law.

¹ R.C. 4730.252, 4731.225, 4760.133, 4762.133, 4774.133, and 4778.141.

² R.C. 4730.252, 4731.225, 4760.133, 4762.133, 4774.133, and 4778.141.

³ R.C. 4730.14(G), 4730.252(B), 4731.225(C), 4731.281(D), 4760.133(B), 4762.133(B), 4774.133(B), and 4778.141(B).

(1) Failure to complete continuing education – If the Board finds that a certificate holder has failed to complete continuing education requirements, current law permits the Board to impose a civil penalty of not more than \$5,000, in addition to or instead of any other authorized action. The bill maintains this civil penalty and specifies that, if the Board imposes only a civil penalty and takes no other disciplinary action, it cannot conduct an adjudication under the Administrative Procedure Act.⁴

(2) Prohibited referrals – Current law prohibits a physician (including a podiatrist) from referring a patient to a person for a designated health service if the physician, or a member of the physician's immediate family, has certain financial relationships with the person. A physician who violates this prohibition is subject to a civil penalty of not more than \$5,000 for an initial violation and \$20,000 for subsequent violations.⁵ The bill maintains this law.

Certificate suspension for failure to renew or register

Under current law, the failure of a physician (including a podiatrist) or physician assistant to renew or register a certificate to practice operates to suspend the certificate automatically. The law specifies procedures to (1) reinstate a certificate that has been suspended for two years or less or (2) restore a certificate that has been suspended for more than two years.

The bill eliminates the automatic suspension and instead allows the Board to suspend a certificate for a failure to renew or register.⁶

In general, the bill permits the Board to reinstate or restore a certificate under the same terms and conditions as existing law. However, in the case of a physician (including a podiatrist), the bill increases the reinstatement fee from \$50 to \$100 and the restoration fee from \$100 to \$200. The fees for a physician assistant remain the same.⁷

Conditions for restoring or issuing certain certificates

Skills assessments

Under existing law, the Board may restore a certificate to practice that has been in a suspended or inactive state for more than two years. The Board may also issue a certificate to practice to an applicant who has not been engaged in practice for more

⁴ R.C. 4730.14 and 4731.281.

⁵ R.C. 4731.225(A).

⁶ R.C. 4730.14 and 4731.281.

⁷ R.C. 4730.14 and 4731.281.

than two years as an active practitioner or a student. Before restoring or issuing a certificate, the Board may impose terms and conditions, including (1) requiring the applicant to pass an examination to determine fitness to resume practice, (2) requiring the applicant to obtain additional training and pass an examination, or (3) restricting or limiting the applicant's practice.

The bill authorizes the Board to impose additional terms and conditions before restoring or issuing a certificate to practice. These include:

(1) Requiring an assessment of the applicant's physical skills for purposes of determining whether the applicant's coordination, fine motor skills, and dexterity are sufficient for performing medical evaluations and procedures in a manner that meets the minimal standards of care;

(2) Requiring an assessment of the applicant's skills in recognizing and understanding diseases and conditions;

(3) Requiring the applicant to undergo a comprehensive physical examination, which may include an assessment of physical abilities, evaluation of sensory capabilities, or screening for the presence of neurological disorders.⁸

Conforming and clarifying changes

The provisions regarding the Board's authority to restore or issue certificates to practice are part of the law governing physicians (including podiatrists) and practitioners of the limited branches of medicine, which consist of cosmetic therapy, massage therapy, naprapathy, and mechanotherapy.⁹ For consistency within these provisions, the bill includes references to podiatrists and practitioners of limited branches of medicine where the references are currently omitted.¹⁰

In addition to the changes made for consistency, the bill specifies that the Board is authorized to impose one or more of the terms and conditions included in either existing law or the bill. Current law provides that the Board may impose any of the specified terms and conditions, but it does not expressly authorize the Board to impose more than one of them.¹¹

⁸ R.C. 4731.222.

⁹ R.C. 4731.15 and 4731.151, not in the bill.

¹⁰ R.C. 4731.222.

¹¹ R.C. 4731.222(B).

HISTORY

ACTION

DATE

Introduced	02-04-15
Reported, H. Gov't Accountability & Oversight	03-04-15
Passed House (96-0)	03-17-15

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