

Department of Planning and Budget 2003 Fiscal Impact Statement

1. Bill Number HB1441

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Sears

3. Committee Health, Welfare and Institutions

4. Title Health regulatory boards; disciplinary procedures; report requirements

5. Summary/Purpose: This bill would lower the disciplinary standard for persons licensed by the Boards of Medicine and Physical Therapy from gross negligence to simple negligence. In addition, the legislation creates a confidential consent agreement that may be used by a health regulatory board (board), in lieu of discipline, only in instances where there is not probable cause to believe the practitioner has

- (i) demonstrated gross negligence or intentional misconduct in the care of patients; or;
- (ii) conduct ed his practice in a manner as to be a danger to patients or the public.

Such agreement will include findings of fact and may include an admission or a finding of a violation. Such agreement may be used by a board in future disciplinary proceedings. A board may enter into a confidential consent agreement with a practitioner involving a standard of care violation only twice in 10 years. The bill provides that before reinstatement to practice, a 3-year minimum period must elapse after the revocation of the certificate, registration or license of any person regulated by one of the boards; however, individuals who have had their licenses revoked by a health regulatory board are grandfathered and subject to provisions concerning reinstatement in effect prior to July 1, 2003. Existing reporting requirements by hospitals, health care institutions, health professionals and others concerning disciplinary actions, certain disorders, malpractice judgments, and settlements are clarified concerning timing for the reports and the information required to be reported to the health regulatory boards. Civil penalties for failure to report are increased up to a maximum of \$25,000 for hospitals and health institutions and \$5,000 for all others. Certification, registration and licensure are conditioned upon the payment of such penalties. The confidentiality of the reported information is clarified. In addition, the Department of Health Professions' biennial reporting requirements on disciplinary actions by each of the health regulatory boards is clarified. The Department is given increased authority to take action against unlicensed practice and is directed to investigate all complaints within the jurisdiction of the relevant health regulatory board. Finally, the executive committee of the Board of Medicine is increased by one member and is required to include two citizen members.

6. Fiscal impact estimates are preliminary

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2003-04	\$1,705,000	27.5	NGF
2004-05	\$1,625,000	27.5	NGF
2005-06	\$1,625,000	27.5	NGF

7. Budget amendment necessary: Yes

8. Fiscal implications:

Additional Costs

The Department of Health Professions (DHP) estimates that a high percentage of those (75 percent or 750 cases) will result in cases being sent to the boards (about 65 percent to Medicine, 30 percent to Nursing and 5 percent to Pharmacy). At least half of that number will likely be returned to the department's Administrative Processes Division (APD) to negotiate a confidential consent agreement, which will entail a review of the investigative file, a determination of completeness, drafting of findings of fact, negotiations with the practitioner and/or his attorney, working with boards on terms and conditions. Together with cases that are currently closed as undetermined, which may lend themselves to a confidential consent agreement, it is projected that APD and board staff will be crafting an additional 700 to 900 consent agreements each year. Most of those agreements will be with licensees of the Board of Medicine, though other boards will use the confidential consent agreement for such violations as failure to obtain continuing education or facility violations. Without confidential consent agreements, additional reporting (by mandated reporters, including mental health providers) would result in the number of informal conferences and formal hearings increasing for all boards. Medicine would experience a very significant increase because of the lower standard of simple negligence.

The department also assumes that this legislation will significantly increase the monetary penalties and enforcement actions for failure to adhere to the revised reporting requirements. For example, failure to report misconduct by health care practitioners, a lack of specificity about information that is reportable and immunities for reporting will generate a minimum of 1,000 additional investigations each year. The department currently receives approximately 4,000 reports per year, with the majority coming from consumers. Approximately 20 percent come from required reporters (hospitals, nursing homes, etc.) or about 800 per year. Of the 200 licensed hospitals in Virginia, 42 percent have never made a report to DHP, so it is certainly possible that five additional reports per hospital will be generated by this legislation.

Additional reporting will likely increase the number of proceedings (both informal conferences and formal hearings for Medicine and Nursing and to some degree in Pharmacy). It is estimated that an additional \$100,000 per year may be spent on proceedings for those boards with the majority of the expenses to Medicine. With a less clearly defined standard of misconduct, the Board believes that more physicians will hire attorneys and expert witnesses to counteract the allegations. In other boards, the small number of additional proceedings will likely be offset by an increased use of confidential consent agreements.

Impact on renewal fees

It is estimated that the impact of an additional cost related to an increased number of reports and disciplinary cases will fall primarily on doctors of medicine, osteopathy, podiatry and chiropractic, and secondarily on the licensees of the Boards of Nursing and Pharmacy. To fund the additional costs for the first two fiscal years, the Board of Medicine would need to increase the biennial renewal fee for doctors by approximately \$73 or an increase of 28 percent. For doctors of medicine, osteopathy, and podiatry, the fee would go from \$260 per biennium to \$333 and for doctors of chiropractic from \$235 to \$308. That figure is calculated based on 60 percent of the estimated costs attributable to doctors ($\$1,705,000 + \$1,625,000 = \$3,330,000 \times 60 \text{ percent} = \$1,998,000 / 27,433 \text{ doctors with active licenses} = \73). If 30 percent of the increased costs fall to the Board of Nursing, the biennial renewal fees for registered and licensed practical nurses would increase by approximately \$18 with the renewal fee increasing from \$70 to \$88 for a 26 percent increase. ($\$3,330,000 \times 30\% = \$999,000 / 111,725 \text{ nurses with active licenses} = \18). If 10 percent of the costs fall to Pharmacy, the annual renewal fee for pharmacists would increase by approximately \$21 with the renewal fee increasing from \$100 to \$121. (The Board of Pharmacy has just doubled the annual renewal fee from \$50 to \$100, so this would represent another 21 percent increase.) ($\$3,330,000 \times 10 \text{ percent} = \$333,000 / 7803 \text{ active pharmacists} = \43 per biennium).

Divisions	Number Positions	FY04	FY05
Enforcement (Investigators)	10.50	630,000	630,000
Enforcement (Admin Support)	2.00	70,000	70,000
Enforcement (Intake Staff)	2.00	110,000	110,000
Enforcement (Compliance)	3.00	180,000	180,000
Enforcement (Compliance Admin Support)	1.00	35,000	35,000
Administrative Proceedings (5.00	275,000	275,000
Administrative Proceedings (Admin Support)	1.00	35,000	35,000
Medicine (Admin. Support)	1.00	35,000	35,000
Medicine (P - 14 Physicians Case Reviews)	1.00	125,000	125,000
Nursing (Admin Support)	1.00	35,000	35,000
Equipment/Supplies (New Hires)		80,000	-
Additional Formal and Informal Hearing Cost		95,000	95,000
Total	27.50	1,705,000	1,625,000

9. Specific agency or political subdivisions affected:

Department of Health Professions
Office of the Attorney General

10. Technical amendment necessary: No

11. Other comments: None

Date: 02/3/03/kwm

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cc: Secretary of Health and Human Resources