CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 223

Citations Affected: IC 25-1-7; IC 25-22.5-2.

Synopsis: Medical licensing board investigations. Authorizes the medical licensing board of Indiana (board) to investigate and assess civil penalties for specified violations by licensed physicians. Requires the division of consumer protection within the office of the attorney general to forward complaints about specified violations to the board unless certain circumstances are met. Allows a physician who is determined by the board to have committed a violation to appeal the board's determination. Establishes the physician compliance fund consisting of penalties assessed and collected by the board for violations determined by the board through investigations. Specifies reports that the board is required to make to the National Practitioner Data Bank concerning disciplinary action taken by the board, and prohibits the board from reporting specified administrative penalties. **(This conference committee report makes the bill effective upon passage and removes language that: (1) redefined "class I child care home" to include full-day kindergarten level children among the three additional school age children that a class I child care home could serve during the school year; and (2) required the legislative council to assign a committee to study issues concerning the need for surety bonds for certain Medicaid transportation providers to cover overpayments and false claims.)**

Effective: Upon passage.

Adopted Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 223 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 25-1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in subsection (b),** the division is responsible for the investigation of complaints concerning licensees.

(b) The medical licensing board of Indiana shall investigate a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8. The division shall forward a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8 to the medical licensing board of Indiana for investigation by the board. However, if the complaint includes a violation in addition to a violation specified in IC 25-22.5-2-8, the division shall investigate the complaint in its entirety and notify the medical licensing board of Indiana of the investigation.

SECTION 2. IC 25-1-7-5, AS AMENDED BY P.L.206-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Subsection (b)(1) does not apply to:

(1) a complaint filed by:

(A) a member of any of the boards listed in section 1 of this chapter; or

(B) the Indiana professional licensing agency; or

(2) a complaint filed under IC 25-1-5-4.

(b) **Except as provided in section 3(b) of this chapter,** the director has the following duties and powers:

(1) The director shall make an initial determination as to the merit of each complaint. A copy of a complaint having merit shall be submitted to the board having jurisdiction over the licensee's regulated occupation, that board thereby acquiring jurisdiction over the matter except as otherwise provided in this chapter.

(2) The director shall through any reasonable means notify the licensee of the nature and ramifications of the complaint and of the duty of the board to attempt to resolve the complaint through negotiation.

(3) The director shall report any pertinent information regarding the status of the complaint to the complainant.

(4) The director may investigate any written complaint against a licensee. The investigation shall be limited to those areas in which there appears to be a violation of statutes governing the regulated occupation.

(5) The director has the power to subpoena witnesses and to send for and compel the production of books, records, papers, and documents for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the director.

SECTION 3. IC 25-1-7-10, AS AMENDED BY P.L.1-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) **Except as provided in section 3(b) of this chapter,** all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:

(1) under law; or

(2) for the advancement of an investigation.

SECTION 4. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006, SECTION 446, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **Except for a penalty under section 8 of this chapter,** the funds obtained from registration and penalty fees shall, upon receipt thereof, be accounted for and paid over by the agency to the treasurer of state and be placed in the general fund of the state. The expenses of the board shall be paid from the general fund upon appropriation being made therefor in the manner required by law for the making of such appropriations. The amount to be expended by the board shall not exceed the amount collected by the board from all sources.

SECTION 5. IC 25-22.5-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) The board shall implement a**

program to investigate and assess a civil penalty of not more than one thousand dollars ($1,000) against a physician licensed under this article for the following violations:

(1) Licensure renewal fraud.

(2) Improper termination of a physician and patient relationship.

(3) Practicing with an expired medical license.

(4) Providing office based anesthesia without the proper accreditation.

(5) Failure to perform duties required for issuing birth or death certificates.

(b) An individual who is investigated by the board and found by the board to have committed a violation specified in subsection (a) may appeal the determination made by the board in accordance with IC 4-21.5.

(c) In accordance with the federal Health Care Quality Improvement Act (42 U.S.C. 11132), the board shall report a disciplinary board action that is subject to reporting to the National Practitioner Data Bank. However, the board may not report board action against a physician for only an administrative penalty described in subsection (a). The board's action concerning disciplinary action or an administrative penalty described in subsection (a) shall be conducted at a hearing that is open to the public.

(d) The physician compliance fund is established to provide funds for administering and enforcing the investigation of violations specified in subsection (a). The fund shall be administered by the Indiana professional licensing agency.

(e) The expenses of administering the physician compliance fund shall be paid from the money in the fund. The fund consists of penalties collected through investigations and assessments by the board concerning violations specified in subsection (a). Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 6. **An emergency is declared for this act.**

(Reference is to ESB 223 as reprinted April 12, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 223

Signed by:

Senator Miller Chairperson	Representative Crouch
Senator Breaux	Representative Welch
Senate Conferees	**House Conferees**