CONFIDENTIAL

LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number:_H.350_____ Name of Bill:_An act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct

Agency/ Dept:AHS/VDH_____ Author of Bill Review:_David Herlihy, Board of Medical Practice; David Englander and Harry Chen. M.D. Commissioner___

Date of Bill Review: May 5, 2014_____ Status of Bill: (check one):

____Upon Introduction __ __ As passed by 1st body ___X__As passed by both bodies _____ Fiscal

Recommended Position: (Only with regard to Part I – the Board does not have a position on Part II)

__X__Support __ __Oppose _____Remain Neutral _____Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*
This bill has two distinct parts. One part deals with the Board of Medical Practice. The other part is an amendment that makes a modification to the Prescription Drug Cost Containment law (Title 18, Chapter 91).

Part I. Medical Board: 1) Public disclosure of Board actions. Under current law, Board actions are confidential unless charges are filed, when statute requires the actions be included in two public postings. One location is the list of all Board actions (the "registry"). The other location is the "health care professional profile" that lists facts about licensees. Now the law provides that every case is included with the Board actions and as part of the profile, regardless of whether the charges resulted in findings of unprofessional conduct. The bill proposes to change the law so that if the charges do not lead to any findings against the provider, the information would not be included in the registry or the profile. It also calls on the Board to provide a summary of the outcome of split decisions. 2) Investigator qualifications and training - investigators must either be certified law enforcement officers or annually complete training comparable to the annual training required to maintain law enforcement certification. It also calls for all investigators to be provided specialized training as practicable. 3) The bill tasks the Board and VMS with working on rules relating to investigative process and to report to the Legislature.

Part II. Prescription Drug Cost Containment (started as H.633): One method for cost control in the cost containment law as it exists (Ch 91, T18) is a provision that prohibits the manufacturers of drugs and medical devices from giving anything of value to a health care provider other than what is defined to be an "allowable expense." 18 V.S.A. § 4631a. The law prevents manufacturers from paying for meals at educational events for healthcare providers, making it a civil violation to do so, subject to injunction and a penalty of up to $10,000 per violation. That has led to reports of Vermont-licensed providers being asked to pay reimbursement for meals given to participants at educational events. Up to now, manufacturers have been allowed to sponsor educational events, including some funding for meals for conference participants, but the program content must be objective, free from industry control, and not promote specific products. 18 V.S.A. § 4631a(1). There also is an exception for provision of coffee, snacks, and refreshments at a booth at a conference or seminar. 18 V.S.A. § 4631a(b)(2)(K), but that exception does not reach organized educational events. This part of H.350

proposes to add an exception to allow manufacturers of drug devices to sponsor an educational program at a regional or national professional society meeting. The bill adds a new subsection to the list of allowable expenditures that would allow a medical device manufacturer to fund a bona fide educational event at which participants are provided meals and other food. The element that is removed in this amendment, which makes it different from the existing provision regarding meals at educational events, is that it is not subject to the requirement to be "objective, free from industry control, and does not promote specific products." 18 V.S.A. § 4631a(1).

2. Is there a need for this bill? *Please explain why or why not.*
Part I: There is no urgent need for these changes, but as passed it is not objectionable and it will bring about a change in public reporting of Board results that the licensed community may view as more fair to members of the profession. Part II: Some health care providers feel they have missed out on training opportunities.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?
Part I: There will be some cost to have the BMP IT contractor make changes to the way the system reports Board results. The costs are not known at this time, but all Board expenses are ultimately borne by licensees through payment of licensing fees. It may be difficult to make the changes to the system. The profiles posted by the Board have been a challenge for IT – a rough estimate of the cost is $20,000 and the software contractor may need a long time to do the project. There will be a need to negotiate and write a contract modification, have the contractor make changes, and test, which may take a year. There could be some cost associated with additional training requirements for investigators, but the Board has historically supported having the investigators maintain the certifications called for by the bill, so the impact would be minimal. The Health Department would not be affected by changes to the Prescription Drug Cost Containment amendments.
Part II: No costs.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?
No direct impact on other departments.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (f*or example, public, municipalities, organizations, business, regulated entities, etc)*
Part I: The public would have less access to information about providers. However, on the whole, this should be of interest mostly only to the Board and the Board's licensees. Part II: Those who are strong believers that Chapter 91 helps to limit the cost of prescription drugs and medical equipment may be opposed.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Part I: Licensees may support it based on a preference to not have public disclosure of the fact that they had been charged with unprofessional conduct, even in cases in which they prevailed. **Part II:** Health care providers and manufacturers of medical devices. Providers because they would be able to accept meals in conjunction with certain training, manufacturers because they would have greater freedom to provide training and promote sales of their devices.

6.2 Who else is likely to oppose the proposal and why? Part I: Advocates for transparency in government could oppose, based on the fact that this is a limitation on the posting of a full record of Board activities. **Part II:** Those who believe the cost for drugs and devices can be controlled through

preventing gifts and who also believe that there is no off-setting advantage to having health care professionals receive training from the manufacturers.

7. Rationale for recommendation: *Justify recommendation stated above.*

Part I: On the whole, BMP does not oppose removal of the information about "complete acquittal" cases from the website. It is extremely rare for that to happen and it will contribute to a sense among licensees that they are treated fairly. The requirements for training for investigators are fine. The Board does it anyway and the House accommodated the Board's request to include the term "practicable," so as to ensure that the inability to get an investigator to a training session would not prevent someone from starting with the Board.

Part II: The Board of Medical Practice Does not have a position on the cost-containment portion of the bill.

Specific modifications that would be needed to recommend support of this bill*: Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

None.

Secretary/Commissioner has reviewed this document: _____ Date: _____

Please return this bill review as a Microsoft Word document to drusilla.roessle@state.vt.us