

The Impending New Era for Criminal Law and Illinois Health Care Worker Licensing

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Are you currently or are you thinking about becoming a health care professional in Illinois? A potential new Illinois Law will cause many to regret their decision and force many with health care career ambitions to think again.

A bill that has passed both houses and currently sits with the Governor of Illinois, HB1271 prohibits anyone convicted of battery against a patient, who is a registered sex offender, or has been convicted of any forcible felony against even a non patient from remaining or ever becoming a licensed health care worker in the State of Illinois.

Now, such a law may seem perfectly reasonable, but even a superficial perusal actually reveals critical deficiencies in what would otherwise be a much-needed piece of legislation.

While the law may seek to target dangerous sex offenders and those who have a history that would suggest potential abuse of patients, the law is much too broad. Let's take a look at a few examples of individuals who could get swept up in this impending new legislation.

Because a forcible felony can mean any felony involving the use of threat of physical force of violence against any individual (720 ILCS5/2-8), this could mean a person who got into a bar fight in college. It could just as easily catch someone who was involved in a domestic argument prior to seeking help with anger management. As far as the sex offender registry component, this could include someone who has three convictions for public indecency or a conviction for indecent solicitation of an adult. Additionally, date rape can occur when an adult cannot provide legally enforceable consent due to intoxication. Moreover, even juveniles can be required to register, which may mean that a bad childhood decision will prevent individuals from turning around their lives and serving society as a health care worker.

Convictions may include those as part of a plea deal, which can include a misdemeanor with no jail time. Convictions falling under this impending law may also encompass situations where the person is no longer required to be in the sex offender registry.

One wouldn't argue that the proven or the alleged actions leading to the convictions listed above are necessarily defensible or an ideal part of a health care practitioner's history, but these particular actions among others do not necessarily prevent a person from being a capable and thoughtful professional caregiver. It should be noted that certain individuals decided to accept a plea in order to avoid costly and time-consuming trial, despite the fact that they maintained their innocence, before this potential law existed. Those individuals made their decision, many times under counseling of an attorney, without knowing that this soon-to-be statute would then take away their livelihood.

As the law stands now, the Illinois Department of Financial and Professional Regulation has the power to review each licensure application and complaint to the agency on a case-by-case basis. The Department could deny a person from having a license or could issue a license with restrictions. A restriction could mean that a pharmacist or nurse would have to be supervised or that a doctor or a chiropractor would always have to have a chaperone while seeing patients. If a health care licensee has restrictions on their license, most of the time this is through a probation that is reportable discipline on the Department's website. Consequently, potential patients and employers can view discipline and

reason behind it.

Under this proposed legislation, the Department would lose its power and health care workers who are already licensed would have those licenses permanently revoked without any type of hearing. This means that people who fall under one of the categories of this law who the Department previously deemed safe to practice would lose their licenses, those who have already invested a great deal of time and money on health care education and training would not be able to utilize those skills, and people who aspire to help others in a health care field would not be able to fulfill those dreams.

Thus, potentially the biggest concern is that the individuals already holding a license who may find themselves facing a permanent revocation will have no due process rights. Normally, in the health care fields, if the Department's prosecutors unit aims to take away licensure, the licensee is given an opportunity for a hearing in front of an administrative law judge and a board made up of people in that particular profession to determine whether the person should be allowed to retain their license. If the Department intends on denying licensure to a health care worker applicant, there is also a licensure board made up of practitioners that deliberates on a case-by-case basis. Without the opportunity for a hearing or appearance in front of one of the Department's licensing or disciplinary boards, the State of Illinois is depriving people of the right to practice their professional, which can be interpreted as a serious due process violation. This is due to the law not differentiating against people who are convicted in the future and those who have old convictions. In other words, the would-be statute has no grandfather clause.

A potential consequence of this imminent statute is to reduce the current health care worker force in the State of Illinois and to scare away many future Illinois licensed professional. This could greatly impact already underserved populations. Moreover, Illinois has already been described as being in a crisis due to the high levels of malpractice insurance premiums in the State, which have already contributed to a decreased health care work force.

Despite the good intentions behind the prospective law and the desire of the legislature to protect the patients and consumers of health care services in the State of Illinois, the looming statute is too broad, denies individuals their due process rights, and will ultimately decrease the already suffering health care worker population in the State. It is still possible to stop, delay, or amend the language of the bill and we encourage all health care workers directly affected by this legislation to contact an attorney to discuss their rights.