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SELLERS, GALENBECK & NELSON

AN ASSOCIATION OF SOLE PRACTITIONERS

January 25, 2021

**RE: House Study Bill 75, An Act relating to disciplinary hearings conducted by professional licensing boards.**

Dear Representative Bergan, Representative Jeneary, and Representative Bennett;

Please allow this correspondence to serve as a comment to House Study Bill 75, "An Act relating to disciplinary hearings conducted by professional licensing boards."

The undersigned are attorneys who work primarily in agency defense. Many of these cases involve representing licensees before the various licensing boards in Iowa.

The changes the licensing boards' intend to make in this proposed legislation legalizes what has been these boards' practice for decades in violation of the existing Iowa Code § 272C.6.

In essence, Iowa Code § 272C.6(4)(a) makes investigative information gathered in a disciplinary case against a licensed professional confidential until a licensing board has included such information in a final agency action. What the boards prefer is to release this information to the public in a statement of charges before a licensee is given an opportunity to defend themselves. This means any allegation – no matter how untrue – could be disseminated to the public at large.

The boards have presented these amendments now because our office recently won a district court case that would require the Iowa Board of Medicine (and presumably all licensing boards) to comply with the confidentiality provisions of Iowa Code § 272C.6. Included with this correspondence is the district court decision (CVCV057453), which has been appealed by the Iowa Board of Medicine to the Iowa Supreme Court. It details many of the reasons why Iowa Code § 272C.6 should remain intact in its present form.

The lawsuit specifically challenges the Board's longtime practice of publishing investigative information in statements of charges and press releases in violation of this statute.

Keeping investigative information confidential protects doctors, nurses, pharmacists, dentists, social workers, therapists, and numerous other professionals from unwarranted disclosure of embarrassing or professionally damaging information. This information should be confidential at least until it can be vetted by a licensing board and under the guidance of an administrative law judge after a licensee has been given an opportunity to explain and defend themselves.

Licensees are granted few protections in defending their careers. The rules of evidence do not apply. Hearsay is authorized and widely accepted in agency proceedings. The standard of proof to sanction is, in practice, less than a preponderance, and boards rely on their professional discretion instead of established legal elements in deciding to discipline. If an agency case is subject to judicial review, the courts, in most cases, must give these agencies deference.

One public accusation against a professional of incompetence or impropriety is enough to end a career. Even if an allegation is ultimately proven untrue, the drafters of Iowa Code 272C.6(4) knew that once a public impression has been made, a professional's career can be irreparably harmed. Often, complaints are made by competitors who hope to drive a licensee out of practice, even for a short while, to capture some extra business.

The sound policy the Legislature has established in the current Iowa Code § 272C.6(4) strikes a balance between protecting the public and giving a licensee the chance to defend their careers. It at least prevents licensing boards from publishing unvetted and undefended allegations until due process has run its course. To keep the confidentiality in Iowa Code § 272C.6(4) limited to the listed exceptions – which includes a *final order* of a licensing board – also prevents boards from coercing licensees into a settlement to avoid the allegations from being made prematurely public. This is a common practice.

This legislation also includes forcing a licensee to pay for the privilege of being investigated by a licensing board, which is simply appalling.

Licensing boards are appointed bodies that wield far greater power over those who fall in their jurisdiction than do the courts over criminals. Licensees have often spent years pursuing education and honing their skills to pursue their chosen careers. They are often celebrated and critical members of our communities. They should at least be given the opportunity to defend their careers before being publicly convicted and hanged, as these boards are now asking this committee to allow.

If anything, the Legislature should explicitly demand that disciplinary charges remain confidential until a licensing board has arrived at a final decision.

If you should have any additional questions or concerns, please do not hesitate to contact us at 515-221-0111 or by email.

Thank you for your time and consideration.

Sincerely,

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