Bill as Introduced

SB 219 – AS INTRODUCED

2003 SESSION

03-1199
05/09

SENATE BILL ***219***

AN ACT relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

SPONSORS: Sen. Peterson, Dist 11

COMMITTEE: Judiciary

ANALYSIS

This bill limits the superior court clerk's notice obligation to those regulatory boards that the clerk reasonably believes license or regulate the convicted health care provider.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 219 – AS INTRODUCED

03-1199
05/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Clerks of Court; Notice to Health Care Regulatory Boards. Amend RSA 499:10-a to read as follows:

499:10-a Notice to Health Care Regulatory Boards. Every clerk of the superior court shall, upon the felony conviction of any person licensed or registered as a health care provider in the state of New Hampshire, notify the appropriate health care regulatory board of such conviction. ***The clerk's duty under this section shall be limited to those boards that the clerk reasonably believes license or regulate the convicted health care provider.***

2 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Senate Judiciary
March 6, 2003
2003-0572s
05/09

Amendment to SB 219

Amend RSA 499:10-a as inserted by section 1 of the bill by replacing it with the following:

499:10-a Notice to Health Care Regulatory Boards. Every clerk of the superior court shall, upon the felony conviction of any person licensed or registered as a health care provider in the state of New Hampshire, notify the appropriate health care regulatory board of such conviction. ***The clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person is a licensed health care provider.***

Committee Minutes

Judiciary Committee

Hearing Report

To: Members of the Senate

From: Susan Duncan
Senior Legislative Aide

Re: **SB 219** – *AN ACT relative to superior court notice to health care regulatory boards of felony convictions of health care providers*

Hearing date: March 4, 2003

Members present: Senators Peterson, Foster, Clegg, Roberge and Sapareto

Members absent: None

Sponsor(s): Senator Peterson

What the bill does: This bill limits the superior court clerk's notice obligation to those regulatory boards that the clerk reasonably believes license or regulate the convicted health care provider.

Who supports the bill: Senator Peterson
Attorney Ray Taylor, Court Clerk, representing the Superior Court
Attorney Roger Phillips, New Hampshire Trial Lawyers
Bob Blaisdell, New Hampshire Trial Lawyers

Who opposes the bill: No one spoke in opposition

Summary of testimony received:

- This legislation was filed at the request of the Supreme Court.
- Since this statute was enacted in 1998, the dilemma for court clerks has been that they are not always aware if people who are convicted are licensed as a healthcare provider.
- During the pre-sentence investigation on felony offenses, the clerk of the court is not present and the information obtained in these sessions is not read by the clerk.
- The definition of "health care provider" is extremely vague and broad.

- Attorney Taylor offered possible language to assuage his concerns with reporting: "the clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person is a licensed health care provider."

Funding: No financial impact

Action: Senator Clegg moved "Ought to Pass, As Amended." Senator Sapareto seconded the motion. The committee voted 5 to 0 in support. Senator Peterson will report the bill out of committee.

sfd
[file: SB 219 report]
Date: March 6, 2003

Date: March 4, 2003
Time: 11:35 a.m.
Room: State House, Room 105-A

The Senate Committee on Judiciary held a hearing on the following:

SB 219 relative to superior court notice to health care regulatory boards of felony convictions of health care providers

Members of Committee present: Senator Peterson
Senator Foster
Senator Clegg
Senator Roberge
Senator Sapareto

The Vice Chair, Senator Foster, opened the hearing ON SB 219, and called upon Senator Peterson, prime sponsor of the bill, to provide testimony.

Senator Andrew R. Peterson, D. 11: Thank you, Senator. This bill, which was brought forward by myself on behalf of and at the request of the Supreme Court, is before you for consideration. Those behind me have a greater knowledge of its content. Thank you.

Senator Joseph A. Foster, D. 13: Thank you. Any questions from the Committee?

Senator Andrew R. Peterson, D. 11: I will call Ray Taylor from the Superior Court. Welcome.

Ray Taylor: Good morning. Chairman Peterson and members of the Committee, good morning. For the record, my name is Ray Taylor. I am a resident of Hampton. I am an attorney and, for the last twenty years, I have been serving as Clerk of the Superior Court of Rockingham County. So I have great interest in this bill.

Simply, this statute was enacted in 1998 and it required the Superior Court clerks to notify the appropriate health care regulatory board of a felony conviction of a person licensed or registered as a health care provider.

The dilemma the clerks find themselves in is we are not always aware of when somebody is in fact licensed or registered as a health care provider. Actually, if I could ask Committee members to take a look at this. **Please see copy of statute attached hereto and referred to as Attachment #1.**

Up until I was asked to come by Chief Justice Murphy today to speak in favor of this bill, I guess I had assumed I knew what a health care provider was. But a quick search of the statutes via the internet shows that there may be some difference of opinion as to what a health care provider is. I assumed we were talking doctors, dentists, nurses, pharmacists. I'm not sure optometrist would have crossed my mind, but I don't know. Are EMTs health care providers, etc?

So, I think I have two points, if I could make them. The first is, how do we know if someone is licensed or registered by a board? The answer, candidly is, we don't. Most people who are charged with a crime, they are charged under their name. They will have the date of birth, they will have the offense, and they might have their address. They will have the date of the offense. They don't say, "Oh, by the way, he is a licensed nurse" or "he's an EMT". So, I think the first issue is we may have people going through our system who have felony convictions that we are totally unaware are licensed by any board in New Hampshire. So, the duty to report to that board really is something we can't comply with.

The wording of the statute, I think, puts kind of the emphasis on the board and I was going to suggest, and I just wrote it out a few minutes ago, that probably better wording would be something to the effect that the clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person convicted is licensed or registered as health care provider. **Please see Clerk Taylor's handwritten amendment, attached hereto and referred to as Attachment #2.**

The only time, and I'm not sure how familiar the Committee is with the criminal process, but the time that someone's occupation would come up would probably be in a pre-sentence investigation in a felony case. There is a report done by probation.

Senator Andrew R. Peterson, D. 11: Could you please repeat that language. I take it you are suggesting an amendment.

Clerk Taylor: Yes.

Senator Andrew R. Peterson, D. 11: If we could have it, even if it is...

Clerk Taylor: I would be happy to give it to the Committee. That would address the issue of when we are aware that someone in fact is licensed by a board.

I think the second issue is what the definition of a health care provider is and I didn't necessarily want to go there on supporting this. But, it may be that the Committee would want to consider whether or not you should define exactly who it is you intend. If you mean doctors, dentists, pharmacists and nurses, for instance, maybe you should just say that instead of just saying health care provider. I am a little concerned that one of those statutes seems to indicate if you are a CEO of a hospital or on the financial staff, you might be a health care provider. Clearly, I would have never thought we had any duty to report.

Senator Andrew R. Peterson, D. 11: If I could just interrupt you while I am getting in the habit of it. If I could just reread this amendment for the Committee so they could understand it as the bill is being refreshed in my memory.

The clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person convicted is licensed or registered as a health care provider.

The clerk reasonably believes or knows that the person convicted. So, in other words, you are saying the clerk needn't investigate the subject or inquire of the felon or to take any of those sort of steps. In other words, you limit the clerk's liability under the statute personally and perhaps by extension, the liability to our government on an action that they unknowingly did not take. Is that correct?

Clerk Taylor: That's correct. The problem I have with this is that, unfortunately, while I am very much in support of the bill and the concept, I think it is very important that we be able to report who in fact is in this situation to the appropriate board. I think that is a really high purpose.

The dilemma comes in the sentencing process. This information is only contained in something presumably that the pre-sentence investigation report, which is only done in the courtroom with the judge, the defense attorneys and the defendant. It is sealed. It is returned to the clerk's office. The clerical staff is not reading the pre-sentence investigation report, so they have no way of knowing what the background of the defendant is, nor are they involved in that. The court doesn't necessarily read it either.

So, the mechanical part of the system is not privy to this information and I guess that is part of the dilemma.

Certainly, if we knew somebody was a doctor, we would do this, or a dentist, etc. and we have in those cases. I should just footnote, the vast majority of defendants are not licensed by any boards either, so it is not an overwhelming issue. I think it is the duty, the clerk now is absolutely required to report this. The problem is, how do you do that when you don't know that somebody is licensed by a board? That's what this amendment is intended to address.

I would be happy to answer any questions.

Senator Andrew R. Peterson, D. 11: Thank you. Questions from the Committee? Senator Foster for a question.

Senator Joseph A. Foster, D. 13: If I understand your testimony, then perhaps the clerk is not the best person, party, individual to be reporting this because they won't know. So, if that is true, who in the court system would tend to have the information if it is available at all? The sentencing judge?

Clerk Taylor: The sentencing judge would be aware if it was contained in the pre-sentence investigation report and it should probably be in there, I would think, although even there, usually it gets into the defendant's background. I'm not sure it always says he is a licensed optometrist, although he has not practiced. I can't tell you whether I have actually seen that written down.

Senator Joseph A. Foster, D. 13: It is waived sometimes, too.

Clerk Taylor: Yes. Well, that is also correct. I would assume that the corrections department, possibly in doing a PSI may become aware of that. That would be one group that would be aware. Then, the judge might be the other possibility. The clerk actually is not on notice as to when these things take place.

Senator Andrew R. Peterson, D. 11: Further questions from the Committee? Hearing none, thank you for your testimony.

Two others who wish to indicate their support for the bill. Robert Blaisdell on behalf of the Trial Lawyers and Roger Phillips on behalf of himself, who are here present. Are there others who needed to speak on the legislation prior to closing the hearing? Seeing none, we do have the sheet to sign up in your support or opposition. I will close the hearing at this time on SB 219.

Hearing concluded at 11:55 a.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary
3/6/03

2 Attachments

ATTACHMENT #1

CHAPTER 130-A
LEAD PAINT POISONING PREVENTION AND CONTROL

130-A:1, VIII-a. "Health care provider" means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, and any officer, employee or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.

CHAPTER 137-J
DURABLE POWER OF ATTORNEY FOR HEALTH CARE

137-J:1, VII. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.

CHAPTER 141-C
COMMUNICABLE DISEASE

141-C:2, X-a. "Health care provider' means any person who or entity which provides health care services including, but not limited to, hospitals, medical clinics and offices, clinical laboratories, physicians, naturopaths, chiropractors, pharmacists, dentists, registered and other nurses, and nurse practitioners, paramedics, and emergency medical technicians.

CHAPTER 281-A
WORKERS COMPENSATION

281-A:2, XII-b. "Health care provider" as used in this chapter includes doctors, chiropractors, rehabilitation providers, health services as defined in RSA 151-C:2,XVIII, health care facilities as defined in RSA 151-C:2, VX-a, and health maintenance organizations as defined in RSA 151-C:2, XVI.

CHAPTER 420-E
LICENSURE OF MEDICAL UTILIZATION REVIEW ENTITIES

420-E:1, III. "Health care provider" means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, including, but not limited to, a physician, hospital or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist or psychologist, and any officer, employee or agent of such provider acting in the course and scope of his employment or agency related to or supportive of health care services.

ATTACHMENT #2

The clerk's duty under this section shall be limited to those instances where the clerk ~~knows~~ knows or reasonably believes that the person convicted is licensed or registered as a health care provider.

Speakers

SENATE JUDICIARY COMMITTEE

Date 3/4/03 Time 10:45 a.m. Public Hearing on **SB 219**

SB 219- relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☒	☐	Robert Blaisdell	NH Trial Lawyers Assoc.
☒	☒	☐	Ray Taylor	Superior Court
☐	☒	☐	Roger Phillips	Self Concord, N.H.
☐	☐	☐		
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 219

AN ACT relative to superior court notice to health care regulatory boards of felony convictions of health care providers

VOTE: 5-0

2003-0572s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Andrew R. Peterson
For the Committee

SB219 Docket

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Bill Title: relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

Date	Body	Description
1/30/2003	S	Introduced and Ref. to Judiciary; SJ 3, Pg.41
2/14/2003	S	Hearing; March 4, 2003, Room 105-A, SH, 10:45 a.m.; SC10
3/7/2003	S	Committee Report; Ought to Pass with Amendment{0572}, [03/13/03]; SC13, Pg.20
3/13/2003	S	Committee Amendment{0572}, AA, VV; SJ 8, Pg.88-89
3/13/2003	S	Ought to Pass with Amendment{0572}, MA, VV; OT3rdg; SJ 8, Pg.89
3/13/2003	S	Passed by 3rd Reading Resolution; SJ 8, Pg.102
3/13/2003	H	Introduced and ref to Judiciary; HJ24, p630
3/27/2003	H	Hearing Apr 9 11:00 RM208,LOB
4/22/2003	H	Maj Report OTP for May 8 (Vote 15-0;CC)
5/8/2003	H	Passed; HJ 40, p1278 + 1290
5/15/2003	S	Enrolled; SJ 16, Pg.394
5/15/2003	H	Enrolled; HJ 45, p1435
5/27/2003	S	Signed by the Governor on 5/27/2003 Eff- 7/26/2003 Chap- 0068

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Docket Abbreviations