

## Bill approved proposing significant APA changes

Tallahassee—A bill proposing changes to the Administrative Procedures Act that would strengthen the role of hearing officers and reduce some of the powers of government agencies has passed the House Governmental Operations committee and been certified to the floor for action.

HB1225 faced virtually no opposition in committee. In fact opposition from an agency attorney to one provision — one that would require agencies to follow their own rules — was greeted with hostility by committee members.

Under Chapter 120, the APA, state agencies have a great deal of final decision-making power. Under some sections of the act, the findings of a hearing officer in a formal hearing are only a

recommendation to the agency which has the power of final decision.

Thus, in a dispute between a private citizen, such as a professional licensee, and a state agency, the agency enjoys the power of final decision. The findings and conclusions of an independent hearing can be totally disregarded.

In practical terms, that has been happening in a number of legal actions against medical licensees. In the last four months, the Florida Medical Board has rejected recommended orders of dismissal of charges against at least three physicians and imposed severe disciplinary action.

In doing so, the board — acting as the state agency — has said the independent hearing officer was wrong.

One provision of HB1225 would require that agencies cite specific reasons "to the record" for rejecting the hearing officer's findings of fact.

As the statute currently stands, the agency may only reject findings of fact "if they are not based on substantial competent evidence." Otherwise the facts must be accepted.

But the agency may change the penalty without regard to the establishment of facts and conclusions that those facts constitute a violation of law so long as it reviews the complete record of the hearing.

Imposing a stiffer penalty has not been much of a problem for the Medical Board as long as the hearing officer finds a viola-

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tion. But lately the board has been faced with recommendations of dismissal based on findings that there has been no violation law. And the board simply has disagreed.

If this seems tediously complicated and overly legalized, it probably is; but the bottom line is that several medical licensees have spent a lot of money electing for "an independent hearing," only to find the hearing was meaningless.

The revised bill would give hearing officers more powers to obtain evidence through subpoenas or discovery by giving them authority to impose sanctions. Hearings would be set by the Division of Administrative Hearings.

One other proposed change to 120 would correct an appeals court ruling. In that case, the appeals court said that an agency may depart from its own rules in some cases. Proponents argue that it puts a party at the disadvantage of not knowing what rules an agency will or will not follow in any given action.

MAY  
1984

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