

# FINAL BILL REPORT

## 4SHB 1103

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### PARTIAL VETO

C 134 L 08

Synopsis as Enacted

**Brief Description:** Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody).

**House Committee on Health Care & Wellness**

**House Committee on Appropriations**

**Senate Committee on Health & Long-Term Care**

**Senate Committee on Ways & Means**

#### **Background:**

##### Health Professions Discipline.

The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 62 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of the Department of Health (Secretary) and 14 health profession boards and commissions (collectively known as "disciplining authorities") according to the profession that the health care provider is a member of and the relevant step in the disciplinary process.

In August 2007 the State Auditor's Office released a performance audit of the Department of Health's (DOH) health professions regulatory system. The report included several recommendations for legislative action. Among the report's recommendations were: to provide the disciplining authorities with additional tools for obtaining records, documents, and other evidence; to give the DOH the authority to access Washington State Patrol (WSP) and Federal Bureau of Investigations (FBI) criminal background information; and to require that national background checks be conducted on all credential holders.

##### Post-Conviction Credentialing.

Individuals who have been convicted of a felony may not be disqualified from government employment or the practice of a profession or business that requires a license solely because of the prior conviction. There is an exception for situations in which the conviction is directly related to the employment or the profession or business at issue and less than 10 years have passed since the conviction.

Criminal defendants who have completed their probation may have their record of convictions vacated and be released from any penalties and disabilities that arose from the conviction. In addition, the conviction is prohibited from being disseminated or disclosed by either the WSP or local law enforcement agencies.

### **Summary:**

#### Disciplinary Procedures.

The authority to conduct all phases of disciplinary actions regarding cases of unprofessional conduct relating to sexual misconduct that do not involve clinical expertise or standards of practice is shifted from the individual disciplining authorities to the sole authority of the Secretary.

Credential holders who have had their credential summarily suspended or their practice restricted may request a show cause hearing before a health law judge or panel of a board or commission. The request must be made within 20 days of the issuance of the order and the show cause hearing must be held within 14 days of the request. The disciplining authority has the burden of demonstrating that the credential holder poses an immediate threat to the public health and safety.

#### Application Denial or Issuance with Conditions.

Disciplining authorities may deny an application for a credential or issue a credential with conditions according to a process that is distinct from the standard disciplinary process for credential holders. The new process provides notice to an applicant of any denial or issuance with conditions and a right to an adjudicative proceeding. The circumstances for which a disciplining authority may deny an application for a health care provider credential or issue the credential with conditions are specified. These circumstances are where the applicant:

- has had his or her credential suspended by another jurisdiction;
- has committed an act of unprofessional conduct;
- has been convicted of, or is subject to prosecution for, a crime involving moral turpitude, certain violent crimes, a crime relating to drugs, or a crime relating to financial exploitation;
- fails to prove that he or she meets the qualifications related to the profession; or
- cannot practice with reasonable skill and safety by reason of a mental or physical condition.

When determining the disposition of an application in which the applicant's mental or physical condition is at issue, the disciplining authority may require the applicant to submit to a mental, physical, or psychological examination at his or her expense. An applicant is deemed to have waived all objections to the admissibility of the testimony or reports of the health care provider who performs the examination.

#### Background Checks.

The Secretary is authorized to receive and use criminal history information including nonconviction data for disciplinary and licensing purposes. Applicants for an initial credential to practice a health profession must receive a background check from the WSP

prior to receiving the credential. The Secretary must specify those circumstances in which a state background check is inadequate and an electronic fingerprint-based national background check through the WSP and the FBI must be conducted. Such situations include cases in which an applicant has a criminal record in Washington or has recently lived out-of-state. The Secretary must conduct an annual review of a representative sample of health care providers who have previously received a background check.

When making license issuance determinations, the disciplining authority must consider the results of any background checks that reveal either a conviction for a crime that constitutes unprofessional conduct or a series of arrests that demonstrate a pattern of behavior that likely presents a risk of harm to the public. The disciplining authority must take disciplinary action against a health care provider when information received from a review of previously checked providers reveals a failure to report required information to the DOH about arrests, convictions, or other determinations by law enforcement agencies.

The list of convictions that are cross-checked with the WSP's database is expanded to include financial crimes, drug crimes, and all felonies.

#### Disciplinary Sanctions.

Each of the disciplining authorities must appoint a representative to collaboratively develop a schedule that defines appropriate ranges of sanctions to apply to a credentialed health care provider for acts of unprofessional conduct. The schedule must identify aggravating and mitigating circumstances to reduce or enhance a sanction for each act of unprofessional conduct. The Secretary must use the recommended schedule as the basis for the adoption of emergency rules to be implemented by January 1, 2009. Disciplining authorities must apply sanctions in accordance with the schedule, unless unique circumstances justify deviating from them.

A disciplining authority may order the permanent revocation of a license if it finds that the credential holder can never be rehabilitated or regain the ability to practice with reasonable skill and safety. A credentialed health care provider who has surrendered his or her credential or had it permanently revoked may not petition the disciplining authority for reinstatement.

#### Reporting Unprofessional Conduct.

Credential holders, corporations, organizations, health care facilities, and government agencies that employ a credentialed health care provider are required to report when they have knowledge that a credential holder or an applicant for a credential has engaged in unprofessional conduct or have information that the individual cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report is punishable by a maximum fine of \$500. The maximum fine of \$250 that hospitals may be charged for not submitting a mandatory report is raised to a maximum fine of \$500.

Credentialed health care providers are required to report any arrests, convictions, and other determinations by law enforcement agencies to the appropriate disciplining authority.

#### Post-Conviction Credentialing.

Records of criminal defendants, which would otherwise be vacated and non-disclosable, are subject to distribution by the WSP or local law enforcement agencies for the purposes of health profession disciplinary activities. Protections that prevent a person from being disqualified to practice a profession for up to 10 years after he or she is convicted of a felony do not apply to health care provider credentials.

Health Profession Commission Authority.

Members of health profession boards and commissions are allowed to express their opinions regarding the work of the board or commission to elected officials even if it is different from the DOH's official position. Members of boards and commissions may not lobby for or against legislative proposals.

At the request of a board or commission, the Secretary shall spend unappropriated funds in the Health Professions Account when revenues for the requesting board or commission exceed 15 percent of estimated six-year spending projections. The money may only be used for the requesting board or commission for unanticipated costs for administering the profession's licensing activities.

Pilot projects are established relating to the Medical Quality Assurance Commission and Nursing Care Quality Assurance Commission. In addition, the Chiropractic Quality Assurance Commission and the Dental Quality Assurance Commission may participate in the pilot projects. The pilot projects authorize each participating commission to hire its own executive director and permit the executive director to carry out the administrative duties of the commission and manage the DOH staff that are assigned to the commission. Under the pilot projects the commissions are authorized to establish their own biennial budgets and develop their own performance-based expectations.

The Secretary and the participating commissions must submit a report to the Governor and the Legislature by December 15, 2013. The report must compare the commissions' effectiveness in licensing and disciplinary activities, efficiency with respect to timeliness and personnel resources, budgetary activity, and ability to meet performance measures. The report must also review national research regarding regulatory effectiveness and patient safety.

Other Provisions.

The Secretary must initiate an investigation in cases in which complaints, arrests, or other actions not resulting in a formal adjudication against a health care provider demonstrate a pattern of behavior that likely poses a risk to his or her patients.

Biennial disciplinary reports are made annual and must include data related to the DOH's background check activities and their effectiveness. The disciplinary reports must include a summary of the distribution of cases assigned to each staff attorney and investigator for each profession. Boards and commissions may publish an annual report of their disciplinary activities, rulemaking and policy activities, and receipts and expenditures for the profession.

**Votes on Final Passage:**

House 70 27

House 97 0  
Senate 48 1 (Senate amended)  
House 93 0 (House concurred)

**Effective:** June 12, 2008  
July 1, 2008 (Section 18)

**Partial Veto Summary:** The Governor vetoed the section that created an emergency clause for the effective date of the bill.