
SUBSTITUTE HOUSE BILL 1103

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Health Care & Wellness (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody)

READ FIRST TIME 01/31/07.

1 AN ACT Relating to health professions; amending RCW 18.130.050,
2 18.130.060, 18.130.080, 18.130.090, 18.130.170, 18.130.172, 18.130.310,
3 and 70.41.210; reenacting and amending RCW 18.130.160; adding new
4 sections to chapter 18.130 RCW; adding a new section to chapter 42.52
5 RCW; creating a new section; prescribing penalties; providing an
6 effective date; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** From statehood, Washington has
9 constitutionally provided for the regulation of the practice of
10 medicine and the sale of drugs and medicines. This constitutional
11 recognition of the importance of regulating health care practitioners
12 derives not from providers' financial interest in their license, but
13 from the greater need to protect the public health and safety by
14 assuring that the health care providers and medicines that society
15 relies upon meet certain standards of quality.

16 The legislature finds that the issuance of a license to practice as
17 a health care provider should be a means to ensure quality and not be
18 a means to ensure financial benefit for providers. Statutory and
19 administrative requirements provide sufficient due process protections

1 to prevent the unwarranted revocation of a health care provider's
2 license. While those due process protections must be maintained, there
3 is an urgent need to return to the original constitutional mandate that
4 patients be ensured quality from their health care providers. The
5 legislature has recognized and medical malpractice reforms have
6 recognized the importance of quality and patient safety through such
7 measures as a new adverse events reporting system. Reforms to the
8 health care provider licensing system is another step toward improving
9 quality in health care. Therefore, the legislature intends to increase
10 the authority of those engaged in the regulation of health care
11 providers to swiftly identify and remove health care providers who pose
12 a risk to the public.

13 **Sec. 2.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read
14 as follows:

15 The disciplining authority has the following authority:

16 (1) To adopt, amend, and rescind such rules as are deemed necessary
17 to carry out this chapter;

18 (2) To ~~((investigate))~~ use individual members of the boards and
19 commissions to provide consultation and assistance with investigations
20 of all complaints or reports of unprofessional conduct as defined in
21 this chapter as requested by the secretary and to hold hearings as
22 provided in this chapter. If the secretary determines that the
23 complaint involves standards of practice or that clinical expertise is
24 necessary, the secretary shall assure that the board or commission is
25 actively involved in the investigation;

26 (3) To issue subpoenas and administer oaths in connection with any
27 investigation, hearing, or proceeding held under this chapter;

28 (4) To take or cause depositions to be taken and use other
29 discovery procedures as needed in any investigation, hearing, or
30 proceeding held under this chapter;

31 (5) To compel attendance of witnesses at hearings;

32 (6) In the course of ~~((investigating))~~ consulting and assisting
33 with the investigation of a complaint or report of unprofessional
34 conduct, to conduct practice reviews as requested by the secretary;

35 (7) ~~((To take emergency action ordering summary suspension of a~~
36 ~~license, or restriction or limitation of the license holder's practice~~
37 ~~pending proceedings by the disciplining authority. Consistent with RCW~~

1 18.130.370, a disciplining authority shall issue a summary suspension
2 of the license or temporary practice permit of a license holder
3 prohibited from practicing a health care profession in another state,
4 federal, or foreign jurisdiction because of an act of unprofessional
5 conduct that is substantially equivalent to an act of unprofessional
6 conduct prohibited by this chapter or any of the chapters specified in
7 RCW 18.130.040. The summary suspension remains in effect until
8 proceedings by the Washington disciplining authority have been
9 completed;

10 ~~((8))~~) To use a presiding officer as authorized in RCW 18.130.095(3)
11 or the office of administrative hearings as authorized in chapter 34.12
12 RCW to conduct hearings. The disciplining authority shall make the
13 final decision regarding disposition of the license unless the
14 disciplining authority elects to delegate in writing the final decision
15 to the presiding officer;

16 ~~((9))~~) (8) To use individual members of the boards to ~~((direct))~~
17 provide consultation and assistance with investigations as requested by
18 the secretary. However, the member of the board shall not subsequently
19 participate in the hearing of the case;

20 ~~((10))~~) (9) To enter into contracts for professional services
21 determined to be necessary for adequate enforcement of this chapter;

22 ~~((11))~~) (10) To contract with licensees or other persons or
23 organizations to provide services necessary for the monitoring and
24 supervision of licensees who are placed on probation, whose
25 professional activities are restricted, or who are for any authorized
26 purpose subject to monitoring by the disciplining authority;

27 ~~((12))~~) (11) To adopt standards of professional conduct or
28 practice;

29 ~~((13))~~) (12) To grant or deny license applications, and in the
30 event of a finding of unprofessional conduct by an applicant or license
31 holder, to impose any sanction against a license applicant or license
32 holder provided by this chapter. After January 1, 2008, all sanctions
33 must be issued in accordance with section 10 of this act;

34 ~~((14))~~) (13) To designate individuals authorized to sign subpoenas
35 and statements of charges;

36 ~~((15))~~) (14) To establish panels consisting of three or more
37 members of the board to perform any duty or authority within the
38 board's jurisdiction under this chapter;

1 (~~(16)~~) (15) To review and audit the records of licensed health
2 facilities' or services' quality assurance committee decisions in which
3 a licensee's practice privilege or employment is terminated or
4 restricted. Each health facility or service shall produce and make
5 accessible to the disciplining authority the appropriate records and
6 otherwise facilitate the review and audit. Information so gained shall
7 not be subject to discovery or introduction into evidence in any civil
8 action pursuant to RCW 70.41.200(3).

9 **Sec. 3.** RCW 18.130.060 and 2006 c 99 s 1 are each amended to read
10 as follows:

11 In addition to the authority specified in RCW 18.130.050, the
12 secretary has the following additional authority:

13 (1) To employ such investigative, administrative, and clerical
14 staff as necessary for the enforcement of this chapter. In assigning
15 investigative and legal personnel, the secretary must, whenever
16 practical, use personnel having expertise in the profession of the
17 applicant or license holder under investigation and assign personnel
18 primarily to investigations involving particular professions on a long-
19 term basis to foster the development and maintenance of their
20 expertise;

21 (2) Upon the request of a board or commission, to appoint pro tem
22 members to participate as members of a panel of the board or commission
23 in connection with proceedings specifically identified in the request.
24 Individuals so appointed must meet the same minimum qualifications as
25 regular members of the board or commission. Pro tem members appointed
26 for matters under this chapter are appointed for a term of no more than
27 one year. No pro tem member may serve more than four one-year terms.
28 While serving as board or commission members pro tem, persons so
29 appointed have all the powers, duties, and immunities, and are entitled
30 to the emoluments, including travel expenses in accordance with RCW
31 43.03.050 and 43.03.060, of regular members of the board or commission.
32 The chairperson of a panel shall be a regular member of the board or
33 commission appointed by the board or commission chairperson. Panels
34 have authority to act as directed by the board or commission with
35 respect to (~~all matters concerning the review, investigation, and~~
36 ~~adjudication of~~) all complaints, allegations, charges, and matters
37 subject to the jurisdiction of the board or commission and within the

1 authority of the board or commission. The authority to act through
2 panels does not restrict the authority of the board or commission to
3 act as a single body at any phase of proceedings within the board's or
4 commission's jurisdiction. Board or commission panels may make interim
5 orders and issue final decisions with respect to matters and cases
6 delegated to the panel by the board or commission. Final decisions may
7 be appealed as provided in chapter 34.05 RCW, the administrative
8 procedure act;

9 (3) To establish fees to be paid for witnesses, expert witnesses,
10 and consultants used in any investigation and to establish fees to
11 witnesses in any agency adjudicative proceeding as authorized by RCW
12 34.05.446;

13 (4) To conduct investigations and practice reviews (~~at the~~
14 ~~direction of the disciplining authority~~) and to issue subpoenas,
15 administer oaths, and take depositions in the course of conducting
16 those investigations and practice reviews (~~at the direction of the~~
17 ~~disciplining authority~~). The secretary may request the consultation
18 and assistance of the appropriate disciplining authority, and where
19 standards of practice or clinical expertise is necessary, the secretary
20 shall assure that the board or commission is actively involved in the
21 investigation;

22 (5) To review results of investigations conducted under this
23 chapter and determine the appropriate disposition, which may include
24 closure, notice of correction, stipulations permitted by RCW
25 18.130.172, or issuance of a statement of charges;

26 (6) To take emergency action ordering summary suspension of a
27 license, or restriction or limitation of the license holder's practice
28 pending proceedings by the disciplining authority. Consistent with RCW
29 18.130.370, the secretary shall issue a summary suspension of the
30 license or temporary practice permit of a license holder prohibited
31 from practicing a health care profession in another state, federal, or
32 foreign jurisdiction because of an act of unprofessional conduct that
33 is substantially equivalent to an act of unprofessional conduct
34 prohibited by this chapter or any of the chapters specified in RCW
35 18.130.040. The summary suspension remains in effect until proceedings
36 by the Washington disciplining authority have been completed;

37 (7) To have the health professions regulatory program establish a
38 system to recruit potential public members, to review the

1 qualifications of such potential members, and to provide orientation to
2 those public members appointed pursuant to law by the governor or the
3 secretary to the boards and commissions specified in RCW
4 18.130.040(2)(b), and to the advisory committees and councils for
5 professions specified in RCW 18.130.040(2)(a); and

6 ~~((+6))~~ (8) To adopt rules, in consultation with the disciplining
7 authorities, requiring every license holder to report information
8 identified in RCW 18.130.070.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.130 RCW
10 to read as follows:

11 (1)(a) The department shall establish requirements for each
12 applicant for an initial license to obtain a state background check
13 through the state patrol prior to the issuance of any license. The
14 background check may be fingerprint-based at the discretion of the
15 department.

16 (b) The department shall specify those situations where a
17 background check under (a) of this subsection is inadequate and an
18 applicant for an initial license must obtain an electronic fingerprint-
19 based national background check through the state patrol and federal
20 bureau of investigation. Situations where a background check is
21 inadequate may include instances where an applicant has recently lived
22 out-of-state or where the applicant has a criminal record in
23 Washington. The secretary shall issue a temporary license to an
24 applicant who must have a national background check conducted if the
25 background check conducted under (a) of this subsection does not reveal
26 a criminal record in Washington.

27 (2) The department shall adopt rules to require license holders to
28 report to the disciplining authority any arrests, convictions, or other
29 determinations or findings by a law enforcement agency occurring after
30 the effective date of this section for a criminal offense. The report
31 must be made within fourteen days of the conviction.

32 (3) The department shall conduct an annual review of a
33 representative sample of all license holders who have previously
34 obtained a background check through the department. The selection of
35 the license holders to be reviewed shall be representative of all
36 categories of license holders and geographic locations.

1 (4)(a) When deciding whether or not to issue an initial license,
2 the disciplining authority shall consider the results of any background
3 check conducted pursuant to subsection (1) of this section that reveals
4 a conviction for any criminal offense that constitutes unprofessional
5 conduct under this chapter or the chapters specified in RCW
6 18.130.040(2) or a series of arrests that when considered together
7 demonstrate a pattern of behavior that, without investigation, may pose
8 a risk to the safety of the license holder's patients.

9 (b) If the background check conducted pursuant to subsection (3) of
10 this section reveals any information related to unprofessional conduct
11 that has not been previously disclosed to the disciplining authority,
12 it shall take appropriate disciplinary action against the license
13 holder.

14 (5) The department shall:

15 (a) Require the applicant or license holder to submit full sets of
16 fingerprints if necessary to complete the background check;

17 (b) Require the applicant to submit any fees for background check
18 activities conducted pursuant to subsection (1) of this section, except
19 as precluded by RCW 43.70.110, and other information required by the
20 state patrol;

21 (c) Notify the applicant of the results of the background check.
22 If any background check reveals a criminal record, the department shall
23 send the applicant a copy of the record upon request; and

24 (d) Restrict use of the background check results to determining the
25 individual's suitability for a license and to conducting disciplinary
26 functions.

27 **Sec. 5.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read
28 as follows:

29 ~~(1) ((A person, including but not limited to consumers, licensees,~~
30 ~~corporations, organizations, health care facilities, impaired~~
31 ~~practitioner programs, or voluntary substance abuse monitoring programs~~
32 ~~approved by disciplining authorities, and state and local governmental~~
33 ~~agencies,)) (a) An individual, an impaired practitioner program, or a~~
34 ~~voluntary substance abuse monitoring program approved by a disciplining~~
35 ~~authority,~~ may submit a written complaint to the ~~((disciplining~~
36 ~~authority)) secretary charging a license holder or applicant with~~
37 unprofessional conduct and specifying the grounds therefor or to report

1 information to the (~~(disciplining authority)~~) secretary, or voluntary
2 substance abuse monitoring program, or an impaired practitioner program
3 approved by the disciplining authority, which indicates that the
4 license holder may not be able to practice his or her profession with
5 reasonable skill and safety to consumers as a result of a mental or
6 physical condition.

7 (b) Every license holder, corporation, organization, health care
8 facility, and state and local governmental agency having knowledge that
9 a license holder or applicant has engaged in unprofessional conduct or
10 having information that indicates that the license holder may not be
11 able to practice his or her profession with reasonable skill and safety
12 to consumers as a result of a mental or physical condition must
13 promptly submit a written report to the secretary specifying the nature
14 of the concerns and the facts supporting the assertions.

15 (2) If the (~~(disciplining authority)~~) secretary determines that
16 (~~the~~) a complaint submitted under subsection (1) of this section
17 merits investigation, or if the (~~(disciplining authority)~~) secretary
18 has reason to believe, without a formal complaint, that a license
19 holder or applicant may have engaged in unprofessional conduct, the
20 (~~(disciplining authority)~~) secretary shall investigate to determine
21 whether there has been unprofessional conduct. In determining whether
22 or not to investigate, the (~~(disciplining authority)~~) secretary shall
23 consider any prior complaints received by the (~~(disciplining~~
24 authority)) secretary, any prior findings of fact under RCW 18.130.110,
25 any stipulations to informal disposition under RCW 18.130.172, and any
26 comparable action taken by other state disciplining authorities.

27 (~~(+2)~~) (3) Notwithstanding subsection (~~(+1)~~) (2) of this section,
28 the (~~(disciplining authority)~~) secretary shall initiate an
29 investigation in every instance where:

30 (a) The (~~(disciplining authority)~~) secretary receives information
31 that a health care provider has been disqualified from participating in
32 the federal medicare program, under Title XVIII of the federal social
33 security act, or the federal medicaid program, under Title XIX of the
34 federal social security act; or

35 (b) There is a pattern of complaints, arrests, or other actions
36 that may not have resulted in a formal adjudication of wrongdoing, but
37 when considered together demonstrate a pattern of similar conduct that,

1 without investigation, may pose a risk to the safety of the license
2 holder's patients.

3 (4) Failure of an entity to submit a mandatory report to the
4 secretary under subsection (1)(b) of this section is punishable by a
5 civil penalty not to exceed five hundred dollars and constitutes
6 unprofessional conduct.

7 (5) If a report has been made by a hospital to the department under
8 RCW 70.41.210, a report to the secretary under subsection (1)(b) of
9 this section is not required.

10 ~~((3))~~ (6) A person who files a complaint or reports information
11 under this section in good faith is immune from suit in any civil
12 action related to the filing or contents of the complaint.

13 **Sec. 6.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to read
14 as follows:

15 (1) If the ~~((disciplining authority))~~ secretary determines, upon
16 investigation, that there is reason to believe a violation of RCW
17 18.130.180 has occurred, a statement of charge or charges shall be
18 prepared and served upon the license holder or applicant at the
19 earliest practical time. The statement of charge or charges shall be
20 accompanied by a notice that the license holder or applicant may
21 request a hearing to contest the charge or charges. The license holder
22 or applicant must file a request for hearing with the disciplining
23 authority within twenty days after being served the statement of
24 charges. If the twenty-day limit results in a hardship upon the
25 license holder or applicant, he or she may request for good cause an
26 extension not to exceed sixty additional days. If the disciplining
27 authority finds that there is good cause, it shall grant the extension.
28 The failure to request a hearing constitutes a default, whereupon the
29 disciplining authority may enter a decision on the basis of the facts
30 available to it.

31 (2) If a hearing is requested, the time of the hearing shall be
32 fixed by the disciplining authority as soon as convenient, but the
33 hearing shall not be held earlier than thirty days after service of the
34 charges upon the license holder or applicant.

35 **Sec. 7.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are
36 each reenacted and amended to read as follows:

1 Upon a finding, after hearing, that a license holder or applicant
2 has committed unprofessional conduct or is unable to practice with
3 reasonable skill and safety due to a physical or mental condition, the
4 disciplining authority (~~((may consider the imposition of sanctions,~~
5 ~~taking into account))~~) shall issue an order including sanctions adopted
6 in accordance with the schedule adopted under section 10 of this act
7 giving proper consideration to any prior findings of fact under RCW
8 18.130.110, any stipulations to informal disposition under RCW
9 18.130.172, and any action taken by other in-state or out-of-state
10 disciplining authorities(~~(, and issue an))~~). The order ((providing))
11 must provide for one or any combination of the following, as directed
12 by the schedule:

- 13 (1) Revocation of the license;
- 14 (2) Suspension of the license for a fixed or indefinite term;
- 15 (3) Restriction or limitation of the practice;
- 16 (4) Requiring the satisfactory completion of a specific program of
17 remedial education or treatment;
- 18 (5) The monitoring of the practice by a supervisor approved by the
19 disciplining authority;
- 20 (6) Censure or reprimand;
- 21 (7) Compliance with conditions of probation for a designated period
22 of time;
- 23 (8) Payment of a fine for each violation of this chapter, not to
24 exceed five thousand dollars per violation. Funds received shall be
25 placed in the health professions account;
- 26 (9) Denial of the license request;
- 27 (10) Corrective action;
- 28 (11) Refund of fees billed to and collected from the consumer;
- 29 (12) A surrender of the practitioner's license in lieu of other
30 sanctions, which must be reported to the federal data bank.

31 Any of the actions under this section may be totally or partly
32 stayed by the disciplining authority. Safeguarding the public's health
33 and safety is the paramount responsibility of every disciplining
34 authority (~~(and)~~). In determining what action is appropriate, the
35 disciplining authority must consider the schedule adopted under section
36 10 of this act. Where the schedule allows flexibility in determining
37 the appropriate sanction, the disciplining authority must first
38 consider what sanctions are necessary to protect or compensate the

1 public. Only after such provisions have been made may the disciplining
2 authority consider and include in the order requirements designed to
3 rehabilitate the license holder or applicant. All costs associated
4 with compliance with orders issued under this section are the
5 obligation of the license holder or applicant.

6 The disciplining authority may determine that a case presents
7 unique circumstances that the schedule adopted under section 10 of this
8 act does not adequately address. The disciplining authority may
9 deviate from the schedule adopted under section 10 of this act when
10 selecting appropriate sanctions, but the disciplining authority must
11 issue a written explanation of the basis for not following the
12 schedule.

13 The ((licensee)) license holder or applicant may enter into a
14 stipulated disposition of charges that includes one or more of the
15 sanctions of this section, but only after a statement of charges has
16 been issued and the ((licensee)) license holder has been afforded the
17 opportunity for a hearing and has elected on the record to forego such
18 a hearing. The stipulation shall either contain one or more specific
19 findings of unprofessional conduct or inability to practice, or a
20 statement by the ((licensee)) license holder acknowledging that
21 evidence is sufficient to justify one or more specified findings of
22 unprofessional conduct or inability to practice. The stipulation
23 entered into pursuant to this subsection shall be considered formal
24 disciplinary action for all purposes.

25 **Sec. 8.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to read
26 as follows:

27 (1) If the ((disciplining authority)) secretary believes a license
28 holder or applicant may be unable to practice with reasonable skill and
29 safety to consumers by reason of any mental or physical condition, a
30 statement of charges in the name of the ((disciplining authority))
31 secretary shall be served on the license holder or applicant and notice
32 shall also be issued providing an opportunity for a hearing. The
33 hearing shall be limited to the sole issue of the capacity of the
34 license holder or applicant to practice with reasonable skill and
35 safety. If the disciplining authority determines that the license
36 holder or applicant is unable to practice with reasonable skill and

1 safety for one of the reasons stated in this subsection, the
2 disciplining authority shall impose such sanctions under RCW 18.130.160
3 as is deemed necessary to protect the public.

4 (2)(a) In investigating or adjudicating a complaint or report that
5 a license holder or applicant may be unable to practice with reasonable
6 skill or safety by reason of any mental or physical condition, the
7 (~~disciplining authority~~) secretary may require a license holder or
8 applicant to submit to a mental or physical examination by one or more
9 licensed or certified health professionals designated by the
10 (~~disciplining authority~~) secretary. The license holder or applicant
11 shall be provided written notice of the (~~disciplining authority's~~)
12 secretary's intent to order a mental or physical examination, which
13 notice shall include: (i) A statement of the specific conduct, event,
14 or circumstances justifying an examination; (ii) a summary of the
15 evidence supporting the (~~disciplining authority's~~) secretary's
16 concern that the license holder or applicant may be unable to practice
17 with reasonable skill and safety by reason of a mental or physical
18 condition, and the grounds for believing such evidence to be credible
19 and reliable; (iii) a statement of the nature, purpose, scope, and
20 content of the intended examination; (iv) a statement that the license
21 holder or applicant has the right to respond in writing within twenty
22 days to challenge the (~~disciplining authority's~~) secretary's grounds
23 for ordering an examination or to challenge the manner or form of the
24 examination; and (v) a statement that if the license holder or
25 applicant timely responds to the notice of intent, then the license
26 holder or applicant will not be required to submit to the examination
27 while the response is under consideration.

28 (b) Upon submission of a timely response to the notice of intent to
29 order a mental or physical examination, the license holder or applicant
30 shall have an opportunity to respond to or refute such an order by
31 submission of evidence or written argument or both. The evidence and
32 written argument supporting and opposing the mental or physical
33 examination shall be reviewed by either a panel of the disciplining
34 authority members who have not been involved with the allegations
35 against the license holder or applicant or a neutral decision maker
36 approved by the disciplining authority. The reviewing panel of the
37 disciplining authority or the approved neutral decision maker may, in
38 its discretion, ask for oral argument from the parties. The reviewing

1 panel of the disciplining authority or the approved neutral decision
2 maker shall prepare a written decision as to whether: There is
3 reasonable cause to believe that the license holder or applicant may be
4 unable to practice with reasonable skill and safety by reason of a
5 mental or physical condition, or the manner or form of the mental or
6 physical examination is appropriate, or both.

7 (c) Upon receipt by the (~~(disciplining authority)~~) secretary of the
8 written decision, or upon the failure of the license holder or
9 applicant to timely respond to the notice of intent, the (~~(disciplining~~
10 ~~authority)~~) secretary may issue an order requiring the license holder
11 or applicant to undergo a mental or physical examination. All such
12 mental or physical examinations shall be narrowly tailored to address
13 only the alleged mental or physical condition and the ability of the
14 license holder or applicant to practice with reasonable skill and
15 safety. An order of the (~~(disciplining authority)~~) secretary requiring
16 the license holder or applicant to undergo a mental or physical
17 examination is not a final order for purposes of appeal. The cost of
18 the examinations ordered by the (~~(disciplining authority)~~) secretary
19 shall be paid out of the health professions account. In addition to
20 any examinations ordered by the (~~(disciplining authority)~~) secretary,
21 the (~~(licensee)~~) license holder may submit physical or mental
22 examination reports from licensed or certified health professionals of
23 the license holder's or applicant's choosing and expense.

24 (d) If the disciplining authority finds that a license holder or
25 applicant has failed to submit to a properly ordered mental or physical
26 examination, then the disciplining authority may order appropriate
27 action or discipline under RCW 18.130.180(9), unless the failure was
28 due to circumstances beyond the person's control. However, no such
29 action or discipline may be imposed unless the license holder or
30 applicant has had the notice and opportunity to challenge the
31 (~~(disciplining authority's)~~) secretary's grounds for ordering the
32 examination, to challenge the manner and form, to assert any other
33 defenses, and to have such challenges or defenses considered by either
34 a panel of the disciplining authority members who have not been
35 involved with the allegations against the license holder or applicant
36 or a neutral decision maker approved by the disciplining authority, as
37 previously set forth in this section. Further, the action or
38 discipline ordered by the disciplining authority shall not be more

1 severe than a suspension of the license, certification, registration or
2 application until such time as the license holder or applicant complies
3 with the properly ordered mental or physical examination.

4 (e) Nothing in this section shall restrict the power of ((a
5 ~~disciplining authority~~)) the secretary to act in an emergency under RCW
6 34.05.422(4), 34.05.479, and ((18.130.050(7))) 18.130.060(6).

7 (f) A determination by a court of competent jurisdiction that a
8 license holder or applicant is mentally incompetent or ((~~mentally ill~~))
9 an individual with mental illness is presumptive evidence of the
10 license holder's or applicant's inability to practice with reasonable
11 skill and safety. An individual affected under this section shall at
12 reasonable intervals be afforded an opportunity, at his or her expense,
13 to demonstrate that the individual can resume competent practice with
14 reasonable skill and safety to the consumer.

15 (3) For the purpose of subsection (2) of this section, an applicant
16 or license holder governed by this chapter, by making application,
17 practicing, or filing a license renewal, is deemed to have given
18 consent to submit to a mental, physical, or psychological examination
19 when directed in writing by the ((~~disciplining authority~~)) secretary
20 and further to have waived all objections to the admissibility or use
21 of the examining health professional's testimony or examination reports
22 by the ((~~disciplining authority~~)) secretary on the ground that the
23 testimony or reports constitute privileged communications.

24 **Sec. 9.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
25 read as follows:

26 (1) Prior to serving a statement of charges under RCW 18.130.090 or
27 18.130.170, the ((~~disciplinary authority~~)) secretary may furnish a
28 statement of allegations to the licensee or applicant along with a
29 detailed summary of the evidence relied upon to establish the
30 allegations and a proposed stipulation for informal resolution of the
31 allegations. These documents shall be exempt from public disclosure
32 until such time as the allegations are resolved either by stipulation
33 or otherwise.

34 (2) The ((~~disciplinary~~)) disciplining authority and the applicant
35 or licensee may stipulate that the allegations may be disposed of
36 informally in accordance with this subsection. The stipulation shall
37 contain a statement of the facts leading to the filing of the

1 complaint; the act or acts of unprofessional conduct alleged to have
2 been committed or the alleged basis for determining that the applicant
3 or licensee is unable to practice with reasonable skill and safety; a
4 statement that the stipulation is not to be construed as a finding of
5 either unprofessional conduct or inability to practice; an
6 acknowledgement that a finding of unprofessional conduct or inability
7 to practice, if proven, constitutes grounds for discipline under this
8 chapter; and an agreement on the part of the licensee or applicant that
9 the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1),
10 (2), (6), and (8), may be imposed as part of the stipulation, except
11 that no fine may be imposed but the licensee or applicant may agree to
12 reimburse the ((disciplinary authority)) secretary the costs of
13 investigation and processing the complaint up to an amount not
14 exceeding one thousand dollars per allegation; and an agreement on the
15 part of the ((disciplinary)) disciplining authority to forego further
16 disciplinary proceedings concerning the allegations. A stipulation
17 entered into pursuant to this subsection shall not be considered formal
18 disciplinary action.

19 (3) If the licensee or applicant declines to agree to disposition
20 of the charges by means of a stipulation pursuant to subsection (2) of
21 this section, the ((disciplinary authority)) secretary may proceed to
22 formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

23 (4) Upon execution of a stipulation under subsection (2) of this
24 section by both the licensee or applicant and the ((disciplinary))
25 disciplining authority, the complaint is deemed disposed of and shall
26 become subject to public disclosure on the same basis and to the same
27 extent as other records of the ((disciplinary)) disciplining authority.
28 Should the licensee or applicant fail to pay any agreed reimbursement
29 within thirty days of the date specified in the stipulation for
30 payment, the ((disciplinary authority)) secretary may seek collection
31 of the amount agreed to be paid in the same manner as enforcement of a
32 fine under RCW 18.130.165.

33 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.130
34 RCW to read as follows:

35 (1) The disciplining authorities shall adopt a schedule that
36 defines appropriate ranges of sanctions that are applicable upon a
37 determination that a license holder has committed unprofessional

1 conduct as defined in this chapter or the chapters specified in RCW
2 18.130.040(2). The schedule must identify aggravating and mitigating
3 circumstances that may enhance or reduce the sanction imposed by the
4 disciplining authority for each act of unprofessional conduct. The
5 schedule must apply to all disciplining authorities. In addition, the
6 disciplining authorities shall make provisions for instances in which
7 there are multiple findings of unprofessional conduct. When
8 establishing the schedule, the disciplining authorities shall consider
9 maintaining consistent sanction determinations that maximize the
10 protection of the public's health and while maintaining the rights of
11 health care providers of the different health professions.

12 (2) The secretary, using his or her emergency rule-making authority
13 pursuant to the procedures under chapter 34.05 RCW, shall adopt rules
14 that take effect no later than January 1, 2008, to implement the
15 schedule. The secretary may modify the schedule adopted by the
16 disciplining authorities as necessary to provide greater protection to
17 the public.

18 (3) The sanctioning schedule shall apply to any disciplinary
19 actions commenced after January 1, 2008.

20 (4) The disciplining authority may determine that a case presents
21 unique circumstances that the schedule adopted under this section does
22 not adequately address. The disciplining authority may deviate from
23 the schedule adopted under this section when selecting appropriate
24 sanctions, but the disciplining authority must issue a written
25 explanation of the basis for not following the schedule.

26 (5) The secretary shall report to the legislature by January 15,
27 2008, on the final sanctioning schedule.

28 **Sec. 11.** RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each
29 amended to read as follows:

30 (1) Subject to RCW 40.07.040, the disciplinary authority shall
31 submit ((a-biennial)) an annual report to the legislature on its
32 proceedings during the ((biennium)) year, detailing the number of
33 complaints made, investigated, and adjudicated and manner of
34 disposition. In addition, the report must provide data on the
35 department's background check activities conducted under section 4 of
36 this act and the effectiveness of those activities in identifying
37 potential license holders who may not be qualified to practice safely.

1 The report may include recommendations for improving the disciplinary
2 process, including proposed legislation. The department shall develop
3 a uniform report format.

4 (2) Each health profession board and commission identified in RCW
5 18.130.040(2)(b) shall submit an annual report to complement the report
6 required under subsection (1) of this section. Each report must
7 identify the disciplinary activities of the individual board or
8 commission, rule-making and policy activities, and receipts and
9 expenditures for the profession.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.130
11 RCW to read as follows:

12 To implement section 4 of this act, the department may increase
13 application and renewal fees by amounts that exceed the fiscal growth
14 factor under RCW 43.135.055.

15 **Sec. 13.** RCW 70.41.210 and 2005 c 470 s 1 are each amended to read
16 as follows:

17 (1) The chief administrator or executive officer of a hospital
18 shall report to the department when the practice of a health care
19 practitioner as defined in subsection (2) of this section is
20 restricted, suspended, limited, or terminated based upon a conviction,
21 determination, or finding by the hospital that the health care
22 practitioner has committed an action defined as unprofessional conduct
23 under RCW 18.130.180. The chief administrator or executive officer
24 shall also report any voluntary restriction or termination of the
25 practice of a health care practitioner as defined in subsection (2) of
26 this section while the practitioner is under investigation or the
27 subject of a proceeding by the hospital regarding unprofessional
28 conduct, or in return for the hospital not conducting such an
29 investigation or proceeding or not taking action. The department will
30 forward the report to the appropriate disciplining authority.

31 (2) The reporting requirements apply to the following health care
32 practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced
33 registered nurse practitioners as defined in chapter 18.79 RCW;
34 dentists as defined in chapter 18.32 RCW; naturopaths as defined in
35 chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW;
36 osteopathic physicians and surgeons as defined in chapter 18.57 RCW;

1 osteopathic ((~~physician~~ [~~physicians~~'])) physicians' assistants as
2 defined in chapter 18.57A RCW; physicians as defined in chapter 18.71
3 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric
4 physicians and surgeons as defined in chapter 18.22 RCW; and
5 psychologists as defined in chapter 18.83 RCW.

6 (3) Reports made under subsection (1) of this section shall be made
7 within fifteen days of the date: (a) A conviction, determination, or
8 finding is made by the hospital that the health care practitioner has
9 committed an action defined as unprofessional conduct under RCW
10 18.130.180; or (b) the voluntary restriction or termination of the
11 practice of a health care practitioner, including his or her voluntary
12 resignation, while under investigation or the subject of proceedings
13 regarding unprofessional conduct under RCW 18.130.180 is accepted by
14 the hospital.

15 (4) Failure of a hospital to comply with this section is punishable
16 by a civil penalty not to exceed ((~~two~~)) five hundred ((~~fifty~~))
17 dollars.

18 (5) A hospital, its chief administrator, or its executive officer
19 who files a report under this section is immune from suit, whether
20 direct or derivative, in any civil action related to the filing or
21 contents of the report, unless the conviction, determination, or
22 finding on which the report and its content are based is proven to not
23 have been made in good faith. The prevailing party in any action
24 brought alleging the conviction, determination, finding, or report was
25 not made in good faith, shall be entitled to recover the costs of
26 litigation, including reasonable attorneys' fees.

27 (6) The department shall forward reports made under subsection (1)
28 of this section to the appropriate disciplining authority designated
29 under Title 18 RCW within fifteen days of the date the report is
30 received by the department. The department shall notify a hospital
31 that has made a report under subsection (1) of this section of the
32 results of the disciplining authority's case disposition decision
33 within fifteen days after the case disposition. Case disposition is
34 the decision whether to issue a statement of charges, take informal
35 action, or close the complaint without action against a practitioner.
36 In its biennial report to the legislature under RCW 18.130.310, the
37 department shall specifically identify the case dispositions of reports
38 made by hospitals under subsection (1) of this section.

1 (7) The department shall not increase hospital license fees to
2 carry out this section before July 1, 2007.

3 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.130
4 RCW to read as follows:

5 Any license holder performing a gynecological examination or
6 procedure must ensure that a third party is in the room where the
7 examination or procedure is being conducted, unless the patient signs
8 a written waiver of the right while the patient is competent to sign
9 such a waiver.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 18.130
11 RCW to read as follows:

12 (1) Each disciplining authority shall develop a clinical competency
13 examination program. Each program must:

14 (a) Be developed in consultation with the major institutions of
15 higher education in the state that provide accredited training for
16 professionals within the disciplining authority's jurisdiction;

17 (b) Establish the skills to be examined and measurement standards
18 and methods by which clinical competency is assessed; and

19 (c) Include criteria for determining when a clinical competency
20 examination may be required, including whether requiring the
21 examination will assist the disciplining authority in carrying out its
22 duties, protecting the public, or promoting quality assurance within
23 the profession.

24 (2) By December 1, 2007, the secretary shall report to the
25 appropriate committees of the legislature on the disciplining
26 authorities' progress in developing clinical competency examinations
27 and any recommendations to the legislature for authority to implement
28 the use of the examinations.

29 NEW SECTION. **Sec. 16.** A new section is added to chapter 42.52 RCW
30 to read as follows:

31 Members of a health profession board or commission as identified in
32 RCW 18.130.040(2)(b) may express their professional opinions to an
33 elected official about the work of the board or commission on which the
34 member serves, even if those opinions differ from the department of

1 health's official position. Such communication shall be to inform the
2 elected official and not to lobby in support or opposition to any
3 initiative to the legislature.

4 NEW SECTION. **Sec. 17.** Except for section 4 of this act, which
5 takes effect January 1, 2008, this act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

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