
HOUSE BILL 2883

State of Washington 60th Legislature 2008 Regular Session

By Representatives Green, Roberts, and Morrell; by request of Governor Gregoire

Read first time 01/17/08. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to regulation of health professionals; amending RCW
2 18.130.050, 18.130.080, 18.130.140, 18.130.150, 18.130.165, 18.130.170,
3 18.130.172, 18.130.180, 9.96A.020, 9.95.240, and 43.43.825; reenacting
4 and amending RCW 18.130.040, 18.130.040, and 18.130.160; adding new
5 sections to chapter 18.130 RCW; providing an effective date; and
6 providing an expiration date.

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

8 **Sec. 1.** RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are
9 each reenacted and amended to read as follows:

10 (1) This chapter applies only to the secretary and the boards and
11 commissions having jurisdiction in relation to the professions licensed
12 under the chapters specified in this section. This chapter does not
13 apply to any business or profession not licensed under the chapters
14 specified in this section.

15 (2)(a) The secretary has authority under this chapter in relation
16 to the following professions:

17 (i) Dispensing opticians licensed and designated apprentices under
18 chapter 18.34 RCW;

19 (ii) Naturopaths licensed under chapter 18.36A RCW;

1 (iii) Midwives licensed under chapter 18.50 RCW;
2 (iv) Ocularists licensed under chapter 18.55 RCW;
3 (v) Massage operators and businesses licensed under chapter 18.108
4 RCW;
5 (vi) Dental hygienists licensed under chapter 18.29 RCW;
6 (vii) Acupuncturists licensed under chapter 18.06 RCW;
7 (viii) Radiologic technologists certified and X-ray technicians
8 registered under chapter 18.84 RCW;
9 (ix) Respiratory care practitioners licensed under chapter 18.89
10 RCW;
11 (x) Persons registered under chapter 18.19 RCW;
12 (xi) Persons licensed as mental health counselors, marriage and
13 family therapists, and social workers under chapter 18.225 RCW;
14 (xii) Persons registered as nursing pool operators under chapter
15 18.52C RCW;
16 (xiii) Nursing assistants registered or certified under chapter
17 18.88A RCW;
18 (xiv) Health care assistants certified under chapter 18.135 RCW;
19 (xv) Dietitians and nutritionists certified under chapter 18.138
20 RCW;
21 (xvi) Chemical dependency professionals certified under chapter
22 18.205 RCW;
23 (xvii) Sex offender treatment providers and certified affiliate sex
24 offender treatment providers certified under chapter 18.155 RCW;
25 (xviii) Persons licensed and certified under chapter 18.73 RCW or
26 RCW 18.71.205;
27 (xix) Denturists licensed under chapter 18.30 RCW;
28 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
29 (xxi) Surgical technologists registered under chapter 18.215 RCW;
30 (xxii) Recreational therapists; and
31 (xxiii) Animal massage practitioners certified under chapter 18.240
32 RCW.
33 (b) The boards and commissions having authority under this chapter
34 are as follows:
35 (i) The podiatric medical board as established in chapter 18.22
36 RCW;
37 (ii) The chiropractic quality assurance commission as established
38 in chapter 18.25 RCW;

1 (iii) The dental quality assurance commission as established in
2 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and
3 licenses and registrations issued under chapter 18.260 RCW;

4 (iv) The board of hearing and speech as established in chapter
5 18.35 RCW;

6 (v) The board of examiners for nursing home administrators as
7 established in chapter 18.52 RCW;

8 (vi) The optometry board as established in chapter 18.54 RCW
9 governing licenses issued under chapter 18.53 RCW;

10 (vii) The board of osteopathic medicine and surgery as established
11 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
12 18.57A RCW;

13 (viii) The board of pharmacy as established in chapter 18.64 RCW
14 governing licenses issued under chapters 18.64 and 18.64A RCW;

15 (ix) The medical quality assurance commission as established in
16 chapter 18.71 RCW governing licenses and registrations issued under
17 chapters 18.71 and 18.71A RCW;

18 (x) The board of physical therapy as established in chapter 18.74
19 RCW;

20 (xi) The board of occupational therapy practice as established in
21 chapter 18.59 RCW;

22 (xii) The nursing care quality assurance commission as established
23 in chapter 18.79 RCW governing licenses and registrations issued under
24 that chapter;

25 (xiii) The examining board of psychology and its disciplinary
26 committee as established in chapter 18.83 RCW; and

27 (xiv) The veterinary board of governors as established in chapter
28 18.92 RCW.

29 (3) In addition to the authority to discipline license holders, the
30 disciplining authority has the authority to grant or deny licenses
31 (~~based on the conditions and criteria established in this chapter and~~
32 ~~the chapters specified in subsection (2) of this section. This chapter~~
33 ~~also governs any investigation, hearing, or proceeding relating to~~
34 ~~denial of licensure or issuance of a license conditioned on the~~
35 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~
36 ~~by)). The disciplining authority may also grant a license subject to
37 conditions.~~

1 (4) All disciplining authorities shall adopt procedures to ensure
2 substantially consistent application of this chapter, the Uniform
3 Disciplinary Act, among the disciplining authorities listed in
4 subsection (2) of this section.

5 **Sec. 2.** RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and
6 2007 c 70 s 11 are each reenacted and amended to read as follows:

7 (1) This chapter applies only to the secretary and the boards and
8 commissions having jurisdiction in relation to the professions licensed
9 under the chapters specified in this section. This chapter does not
10 apply to any business or profession not licensed under the chapters
11 specified in this section.

12 (2)(a) The secretary has authority under this chapter in relation
13 to the following professions:

14 (i) Dispensing opticians licensed and designated apprentices under
15 chapter 18.34 RCW;

16 (ii) Naturopaths licensed under chapter 18.36A RCW;

17 (iii) Midwives licensed under chapter 18.50 RCW;

18 (iv) Ocularists licensed under chapter 18.55 RCW;

19 (v) Massage operators and businesses licensed under chapter 18.108
20 RCW;

21 (vi) Dental hygienists licensed under chapter 18.29 RCW;

22 (vii) Acupuncturists licensed under chapter 18.06 RCW;

23 (viii) Radiologic technologists certified and X-ray technicians
24 registered under chapter 18.84 RCW;

25 (ix) Respiratory care practitioners licensed under chapter 18.89
26 RCW;

27 (x) Persons registered under chapter 18.19 RCW;

28 (xi) Persons licensed as mental health counselors, marriage and
29 family therapists, and social workers under chapter 18.225 RCW;

30 (xii) Persons registered as nursing pool operators under chapter
31 18.52C RCW;

32 (xiii) Nursing assistants registered or certified under chapter
33 18.88A RCW;

34 (xiv) Health care assistants certified under chapter 18.135 RCW;

35 (xv) Dietitians and nutritionists certified under chapter 18.138
36 RCW;

1 (xvi) Chemical dependency professionals certified under chapter
2 18.205 RCW;

3 (xvii) Sex offender treatment providers and certified affiliate sex
4 offender treatment providers certified under chapter 18.155 RCW;

5 (xviii) Persons licensed and certified under chapter 18.73 RCW or
6 RCW 18.71.205;

7 (xix) Denturists licensed under chapter 18.30 RCW;

8 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

9 (xxi) Surgical technologists registered under chapter 18.215 RCW;

10 (xxii) Recreational therapists;

11 (xxiii) Animal massage practitioners certified under chapter 18.240
12 RCW; and

13 (xxiv) Athletic trainers licensed under chapter 18.250 RCW.

14 (b) The boards and commissions having authority under this chapter
15 are as follows:

16 (i) The podiatric medical board as established in chapter 18.22
17 RCW;

18 (ii) The chiropractic quality assurance commission as established
19 in chapter 18.25 RCW;

20 (iii) The dental quality assurance commission as established in
21 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and
22 licenses and registrations issued under chapter 18.260 RCW;

23 (iv) The board of hearing and speech as established in chapter
24 18.35 RCW;

25 (v) The board of examiners for nursing home administrators as
26 established in chapter 18.52 RCW;

27 (vi) The optometry board as established in chapter 18.54 RCW
28 governing licenses issued under chapter 18.53 RCW;

29 (vii) The board of osteopathic medicine and surgery as established
30 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
31 18.57A RCW;

32 (viii) The board of pharmacy as established in chapter 18.64 RCW
33 governing licenses issued under chapters 18.64 and 18.64A RCW;

34 (ix) The medical quality assurance commission as established in
35 chapter 18.71 RCW governing licenses and registrations issued under
36 chapters 18.71 and 18.71A RCW;

37 (x) The board of physical therapy as established in chapter 18.74
38 RCW;

1 (xi) The board of occupational therapy practice as established in
2 chapter 18.59 RCW;

3 (xii) The nursing care quality assurance commission as established
4 in chapter 18.79 RCW governing licenses and registrations issued under
5 that chapter;

6 (xiii) The examining board of psychology and its disciplinary
7 committee as established in chapter 18.83 RCW; and

8 (xiv) The veterinary board of governors as established in chapter
9 18.92 RCW.

10 (3) In addition to the authority to discipline license holders, the
11 disciplining authority has the authority to grant or deny licenses
12 (~~based on the conditions and criteria established in this chapter and~~
13 ~~the chapters specified in subsection (2) of this section. This chapter~~
14 ~~also governs any investigation, hearing, or proceeding relating to~~
15 ~~denial of licensure or issuance of a license conditioned on the~~
16 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~
17 ~~by)). The disciplining authority may also grant a license subject to
18 conditions.~~

19 (4) All disciplining authorities shall adopt procedures to ensure
20 substantially consistent application of this chapter, the Uniform
21 Disciplinary Act, among the disciplining authorities listed in
22 subsection (2) of this section.

23 NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW
24 to read as follows:

25 (1) The disciplining authority may deny an application for
26 licensure or grant a license with conditions if the applicant:

27 (a) Has had his or her license to practice any health care
28 profession suspended, revoked, or restricted, by competent authority in
29 any state, federal, or foreign jurisdiction;

30 (b) Has committed any act defined as unprofessional conduct for a
31 license holder under RCW 18.130.180;

32 (c) Has been convicted or is subject to current prosecution or
33 pending charges of a crime involving moral turpitude or a crime
34 identified in RCW 43.43.830. For purposes of this section, conviction
35 includes all instances in which a plea of guilty or nolo contendere is
36 the basis for the conviction and all proceedings in which the
37 prosecution or sentence has been deferred or suspended. At the request

1 of an applicant for an original license whose conviction is under
2 appeal, the disciplining authority may defer decision upon the
3 application during the pendency of such a prosecution or appeal;

4 (d) Fails to prove that he or she is qualified in accordance with
5 the provisions of this chapter, the chapters identified in RCW
6 18.130.040(2), or the rules adopted by the disciplining authority; or

7 (e) Is not able to practice with reasonable skill and safety to
8 consumers by reason of any mental or physical condition.

9 (i) The disciplining authority may require the applicant, at his or
10 her own expense, to submit to a mental, physical, or psychological
11 examination by one or more licensed health professionals designated by
12 the disciplining authority. The disciplining authority shall provide
13 written notice of its requirement for a mental or physical examination
14 that includes a statement of the specific conduct, event, or
15 circumstances justifying an examination and a statement of the nature,
16 purpose, scope, and content of the intended examination. If the
17 applicant fails to submit to the examination or provide the results of
18 the examination or any required waivers, the disciplining authority may
19 deny the application.

20 (ii) An applicant governed by this chapter is deemed to have given
21 consent to submit to a mental, physical, or psychological examination
22 when directed in writing by the disciplining authority and further to
23 have waived all objections to the admissibility or use of the examining
24 health professional's testimony or examination reports by the
25 disciplining authority on the grounds that the testimony or reports
26 constitute privileged communications.

27 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not
28 apply to a decision to deny a license under this section.

29 (3) The disciplining authority shall give written notice to the
30 applicant of the decision to deny a license or grant a license with
31 conditions in response to an application for a license. The notice
32 must state the grounds and factual basis for the action and be served
33 upon the applicant.

34 (4) A license applicant who is aggrieved by the decision to deny
35 the license or grant the license with conditions has the right to an
36 adjudicative proceeding. The application for adjudicative proceeding
37 must be in writing, state the basis for contesting the adverse action,
38 include a copy of the adverse notice, and be served on and received by

1 the department within twenty-eight days of the decision. The license
2 applicant has the burden to establish, by a preponderance of evidence,
3 that the license applicant is qualified in accordance with the
4 provisions of this chapter, the chapters identified in RCW
5 18.130.040(2), and the rules adopted by the disciplining authority.

6 **Sec. 4.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read
7 as follows:

8 The disciplining authority has the following authority:

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

11 (2) To investigate all complaints or reports of unprofessional
12 conduct as defined in this chapter and to hold hearings as provided in
13 this chapter;

14 (3) To issue subpoenas and administer oaths in connection with any
15 investigation, consideration of an application for license, hearing, or
16 proceeding held under this chapter;

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

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

21 (6) In the course of investigating a complaint or report of
22 unprofessional conduct, to conduct practice reviews and to issue
23 citations and assess fines for failure to produce documents, records,
24 or other items in accordance with section 5 of this act;

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

1 (8) To use a presiding officer as authorized in RCW 18.130.095(3)
2 or the office of administrative hearings as authorized in chapter 34.12
3 RCW to conduct hearings. The disciplining authority shall make the
4 final decision regarding disposition of the license unless the
5 disciplining authority elects to delegate in writing the final decision
6 to the presiding officer;

7 (9) To use individual members of the boards to direct
8 investigations and to authorize the issuance of a citation under
9 subsection (6) of this section. However, the member of the board shall
10 not subsequently participate in the hearing of the case;

11 (10) To enter into contracts for professional services determined
12 to be necessary for adequate enforcement of this chapter;

13 (11) To contract with licensees or other persons or organizations
14 to provide services necessary for the monitoring and supervision of
15 licensees who are placed on probation, whose professional activities
16 are restricted, or who are for any authorized purpose subject to
17 monitoring by the disciplining authority;

18 (12) To adopt standards of professional conduct or practice;

19 (13) To grant or deny license applications, and in the event of a
20 finding of unprofessional conduct by an applicant or license holder, to
21 impose any sanction against a license applicant or license holder
22 provided by this chapter;

23 (14) To restrict or place conditions on the practice of new
24 licensees in order to protect the public and promote the safety of and
25 confidence in the health care system;

26 (15) To designate individuals authorized to sign subpoenas and
27 statements of charges;

28 ((+15+)) (16) To establish panels consisting of three or more
29 members of the board to perform any duty or authority within the
30 board's jurisdiction under this chapter;

31 ((+16+)) (17) To review and audit the records of licensed health
32 facilities' or services' quality assurance committee decisions in which
33 a licensee's practice privilege or employment is terminated or
34 restricted. Each health facility or service shall produce and make
35 accessible to the disciplining authority the appropriate records and
36 otherwise facilitate the review and audit. Information so gained shall
37 not be subject to discovery or introduction into evidence in any civil
38 action pursuant to RCW 70.41.200(3).

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.130 RCW
2 to read as follows:

3 (1)(a) A licensee must produce documents, records, or other items
4 that are within his or her possession or control within twenty-one
5 calendar days of service of a request by a disciplining authority. If
6 the twenty-one calendar day limit results in a hardship upon the
7 licensee, he or she may request, for good cause, an extension not to
8 exceed thirty additional calendar days.

9 (b) In the event the licensee fails to produce the documents,
10 records, or other items as requested by the disciplining authority or
11 fails to obtain an extension of the time for response, the disciplining
12 authority may issue a written citation and assess a fine of up to one
13 hundred dollars per day for each day after the issuance of the citation
14 until the documents, records, or other items are produced.

15 (c) In no event may the administrative fine assessed by the
16 disciplining authority exceed five thousand dollars for each
17 investigation made with respect to the violation.

18 (2) Citations issued under this section must include the following:

19 (a) A statement that the citation represents a determination that
20 the person named has failed to produce documents, records, or other
21 items as required by this section and that the determination is final
22 unless contested as provided in this section;

23 (b) A statement of the specific circumstances;

24 (c) A statement of the monetary fine, which is up to one hundred
25 dollars per day for each day after the issuance of the citation;

26 (d) A statement informing the licensee that if the licensee desires
27 a hearing to contest the finding of a violation, the hearing must be
28 requested by written notice to the disciplining authority within twenty
29 days of the date of issuance of the citation. The hearing is limited
30 to the issue of whether the licensee timely produced the requested
31 documents, records, or other items or had good cause for failure to do
32 so; and

33 (e) A statement that in the event a licensee fails to pay a fine
34 within thirty days of the date of assessment, the full amount of the
35 assessed fine must be added to the fee for renewal of the license
36 unless the citation is being appealed.

37 (3) RCW 18.130.165 governs proof and enforcement of the fine.

1 (4) Administrative fines collected under this section must be
2 deposited in the health professions account created in RCW 43.70.320.

3 (5) Issuance of a citation under this section does not preclude the
4 disciplining authority from pursuing other action under this chapter.

5 (6) The disciplining authority shall establish and make available
6 to licensees the maximum daily monetary fine that may be issued under
7 subsection (2)(c) of this section. The disciplining authority shall
8 review the maximum fine on a regular basis, but at a minimum, each
9 biennium.

10 **Sec. 6.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read
11 as follows:

12 (1) A person, including but not limited to consumers, licensees,
13 corporations, organizations, health care facilities, impaired
14 practitioner programs, or voluntary substance abuse monitoring programs
15 approved by disciplining authorities, and state and local governmental
16 agencies, may submit a written complaint to the disciplining authority
17 charging a license holder or applicant with unprofessional conduct and
18 specifying the grounds therefor or to report information to the
19 disciplining authority, or voluntary substance abuse monitoring
20 program, or an impaired practitioner program approved by the
21 disciplining authority, which indicates that the license holder may not
22 be able to practice his or her profession with reasonable skill and
23 safety to consumers as a result of a mental or physical condition. If
24 the disciplining authority determines that the complaint merits
25 investigation, or if the disciplining authority has reason to believe,
26 without a formal complaint, that a license holder or applicant may have
27 engaged in unprofessional conduct, the disciplining authority shall
28 investigate to determine whether there has been unprofessional conduct.
29 In determining whether or not to investigate, the disciplining
30 authority shall consider any prior complaints received by the
31 disciplining authority, any prior findings of fact under RCW
32 18.130.110, any stipulations to informal disposition under RCW
33 18.130.172, and any comparable action taken by other state disciplining
34 authorities.

35 (2) Notwithstanding subsection (1) of this section, the
36 disciplining authority shall initiate an investigation in every
37 instance where the disciplining authority receives information that a

1 health care provider has been disqualified from participating in the
2 federal medicare program, under Title XVIII of the federal social
3 security act, or the federal medicaid program, under Title XIX of the
4 federal social security act.

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

8 (4)(a) The secretary is authorized to receive criminal history
9 record information that includes nonconviction data for any purpose
10 associated with the investigation or licensing of persons under this
11 chapter.

12 (b) Dissemination or use of nonconviction data for purposes other
13 than that authorized in this section is prohibited.

14 NEW SECTION. Sec. 7. A new section is added to chapter 18.130 RCW
15 to read as follows:

16 (1)(a) The secretary is authorized to receive criminal history
17 record information that includes nonconviction data for any purpose
18 associated with investigation or licensing and investigate the complete
19 criminal history and pending charges of all applicants and licensees.

20 (b) Dissemination or use of nonconviction data for purposes other
21 than that authorized in this section is prohibited.

22 (2) The investigation may include an examination of state and
23 national criminal identification data. The disciplining authority
24 shall use the information for determining eligibility for licensure or
25 renewal. The disciplining authority may also use the information when
26 determining whether to proceed with an investigation of a report under
27 RCW 18.130.080. For a national criminal history records check, the
28 department shall require fingerprints be submitted to and searched
29 through the Washington state patrol identification and criminal history
30 section. The Washington state patrol shall forward the fingerprints to
31 the federal bureau of investigation.

32 (3) Criminal justice agencies shall provide the secretary with both
33 conviction and nonconviction information that the secretary requests
34 for investigations under this chapter.

35 (4) There is established a unit within the department for the
36 purpose of detection, investigation, and prosecution of any act

1 prohibited or declared unlawful under this chapter. The secretary will
2 employ supervisory, legal, and investigative personnel for the program
3 who must be qualified by training and experience.

4 **Sec. 8.** RCW 18.130.140 and 1984 c 279 s 14 are each amended to
5 read as follows:

6 An individual who has been disciplined (~~((or))~~), whose license has
7 been denied, or whose license has been granted with conditions by a
8 disciplining authority may appeal the decision as provided in chapter
9 34.05 RCW.

10 **Sec. 9.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to
11 read as follows:

12 A person whose license has been suspended (~~((or revoked))~~) under this
13 chapter may petition the disciplining authority for reinstatement after
14 an interval as determined by the disciplining authority in the order
15 unless the disciplining authority has found, pursuant to RCW
16 18.130.160, that the licensee can never be rehabilitated or can never
17 regain the ability to practice with reasonable skill and safety. The
18 disciplining authority shall hold hearings on the petition and may deny
19 the petition or may order reinstatement and impose terms and conditions
20 as provided in RCW 18.130.160 and issue an order of reinstatement. The
21 disciplining authority may require successful completion of an
22 examination as a condition of reinstatement.

23 A person whose license has been suspended for noncompliance with a
24 support order or (~~((a residential or))~~) visitation order under RCW
25 74.20A.320 may petition for reinstatement at any time by providing the
26 secretary a release issued by the department of social and health
27 services stating that the person is in compliance with the order. If
28 the person has continued to meet all other requirements for
29 reinstatement during the suspension, the secretary shall automatically
30 reissue the person's license upon receipt of the release, and payment
31 of a reinstatement fee, if any.

32 **Sec. 10.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are
33 each reenacted and amended to read as follows:

34 Upon a finding, after hearing, that a license holder (~~((or~~
35 ~~applicant))~~) has committed unprofessional conduct or is unable to

1 practice with reasonable skill and safety due to a physical or mental
2 condition, the disciplining authority may consider the imposition of
3 sanctions, taking into account any prior findings of fact under RCW
4 18.130.110, any stipulations to informal disposition under RCW
5 18.130.172, and any action taken by other in-state or out-of-state
6 disciplining authorities, and issue an order providing for one or any
7 combination of the following:

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

26 Any of the actions under this section may be totally or partly
27 stayed by the disciplining authority. Safeguarding the public's health
28 and safety is the paramount responsibility of every disciplining
29 authority and in determining what action is appropriate, the
30 disciplining authority must first consider what sanctions are necessary
31 to protect or compensate the public. Only after such provisions have
32 been made may the disciplining authority consider and include in the
33 order requirements designed to rehabilitate the license holder (~~or~~
34 ~~applicant~~). All costs associated with compliance with orders issued
35 under this section are the obligation of the license holder (~~or~~
36 ~~applicant~~). The disciplining authority may order permanent revocation
37 of a license if it finds that the licensee can never be rehabilitated

1 or can never regain the ability to practice with reasonable skill and
2 safety.

3 Surrender or permanent revocation of a license under this section
4 is not subject to a petition for reinstatement under RCW 18.130.150.

5 The licensee ((~~or applicant~~)) may enter into a stipulated
6 disposition of charges that includes one or more of the sanctions of
7 this section, but only after a statement of charges has been issued and
8 the licensee has been afforded the opportunity for a hearing and has
9 elected on the record to forego such a hearing. The stipulation shall
10 either contain one or more specific findings of unprofessional conduct
11 or inability to practice, or a statement by the licensee acknowledging
12 that evidence is sufficient to justify one or more specified findings
13 of unprofessional conduct or inability to practice. The stipulation
14 entered into pursuant to this subsection shall be considered formal
15 disciplinary action for all purposes.

16 **Sec. 11.** RCW 18.130.165 and 1993 c 367 s 20 are each amended to
17 read as follows:

18 Where an order for payment of a fine is made as a result of a
19 citation under section 5 of this act or a hearing under RCW 18.130.100
20 or 18.130.190 and timely payment is not made as directed in the final
21 order, the disciplining authority may enforce the order for payment in
22 the superior court in the county in which the hearing was held. This
23 right of enforcement shall be in addition to any other rights the
24 disciplining authority may have as to any licensee ordered to pay a
25 fine but shall not be construed to limit a licensee's ability to seek
26 judicial review under RCW 18.130.140.

27 In any action for enforcement of an order of payment of a fine, the
28 disciplining authority's order is conclusive proof of the validity of
29 the order of payment of a fine and the terms of payment.

30 **Sec. 12.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to
31 read as follows:

32 (1) If the disciplining authority believes a license holder ((~~or~~
33 ~~applicant~~)) may be unable to practice with reasonable skill and safety
34 to consumers by reason of any mental or physical condition, a statement
35 of charges in the name of the disciplining authority shall be served on
36 the license holder ((~~or applicant~~)) and notice shall also be issued

1 providing an opportunity for a hearing. The hearing shall be limited
2 to the sole issue of the capacity of the license holder (~~or~~
3 ~~applicant~~) to practice with reasonable skill and safety. If the
4 disciplining authority determines that the license holder (~~or~~
5 ~~applicant~~) is unable to practice with reasonable skill and safety for
6 one of the reasons stated in this subsection, the disciplining
7 authority shall impose such sanctions under RCW 18.130.160 as is deemed
8 necessary to protect the public.

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

32 (b) Upon submission of a timely response to the notice of intent to
33 order a mental or physical examination, the license holder (~~or~~
34 ~~applicant~~) shall have an opportunity to respond to or refute such an
35 order by submission of evidence or written argument or both. The
36 evidence and written argument supporting and opposing the mental or
37 physical examination shall be reviewed by either a panel of the
38 disciplining authority members who have not been involved with the

1 allegations against the license holder (~~(or applicant)~~) or a neutral
2 decision maker approved by the disciplining authority. The reviewing
3 panel of the disciplining authority or the approved neutral decision
4 maker may, in its discretion, ask for oral argument from the parties.
5 The reviewing panel of the disciplining authority or the approved
6 neutral decision maker shall prepare a written decision as to whether:
7 There is reasonable cause to believe that the license holder (~~(or~~
8 ~~applicant)~~) may be unable to practice with reasonable skill and safety
9 by reason of a mental or physical condition, or the manner or form of
10 the mental or physical examination is appropriate, or both.

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

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

1 decision maker approved by the disciplining authority, as previously
2 set forth in this section. Further, the action or discipline ordered
3 by the disciplining authority shall not be more severe than a
4 suspension of the license, certification, registration, or application
5 until such time as the license holder (~~(or applicant)~~) complies with
6 the properly ordered mental or physical examination.

7 (e) Nothing in this section shall restrict the power of a
8 disciplining authority to act in an emergency under RCW 34.05.422(4),
9 34.05.479, and 18.130.050(7).

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

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

27 **Sec. 13.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
28 read as follows:

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

36 (2) The disciplinary authority and the (~~(applicant or)~~) licensee
37 may stipulate that the allegations may be disposed of informally in

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

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

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

33 **Sec. 14.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to
34 read as follows:

35 The following conduct, acts, or conditions constitute
36 unprofessional conduct for any license holder ((~~or applicant~~)) under
37 the jurisdiction of this chapter:

1 (1) The commission of any act involving moral turpitude,
2 dishonesty, or corruption relating to the practice of the person's
3 profession, whether the act constitutes a crime or not. If the act
4 constitutes a crime, conviction in a criminal proceeding is not a
5 condition precedent to disciplinary action. Upon such a conviction,
6 however, the judgment and sentence is conclusive evidence at the
7 ensuing disciplinary hearing of the guilt of the license holder (~~(or~~
8 ~~applicant)~~) of the crime described in the indictment or information,
9 and of the person's violation of the statute on which it is based. For
10 the purposes of this section, conviction includes all instances in
11 which a plea of guilty or nolo contendere is the basis for the
12 conviction and all proceedings in which the sentence has been deferred
13 or suspended. Nothing in this section abrogates rights guaranteed
14 under chapter 9.96A RCW;

15 (2) Misrepresentation or concealment of a material fact in
16 obtaining a license or in reinstatement thereof;

17 (3) All advertising which is false, fraudulent, or misleading;

18 (4) Incompetence, negligence, or malpractice which results in
19 injury to a patient or which creates an unreasonable risk that a
20 patient may be harmed. The use of a nontraditional treatment by itself
21 shall not constitute unprofessional conduct, provided that it does not
22 result in injury to a patient or create an unreasonable risk that a
23 patient may be harmed;

24 (5) Suspension, revocation, or restriction of the individual's
25 license to practice any health care profession by competent authority
26 in any state, federal, or foreign jurisdiction, a certified copy of the
27 order, stipulation, or agreement being conclusive evidence of the
28 revocation, suspension, or restriction;

29 (6) The possession, use, prescription for use, or distribution of
30 controlled substances or legend drugs in any way other than for
31 legitimate or therapeutic purposes, diversion of controlled substances
32 or legend drugs, the violation of any drug law, or prescribing
33 controlled substances for oneself;

34 (7) Violation of any state or federal statute or administrative
35 rule regulating the profession in question, including any statute or
36 rule defining or establishing standards of patient care or professional
37 conduct or practice;

38 (8) Failure to cooperate with the disciplining authority by:

- 1 (a) Not furnishing any papers ((~~or~~)), documents, records, or other
2 items;
- 3 (b) Not furnishing in writing a full and complete explanation
4 covering the matter contained in the complaint filed with the
5 disciplining authority;
- 6 (c) Not responding to subpoenas issued by the disciplining
7 authority, whether or not the recipient of the subpoena is the accused
8 in the proceeding; or
- 9 (d) Not providing reasonable and timely access for authorized
10 representatives of the disciplining authority seeking to perform
11 practice reviews at facilities utilized by the license holder;
- 12 (9) Failure to comply with an order issued by the disciplining
13 authority or a stipulation for informal disposition entered into with
14 the disciplining authority;
- 15 (10) Aiding or abetting an unlicensed person to practice when a
16 license is required;
- 17 (11) Violations of rules established by any health agency;
- 18 (12) Practice beyond the scope of practice as defined by law or
19 rule;
- 20 (13) Misrepresentation or fraud in any aspect of the conduct of the
21 business or profession;
- 22 (14) Failure to adequately supervise auxiliary staff to the extent
23 that the consumer's health or safety is at risk;
- 24 (15) Engaging in a profession involving contact with the public
25 while suffering from a contagious or infectious disease involving
26 serious risk to public health;
- 27 (16) Promotion for personal gain of any unnecessary or
28 inefficacious drug, device, treatment, procedure, or service;
- 29 (17) Conviction of any gross misdemeanor or felony relating to the
30 practice of the person's profession. For the purposes of this
31 subsection, conviction includes all instances in which a plea of guilty
32 or nolo contendere is the basis for conviction and all proceedings in
33 which the sentence has been deferred or suspended. Nothing in this
34 section abrogates rights guaranteed under chapter 9.96A RCW;
- 35 (18) The procuring, or aiding or abetting in procuring, a criminal
36 abortion;
- 37 (19) The offering, undertaking, or agreeing to cure or treat
38 disease by a secret method, procedure, treatment, or medicine, or the

1 treating, operating, or prescribing for any health condition by a
2 method, means, or procedure which the licensee refuses to divulge upon
3 demand of the disciplining authority;

4 (20) The willful betrayal of a practitioner-patient privilege as
5 recognized by law;

6 (21) Violation of chapter 19.68 RCW;

7 (22) Interference with an investigation or disciplinary proceeding
8 by willful misrepresentation of facts before the disciplining authority
9 or its authorized representative, or by the use of threats or
10 harassment against any patient or witness to prevent them from
11 providing evidence in a disciplinary proceeding or any other legal
12 action, or by the use of financial inducements to any patient or
13 witness to prevent or attempt to prevent him or her from providing
14 evidence in a disciplinary proceeding;

15 (23) Current misuse of:

16 (a) Alcohol;

17 (b) Controlled substances; or

18 (c) Legend drugs;

19 (24) Abuse of a client or patient or sexual contact with a client
20 or patient;

21 (25) Acceptance of more than a nominal gratuity, hospitality, or
22 subsidy offered by a representative or vendor of medical or health-
23 related products or services intended for patients, in contemplation of
24 a sale or for use in research publishable in professional journals,
25 where a conflict of interest is presented, as defined by rules of the
26 disciplining authority, in consultation with the department, based on
27 recognized professional ethical standards.

28 **Sec. 15.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read
29 as follows:

30 (1) Subject to the exceptions in subsections (3) and (4) of this
31 section, and unless there is another provision of law to the contrary,
32 a person is not disqualified from employment by the state of Washington
33 or any of its counties, cities, towns, municipal corporations, or
34 quasi-municipal corporations, nor is a person disqualified to practice,
35 pursue or engage in any occupation, trade, vocation, or business for
36 which a license, permit, certificate or registration is required to be
37 issued by the state of Washington or any of its counties, cities,

1 towns, municipal corporations, or quasi-municipal corporations solely
2 because of a prior conviction of a felony. However, this section does
3 not preclude the fact of any prior conviction of a crime from being
4 considered.

5 (2) A person may be denied employment by the state of Washington or
6 any of its counties, cities, towns, municipal corporations, or quasi-
7 municipal corporations, or a person may be denied a license, permit,
8 certificate or registration to pursue, practice or engage in an
9 occupation, trade, vocation, or business by reason of the prior
10 conviction of a felony if the felony for which he or she was convicted
11 directly relates to the position of employment sought or to the
12 specific occupation, trade, vocation, or business for which the
13 license, permit, certificate or registration is sought, and the time
14 elapsed since the conviction is less than ten years. However, for
15 positions in the county treasurer's office, a person may be
16 disqualified from employment because of a prior guilty plea or
17 conviction of a felony involving embezzlement or theft, even if the
18 time elapsed since the guilty plea or conviction is ten years or more.

19 (3) A person is disqualified for any certificate required or
20 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior
21 guilty plea or the conviction of a felony involving sexual exploitation
22 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44
23 RCW where a minor is the victim, promoting prostitution of a minor
24 under chapter 9A.88 RCW, or a violation of similar laws of another
25 jurisdiction, even if the time elapsed since the guilty plea or
26 conviction is ten years or more.

27 (4) A person is disqualified from employment by school districts,
28 educational service districts, and their contractors hiring employees
29 who will have regularly scheduled unsupervised access to children,
30 because of a prior guilty plea or conviction of a felony involving
31 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
32 under chapter 9A.44 RCW where a minor is the victim, promoting
33 prostitution of a minor under chapter 9A.88 RCW, or a violation of
34 similar laws of another jurisdiction, even if the time elapsed since
35 the guilty plea or conviction is ten years or more.

36 (5) The provisions of this chapter do not apply to issuance of
37 licenses or credentials for professions regulated under chapter 18.130
38 RCW.

1 (6) Subsections (3) and (4) of this section only apply to a person
2 applying for a certificate or for employment on or after July 25, 1993.
3 Subsection (5) of this section only applies to a person applying for a
4 license or credential on or after the effective date of this section.

5 **Sec. 16.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read
6 as follows:

7 (1) Every defendant who has fulfilled the conditions of his or her
8 probation for the entire period thereof, or who shall have been
9 discharged from probation prior to the termination of the period
10 thereof, may at any time prior to the expiration of the maximum period
11 of punishment for the offense for which he or she has been convicted be
12 permitted in the discretion of the court to withdraw his or her plea of
13 guilty and enter a plea of not guilty, or if he or she has been
14 convicted after a plea of not guilty, the court may in its discretion
15 set aside the verdict of guilty; and in either case, the court may
16 thereupon dismiss the information or indictment against such defendant,
17 who shall thereafter be released from all penalties and disabilities
18 resulting from the offense or crime of which he or she has been
19 convicted. The probationer shall be informed of this right in his or
20 her probation papers: PROVIDED, That in any subsequent prosecution,
21 for any other offense, such prior conviction may be pleaded and proved,
22 and shall have the same effect as if probation had not been granted, or
23 the information or indictment dismissed.

24 (2)(a) After the period of probation has expired, the defendant may
25 apply to the sentencing court for a vacation of the defendant's record
26 of conviction under RCW 9.94A.640. The court may, in its discretion,
27 clear the record of conviction if it finds the defendant has met the
28 equivalent of the tests in RCW 9.94A.640(2) as those tests would be
29 applied to a person convicted of a crime committed before July 1, 1984.

30 (b) The clerk of the court in which the vacation order is entered
31 shall immediately transmit the order vacating the conviction to the
32 Washington state patrol identification section and to the local police
33 agency, if any, which holds criminal history information for the person
34 who is the subject of the conviction. The Washington state patrol and
35 any such local police agency shall immediately update their records to
36 reflect the vacation of the conviction, and shall transmit the order
37 vacating the conviction to the federal bureau of investigation. A

1 conviction that has been vacated under this section may not be
2 disseminated or disclosed by the state patrol or local law enforcement
3 agency to any person, except other criminal justice enforcement
4 agencies.

5 (3) This section does not apply to chapter 18.130 RCW.

6 **Sec. 17.** RCW 43.43.825 and 2006 c 99 s 8 are each amended to read
7 as follows:

8 (1) Upon a guilty plea or conviction of a person for any felony
9 crime involving homicide under chapter 9A.32 RCW, assault under chapter
10 9A.36 RCW, kidnapping under chapter 9A.40 RCW, ~~((or))~~ sex offenses
11 under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW,
12 violations of the uniform controlled substances act under chapter 69.50
13 RCW, any drug offense defined under RCW 9.94A.030, or a crime of any
14 type classified as a felony under Washington state law, the prosecuting
15 attorney shall notify the state patrol of such guilty pleas or
16 convictions.

17 (2) When the state patrol receives information that a person has
18 pled guilty to or been convicted of one of the felony crimes under
19 subsection (1) of this section, the state patrol shall transmit that
20 information to the department of health. It is the duty of the
21 department of health to identify whether the person holds a credential
22 issued by a disciplining authority listed under RCW 18.130.040, and
23 provide this information to the disciplining authority that issued the
24 credential to the person who pled guilty or was convicted of a crime
25 listed in subsection (1) of this section.

26 NEW SECTION. **Sec. 18.** Section 1 of this act expires July 1, 2008.

27 NEW SECTION. **Sec. 19.** Section 2 of this act takes effect July 1,
28 2008.

29 NEW SECTION. **Sec. 20.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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