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SECOND SUBSTITUTE SENATE BILL 5509

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State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kastama, Pflug, Kohl-Welles, Keiser, Parlette, Carrell, Regala and Franklin)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to disciplinary actions for health care providers  
2 regulated under chapter 18.130 RCW; amending RCW 18.130.080,  
3 18.130.180, and 18.130.020; adding a new section to chapter 18.130 RCW;  
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that Washington  
7 citizens desire and receive health care and treatment from a variety of  
8 professional providers. The legislature further recognizes that some  
9 health care providers have used the professional disciplinary process  
10 as a means of attacking other health care providers. In order to  
11 prevent unwarranted attacks on other health care providers where the  
12 health of the patient is not at risk, the legislature is making changes  
13 in the uniform disciplinary act to ensure that all complaints against  
14 health care providers are grounded in real harm to the patient rather  
15 than mere disagreement about the type of procedure provided.

16 **Sec. 2.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read  
17 as follows:

18 (1) A person, including but not limited to consumers, licensees,

1 corporations, organizations, health care facilities, impaired  
2 practitioner programs, or voluntary substance abuse monitoring programs  
3 approved by disciplining authorities, and state and local governmental  
4 agencies, may submit a written complaint to the disciplining authority  
5 charging a license holder or applicant with unprofessional conduct and  
6 specifying the grounds therefor or to report information to the  
7 disciplining authority, or voluntary substance abuse monitoring  
8 program, or an impaired practitioner program approved by the  
9 disciplining authority, which indicates that the license holder may not  
10 be able to practice his or her profession with reasonable skill and  
11 safety to consumers as a result of a mental or physical condition. The  
12 complainant or the complainant's guardian or legal representative must  
13 sign the written complaint to the disciplining authority. The members  
14 of the disciplining authority must determine as to each complaint that  
15 there is probable cause to merit an investigation of the allegations in  
16 the complaint by the disciplining authority. If the disciplining  
17 authority determines that the complaint merits an investigation, or if  
18 the disciplining authority has reason to believe, without a formal  
19 complaint, that a license holder or applicant may have engaged in  
20 unprofessional conduct, the disciplining authority shall investigate to  
21 determine whether there has been unprofessional conduct. In conducting  
22 the investigation, the disciplining authority may consult with a  
23 practitioner or practitioners who utilize the procedure in question in  
24 the complaint in their practices to determine whether the license  
25 holder or applicant against whom the complaint has been filed is guilty  
26 of unprofessional conduct. In determining whether or not to  
27 investigate, the disciplining authority shall consider any prior  
28 complaints received by the disciplining authority, any prior findings  
29 of fact under RCW 18.130.110, any stipulations to informal disposition  
30 under RCW 18.130.172, and any comparable action taken by other state  
31 disciplining authorities.

32 (2) Notwithstanding subsection (1) of this section, the  
33 disciplining authority shall initiate an investigation in every  
34 instance where the disciplining authority receives information that a  
35 health care provider has been disqualified from participating in the  
36 federal medicare program, under Title XVIII of the federal social  
37 security act, or the federal medicaid program, under Title XIX of the  
38 federal social security act.

1 (3) A person who files a complaint or reports information under  
2 this section in good faith is immune from suit in any civil action  
3 related to the filing or contents of the complaint. A complaint  
4 against a license holder or applicant based solely on the use of a  
5 procedure, in the absence of any proof of harm to a patient, shall not  
6 be in good faith.

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

9 In order to sustain a complaint against a license holder or  
10 applicant, the disciplining authority must provide the testimony of at  
11 least one practitioner who utilizes the procedure that is the subject  
12 of the complaint in question in his or her practice, or when there is  
13 no practitioner who utilizes the procedure in question that is readily  
14 available, a practitioner who practices complementary alternative  
15 medicine may be used, to establish the license holder or applicant is  
16 guilty of unprofessional conduct.

17 **Sec. 4.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to read  
18 as follows:

19 The following conduct, acts, or conditions constitute  
20 unprofessional conduct for any license holder or applicant under the  
21 jurisdiction of this chapter:

22 (1) The commission of any act involving moral turpitude,  
23 dishonesty, or corruption relating to the practice of the person's  
24 profession, whether the act constitutes a crime or not. If the act  
25 constitutes a crime, conviction in a criminal proceeding is not a  
26 condition precedent to disciplinary action. Upon such a conviction,  
27 however, the judgment and sentence is conclusive evidence at the  
28 ensuing disciplinary hearing of the guilt of the license holder or  
29 applicant of the crime described in the indictment or information, and  
30 of the person's violation of the statute on which it is based. For the  
31 purposes of this section, conviction includes all instances in which a  
32 plea of guilty or nolo contendere is the basis for the conviction and  
33 all proceedings in which the sentence has been deferred or suspended.  
34 Nothing in this section abrogates rights guaranteed under chapter 9.96A  
35 RCW;

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

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

4 (4) Incompetence, negligence, or malpractice which results in  
5 injury to a patient or which creates an unreasonable risk that a  
6 patient may be harmed. The use of a (~~nontraditional treatment~~)  
7 procedure by itself shall not constitute unprofessional conduct,  
8 provided that it does not result in injury to a patient (~~or create an~~  
9 ~~unreasonable risk that a patient may be harmed~~) and the patient has  
10 signed a writing that complies with the requirements set forth in RCW  
11 7.70.060. The writing shall constitute prima facie evidence that the  
12 patient gave his or her consent to the treatment that is the subject of  
13 the complaint;

14 (5) Suspension, revocation, or restriction of the individual's  
15 license to practice any health care profession by competent authority  
16 in any state, federal, or foreign jurisdiction, a certified copy of the  
17 order, stipulation, or agreement being conclusive evidence of the  
18 revocation, suspension, or restriction;

19 (6) The possession, use, prescription for use, or distribution of  
20 controlled substances or legend drugs in any way other than for  
21 legitimate or therapeutic purposes, diversion of controlled substances  
22 or legend drugs, the violation of any drug law, or prescribing  
23 controlled substances for oneself;

24 (7) Violation of any state or federal statute or administrative  
25 rule regulating the profession in question, including any statute or  
26 rule defining or establishing standards of patient care or professional  
27 conduct or practice;

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

29 (a) Not furnishing any papers or documents;

30 (b) Not furnishing in writing a full and complete explanation  
31 covering the matter contained in the complaint filed with the  
32 disciplining authority;

33 (c) Not responding to subpoenas issued by the disciplining  
34 authority, whether or not the recipient of the subpoena is the accused  
35 in the proceeding; or

36 (d) Not providing reasonable and timely access for authorized  
37 representatives of the disciplining authority seeking to perform  
38 practice reviews at facilities utilized by the license holder;

- 1 (9) Failure to comply with an order issued by the disciplining  
2 authority or a stipulation for informal disposition entered into with  
3 the disciplining authority;
- 4 (10) Aiding or abetting an unlicensed person to practice when a  
5 license is required;
- 6 (11) Violations of rules established by any health agency;
- 7 (12) Practice beyond the scope of practice as defined by law or  
8 rule;
- 9 (13) Misrepresentation or fraud in any aspect of the conduct of the  
10 business or profession;
- 11 (14) Failure to adequately supervise auxiliary staff to the extent  
12 that the consumer's health or safety is at risk;
- 13 (15) Engaging in a profession involving contact with the public  
14 while suffering from a contagious or infectious disease involving  
15 serious risk to public health;
- 16 (16) Promotion for personal gain of any unnecessary or  
17 inefficacious drug, device, treatment, procedure, or service;
- 18 (17) Conviction of any gross misdemeanor or felony relating to the  
19 practice of the person's profession. For the purposes of this  
20 subsection, conviction includes all instances in which a plea of guilty  
21 or nolo contendere is the basis for conviction and all proceedings in  
22 which the sentence has been deferred or suspended. Nothing in this  
23 section abrogates rights guaranteed under chapter 9.96A RCW;
- 24 (18) The procuring, or aiding or abetting in procuring, a criminal  
25 abortion;
- 26 (19) The offering, undertaking, or agreeing to cure or treat  
27 disease by a secret method, procedure, treatment, or medicine, or the  
28 treating, operating, or prescribing for any health condition by a  
29 method, means, or procedure which the licensee refuses to divulge upon  
30 demand of the disciplining authority;
- 31 (20) The willful betrayal of a practitioner-patient privilege as  
32 recognized by law;
- 33 (21) Violation of chapter 19.68 RCW;
- 34 (22) Interference with an investigation or disciplinary proceeding  
35 by willful misrepresentation of facts before the disciplining authority  
36 or its authorized representative, or by the use of threats or  
37 harassment against any patient or witness to prevent them from  
38 providing evidence in a disciplinary proceeding or any other legal

1 action, or by the use of financial inducements to any patient or  
2 witness to prevent or attempt to prevent him or her from providing  
3 evidence in a disciplinary proceeding;

4 (23) Current misuse of:

5 (a) Alcohol;

6 (b) Controlled substances; or

7 (c) Legend drugs;

8 (24) Abuse of a client or patient or sexual contact with a client  
9 or patient;

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

17 **Sec. 5.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read  
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in  
20 this section apply throughout this chapter.

21 (1) "Disciplining authority" means the agency, board, or commission  
22 having the authority to take disciplinary action against a holder of,  
23 or applicant for, a professional or business license upon a finding of  
24 a violation of this chapter or a chapter specified under RCW  
25 18.130.040.

26 (2) "Department" means the department of health.

27 (3) "Secretary" means the secretary of health or the secretary's  
28 designee.

29 (4) "Board" means any of those boards specified in RCW 18.130.040.

30 (5) "Commission" means any of the commissions specified in RCW  
31 18.130.040.

32 (6) "Unlicensed practice" means:

33 (a) Practicing a profession or operating a business identified in  
34 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and  
35 unsuspended license to do so; or

36 (b) Representing to a consumer, through offerings, advertisements,  
37 or use of a professional title or designation, that the individual is

1 qualified to practice a profession or operate a business identified in  
2 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and  
3 unsuspended license to do so.

4 (7) "Disciplinary action" means sanctions identified in RCW  
5 18.130.160.

6 (8) "Practice review" means an investigative audit of records  
7 related to the complaint, without prior identification of specific  
8 patient or consumer names, or an assessment of the conditions,  
9 circumstances, and methods of the professional's practice related to  
10 the complaint, to determine whether unprofessional conduct may have  
11 been committed.

12 (9) "Health agency" means city and county health departments and  
13 the department of health.

14 (10) "License," "licensing," and "licensure" shall be deemed  
15 equivalent to the terms "license," "licensing," "licensure,"  
16 "certificate," "certification," and "registration" as those terms are  
17 defined in RCW 18.120.020.

18 (11) "False, fraudulent, or misleading advertising" means a  
19 statement that includes a misrepresentation of fact that is likely to  
20 mislead or deceive because of a failure to disclose material facts,  
21 that is intended or likely to create false or unjustified expectations  
22 of favorable results, or that includes representations or implications  
23 that in reasonable probability will cause an ordinarily prudent person  
24 to misunderstand or to be deceived.

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