
HOUSE BILL 1381

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Jinkins, Hunt, Wylie, Morrell, Cody, Green, Roberts, Clibborn, Ormsby, Reykdal, and Ryu

Read first time 01/24/13. Referred to Committee on Government Accountability & Oversight.

1 AN ACT Relating to administrative adjudicatory proceedings coming
2 before the department of health; amending RCW 18.130.050, 18.130.095,
3 18.130.100, 69.45.080, 69.50.305, 70.05.120, and 34.12.030; adding a
4 new section to chapter 43.70 RCW; adding new sections to chapter 18.130
5 RCW; and adding a new section to chapter 34.12 RCW.

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

7 **Sec. 1.** RCW 18.130.050 and 2008 c 134 s 3 are each amended to read
8 as follows:

9 Except as provided in RCW 18.130.062, the disciplining authority
10 has the following authority:

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

13 (2) To investigate all complaints or reports of unprofessional
14 conduct as defined in this chapter;

15 (3) To hold hearings as provided in this chapter;

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

1 (5) To take or cause depositions to be taken and use other
2 discovery procedures as needed in any investigation, hearing, or
3 proceeding held under this chapter;

4 (6) To compel attendance of witnesses at hearings;

5 (7) In the course of investigating a complaint or report of
6 unprofessional conduct, to conduct practice reviews and to issue
7 citations and assess fines for failure to produce documents, records,
8 or other items in accordance with RCW 18.130.230;

9 (8) To take emergency action ordering summary suspension of a
10 license, or restriction or limitation of the license holder's practice
11 pending proceedings by the disciplining authority. Within fourteen
12 days of a request by the affected license holder, the disciplining
13 authority must provide a show cause hearing in accordance with the
14 requirements of RCW 18.130.135. Consistent with RCW 18.130.370, a
15 disciplining authority shall issue a summary suspension of the license
16 or temporary practice permit of a license holder prohibited from
17 practicing a health care profession in another state, federal, or
18 foreign jurisdiction because of an act of unprofessional conduct that
19 is substantially equivalent to an act of unprofessional conduct
20 prohibited by this chapter or any of the chapters specified in RCW
21 18.130.040. The summary suspension remains in effect until proceedings
22 by the Washington disciplining authority have been completed;

23 (9) To conduct show cause hearings in accordance with RCW
24 18.130.062 or 18.130.135 to review an action taken by the disciplining
25 authority to suspend a license or restrict or limit a license holder's
26 practice pending proceedings by the disciplining authority;

27 ~~(10) ((To use a presiding officer as authorized in RCW
28 18.130.095(3) or the office of administrative hearings as authorized in
29 chapter 34.12 RCW to conduct hearings. The disciplining authority
30 shall make the final decision regarding disposition of the license
31 unless the disciplining authority elects to delegate in writing the
32 final decision to the presiding officer. Disciplining authorities
33 identified in RCW 18.130.040(2)(b) may not delegate the final decision
34 regarding disposition of the license or imposition of sanctions to a
35 presiding officer in any case pertaining to standards of practice or
36 where clinical expertise is necessary;~~

37 ~~((11))~~ To use individual members of the boards to direct

1 investigations and to authorize the issuance of a citation under
2 subsection (7) of this section. However, the member of the board shall
3 not subsequently participate in the hearing of the case;

4 ~~((+12+))~~ (11) To enter into contracts for professional services
5 determined to be necessary for adequate enforcement of this chapter;

6 ~~((+13+))~~ (12) To contract with license holders or other persons or
7 organizations to provide services necessary for the monitoring and
8 supervision of license holders who are placed on probation, whose
9 professional activities are restricted, or who are for any authorized
10 purpose subject to monitoring by the disciplining authority;

11 ~~((+14+))~~ (13) To adopt standards of professional conduct or
12 practice;

13 ~~((+15+))~~ (14) To grant or deny license applications, and in the
14 event of a finding of unprofessional conduct by an applicant or license
15 holder, to impose any sanction against a license applicant or license
16 holder provided by this chapter. After January 1, 2009, all sanctions
17 must be issued in accordance with RCW 18.130.390;

18 ~~((+16+))~~ (15) To restrict or place conditions on the practice of
19 new licensees in order to protect the public and promote the safety of
20 and confidence in the health care system;

21 ~~((+17+))~~ (16) To designate individuals authorized to sign subpoenas
22 and statements of charges;

23 ~~((+18+))~~ (17) To establish panels consisting of three or more
24 members of the board to perform any duty or authority within the
25 board's jurisdiction under this chapter;

26 ~~((+19+))~~ (18) To review and audit the records of licensed health
27 facilities' or services' quality assurance committee decisions in which
28 a license holder's practice privilege or employment is terminated or
29 restricted. Each health facility or service shall produce and make
30 accessible to the disciplining authority the appropriate records and
31 otherwise facilitate the review and audit. Information so gained shall
32 not be subject to discovery or introduction into evidence in any civil
33 action pursuant to RCW 70.41.200(3).

34 **Sec. 2.** RCW 18.130.095 and 2008 c 134 s 9 are each amended to read
35 as follows:

36 (1)(a) The secretary, in consultation with the disciplining
37 authorities, shall develop uniform procedural rules to respond to

1 public inquiries concerning complaints and their disposition, active
2 investigations, statement of charges, findings of fact, and final
3 orders involving a license holder, applicant, or unlicensed person.
4 The uniform procedural rules adopted under this subsection apply to all
5 adjudicative proceedings conducted under this chapter and shall include
6 provisions for establishing time periods for initial assessment,
7 investigation, charging, discovery, settlement, and adjudication of
8 complaints, and shall include enforcement provisions for violations of
9 the specific time periods by the department, the disciplining
10 authority, and the respondent. A license holder must be notified upon
11 receipt of a complaint, except when the notification would impede an
12 effective investigation. At the earliest point of time the license
13 holder must be allowed to submit a written statement about that
14 complaint, which statement must be included in the file. Complaints
15 filed after July 27, 1997, are exempt from public disclosure under
16 chapter 42.56 RCW until the complaint has been initially assessed and
17 determined to warrant an investigation by the disciplining authority.
18 Complaints determined not to warrant an investigation by the
19 disciplining authority are no longer considered complaints, but must
20 remain in the records and tracking system of the department.
21 Information about complaints that did not warrant an investigation,
22 including the existence of the complaint, may be released only upon
23 receipt of a written public disclosure request or pursuant to an
24 interagency agreement as provided in (b) of this subsection.
25 Complaints determined to warrant no cause for action after
26 investigation are subject to public disclosure, must include an
27 explanation of the determination to close the complaint, and must
28 remain in the records and tracking system of the department.

29 (b) The secretary, on behalf of the disciplining authorities, shall
30 enter into interagency agreements for the exchange of records, which
31 may include complaints filed but not yet assessed, with other state
32 agencies if access to the records will assist those agencies in meeting
33 their federal or state statutory responsibilities. Records obtained by
34 state agencies under the interagency agreements are subject to the
35 limitations on disclosure contained in (a) of this subsection.

36 (2) The uniform procedures for conducting investigations shall
37 provide that prior to taking a written statement:

1 (a) For violation of this chapter, the investigator shall inform
2 such person, in writing of: (i) The nature of the complaint; (ii) that
3 the person may consult with legal counsel at his or her expense prior
4 to making a statement; and (iii) that any statement that the person
5 makes may be used in an adjudicative proceeding conducted under this
6 chapter; and

7 (b) From a witness or potential witness in an investigation under
8 this chapter, the investigator shall inform the person, in writing,
9 that the statement may be released to the license holder, applicant, or
10 unlicensed person under investigation if a statement of charges is
11 issued.

12 ~~(3) ((Only upon the authorization of a disciplining authority~~
13 ~~identified in RCW 18.130.040(2)(b), the secretary, or his or her~~
14 ~~designee, may serve as the presiding officer for any disciplinary~~
15 ~~proceedings of the disciplining authority authorized under this~~
16 ~~chapter. The presiding officer shall not vote on or make any final~~
17 ~~decision in cases pertaining to standards of practice or where clinical~~
18 ~~expertise is necessary. All functions performed by the presiding~~
19 ~~officer shall be subject to chapter 34.05 RCW. The secretary, in~~
20 ~~consultation with the disciplining authorities, shall adopt procedures~~
21 ~~for implementing this subsection.~~

22 ~~(4))~~ The uniform procedural rules shall be adopted by all
23 disciplining authorities listed in RCW 18.130.040(2), and shall be used
24 for all adjudicative proceedings conducted under this chapter, as
25 defined by chapter 34.05 RCW. The uniform procedural rules shall
26 address the use of ~~((a presiding officer authorized in subsection (3)~~
27 ~~of this section))~~ the office of administrative hearings under RCW
28 18.130.100(2) to determine and issue decisions on all legal issues and
29 motions arising during adjudicative proceedings.

30 **Sec. 3.** RCW 18.130.100 and 1989 c 175 s 69 are each amended to
31 read as follows:

32 (1) The procedures governing adjudicative proceedings before
33 agencies under chapter 34.05 RCW, the administrative procedure act,
34 govern all hearings before the disciplining authority. The
35 disciplining authority has, in addition to the powers and duties set
36 forth in this chapter, all of the powers and duties under chapter 34.05

1 RCW, which include, without limitation, all powers relating to the
2 administration of oaths, the receipt of evidence, the issuance and
3 enforcing of subpoenas, and the taking of depositions.

4 (2)(a) In all adjudicative proceedings held under this chapter, a
5 disciplining authority identified in RCW 18.130.040(2)(b) shall use the
6 office of administrative hearings as authorized in chapter 34.12 RCW.
7 The disciplining authority shall make the final decision regarding the
8 disposition of the license unless the disciplining authority elects to
9 delegate in writing the final decision to the presiding officer. The
10 disciplining authority may not delegate the final decision regarding
11 disposition of the license or imposition of sanctions in any case
12 pertaining to standards of practice or where clinical expertise is
13 necessary.

14 (b) In all adjudicative proceedings held under this chapter, the
15 secretary shall use the office of administrative hearings as authorized
16 in chapter 34.12 RCW. An administrative law judge appointed under RCW
17 34.12.030 shall enter an initial order pursuant to RCW 34.05.461
18 subject to review by the secretary or his or her designee. Pursuant to
19 RCW 34.05.464, the secretary may, by rule, provide that initial orders
20 in specified classes of cases may become final without further agency
21 action, unless, within a specified time period:

22 (i) The secretary upon his or her own motion determines that the
23 initial order should be reviewed; or

24 (ii) A party to the proceedings files a petition for administrative
25 review of the initial order.

26 NEW SECTION. Sec. 4. A new section is added to chapter 43.70 RCW
27 to read as follows:

28 In all adjudicative proceedings before the secretary or the
29 department, the secretary shall use the office of administrative
30 hearings as authorized in chapter 34.12 RCW. An administrative law
31 judge appointed under RCW 34.12.030 shall enter an initial order
32 pursuant to RCW 34.05.461 subject to review by the secretary or his or
33 her designee. Pursuant to RCW 34.05.464, the secretary may, by rule,
34 provide that initial orders in specified classes of cases may become
35 final without further agency action, unless, within a specified time
36 period:

1 (1) The secretary upon his or her own motion determines that the
2 initial order should be reviewed; or

3 (2) A party to the proceedings files a petition for administrative
4 review of the initial order.

5 **Sec. 5.** RCW 69.45.080 and 1987 c 411 s 8 are each amended to read
6 as follows:

7 (1) The manufacturer is responsible for the actions and conduct of
8 its representatives with regard to drug samples.

9 (2) The board may hold a public hearing to examine a possible
10 violation and may require a designated representative of the
11 manufacturer to attend.

12 (3)(a) If a manufacturer fails to comply with this chapter
13 following notification by the board, the board may impose a civil
14 penalty of up to five thousand dollars. The board shall take no action
15 to impose any civil penalty except pursuant to a hearing held in
16 accordance with chapter 34.05 RCW.

17 (b) In all adjudicative proceedings held under this section, the
18 board shall use the office of administrative hearings as authorized in
19 chapter 34.12 RCW. The board shall make the final decision unless it
20 elects to delegate in writing the final decision to the presiding
21 officer.

22 (4) Specific drug samples which are distributed in this state in
23 violation of this chapter, following notification by the board, shall
24 be subject to seizure following the procedures set out in RCW
25 69.41.060.

26 **Sec. 6.** RCW 69.50.305 and 1971 ex.s. c 308 s 69.50.305 are each
27 amended to read as follows:

28 (a) Any registration, or exemption from registration, issued
29 pursuant to the provisions of this chapter shall not be denied,
30 suspended, or revoked unless the board denies, suspends, or revokes
31 such registration, or exemption from registration, by proceedings
32 consistent with the administrative procedure act, chapter 34.05 RCW.

33 (b) The board may suspend any registration simultaneously with the
34 institution of proceedings under RCW 69.50.304, or where renewal of
35 registration is refused, if it finds that there is an imminent danger
36 to the public health or safety which warrants this action. The

1 suspension shall continue in effect until the conclusion of the
2 proceedings, including judicial review thereof, unless sooner withdrawn
3 by the board or dissolved by a court of competent jurisdiction.

4 (c) In all adjudicative proceedings held under this section, the
5 board shall use the office of administrative hearings as authorized in
6 chapter 34.12 RCW. The board shall make the final decision unless it
7 elects to delegate in writing the final decision to the presiding
8 officer.

9 **Sec. 7.** RCW 70.05.120 and 2003 c 53 s 350 are each amended to read
10 as follows:

11 (1) Any local health officer or administrative officer appointed
12 under RCW 70.05.040, if any, who shall refuse or neglect to obey or
13 enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the
14 rules, regulations or orders of the state board of health or who shall
15 refuse or neglect to make prompt and accurate reports to the state
16 board of health, may be removed as local health officer or
17 administrative officer by the state board of health and shall not again
18 be reappointed except with the consent of the state board of health.
19 Any person may complain to the state board of health concerning the
20 failure of the local health officer or administrative officer to carry
21 out the laws or the rules and regulations concerning public health, and
22 the state board of health shall, if a preliminary investigation so
23 warrants, call a hearing to determine whether the local health officer
24 or administrative officer is guilty of the alleged acts. Such hearings
25 shall be held pursuant to the provisions of chapter 34.05 RCW, and the
26 rules and regulations of the state board of health adopted thereunder.
27 In all adjudicative proceedings held under this section, the state
28 board of health shall use the office of administrative hearings as
29 authorized in chapter 34.12 RCW. The state board of health shall make
30 the final decision unless it elects to delegate in writing the final
31 decision to the presiding officer.

32 (2) Any member of a local board of health who shall violate any of
33 the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or
34 neglect to obey or enforce any of the rules, regulations or orders of
35 the state board of health made for the prevention, suppression or
36 control of any dangerous contagious or infectious disease or for the

1 protection of the health of the people of this state, is guilty of a
2 misdemeanor, and upon conviction shall be fined not less than ten
3 dollars nor more than two hundred dollars.

4 (3) Any physician who shall refuse or neglect to report to the
5 proper health officer or administrative officer within twelve hours
6 after first attending any case of contagious or infectious disease or
7 any diseases required by the state board of health to be reported or
8 any case suspicious of being one of such diseases, is guilty of a
9 misdemeanor, and upon conviction shall be fined not less than ten
10 dollars nor more than two hundred dollars for each case that is not
11 reported.

12 (4) Any person violating any of the provisions of chapters 70.05,
13 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any
14 of the rules, regulations or orders made for the prevention,
15 suppression and control of dangerous contagious and infectious diseases
16 by the local board of health or local health officer or administrative
17 officer or state board of health, or who shall leave any isolation
18 hospital or quarantined house or place without the consent of the
19 proper health officer or who evades or breaks quarantine or conceals a
20 case of contagious or infectious disease or assists in evading or
21 breaking any quarantine or concealing any case of contagious or
22 infectious disease, is guilty of a misdemeanor, and upon conviction
23 thereof shall be subject to a fine of not less than twenty-five dollars
24 nor more than one hundred dollars or to imprisonment in the county jail
25 not to exceed ninety days or to both fine and imprisonment.

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

28 The secretary of health, the state board of health, and each
29 disciplining authority, as defined in RCW 18.130.020, shall adopt any
30 rules necessary to implement chapter . . . , Laws of 2013 (this act).

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

33 (1) All employees of the department of health serving as presiding
34 officers in the department's adjudicative proceedings prior to the
35 effective date of this section, and any administrative staff necessary
36 to support the presiding officers, are transferred to the office of

1 administrative hearings. The number of administrative staff who are
2 transferred shall be determined by the department of health and the
3 office of administrative hearings based on anticipated workload. Any
4 such employees classified under chapter 41.06 RCW, the state civil
5 service law, are assigned to the office of administrative hearings to
6 perform their usual duties upon the same terms as formerly, without any
7 loss of rights, subject to any action that may be appropriate
8 thereafter in accordance with the laws and rules governing state civil
9 service.

10 (2) Except for those employees explicitly made subject to transfer
11 to the office of administrative hearings from the department of health
12 pursuant to this section, the transfer of employees required under this
13 section shall not result in any increase in the total number of
14 full-time employees employed by the office of administrative hearings.

15 (3) The department of health shall not increase its number of
16 full-time employees as the result of, or in response to, the transfer
17 of employees required under this section.

18 (4) Unless or until modified by the public employment relations
19 commission pursuant to section 10 of this act:

20 (a) The portion of the bargaining unit of employees at the
21 department of health existing on the effective date of this section
22 shall be considered an appropriate unit at the office of administrative
23 hearings and will be so certified by the public employment relations
24 commission.

25 (b) The exclusive bargaining representatives recognized as
26 representing the portion of the bargaining unit of employees at the
27 department of health existing on the effective date of this section
28 shall continue as the exclusive bargaining representatives of the
29 transferred bargaining unit without the necessity of an election.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 34.12 RCW
31 to read as follows:

32 (1) By January 1, 2014, the public employment relations commission
33 may review the appropriateness of the collective bargaining unit
34 transferred under section 9 of this act. The employer or the exclusive
35 bargaining representative may petition the public employment relations
36 commission to review the bargaining unit in accordance with this
37 section.

1 (2) If the commission determines the existing collective bargaining
2 unit is appropriate pursuant to RCW 41.80.070, the exclusive bargaining
3 representative certified to represent the bargaining unit prior to
4 January 1, 2014, shall continue as the exclusive bargaining
5 representative without the necessity of an election.

6 (3) If the commission determines that the existing collective
7 bargaining unit is not appropriate, the commission may modify the unit
8 and order an election pursuant to RCW 41.80.080. The certified
9 bargaining representative will not be required to demonstrate a showing
10 of interest to be included on the ballot.

11 (4) The commission may require an election pursuant to RCW
12 41.80.080 if similarly situated employees are represented by more than
13 one employee organization. Certified bargaining representatives will
14 not be required to demonstrate a showing of interest to be included on
15 the ballot.

16 **Sec. 11.** RCW 34.12.030 and 1981 c 67 s 3 are each amended to read
17 as follows:

18 (1) The chief administrative law judge shall appoint administrative
19 law judges to fulfill the duties prescribed in this chapter. All
20 administrative law judges shall have a demonstrated knowledge of
21 administrative law and procedures. ~~((The chief administrative law
22 judge may establish different levels of administrative law judge
23 positions.))~~

24 (2) The chief administrative law judge may also contract with
25 qualified individuals to serve as administrative law judges for
26 specified hearings. Such individuals shall be compensated for their
27 services on a contractual basis for each hearing, in accordance with
28 chapter 43.88 RCW. Contracts authorized under this section are not
29 subject to the processes in RCW 41.06.142 (1), (4), and (5). The chief
30 administrative law judge may not contract with any individual who is at
31 that time an employee of the state.

32 (3) The chief administrative law judge may appoint such clerical
33 and other specialized or technical personnel as may be necessary to
34 carry on the work of this chapter.

35 ~~((The administrative law judges appointed under subsection (1)
36 of this section are subject to discipline and termination, for cause,
37 by the chief administrative law judge. Upon written request by the~~

1 ~~person so disciplined or terminated, the chief administrative law judge~~
2 ~~shall forthwith put the reasons for such action in writing. The person~~
3 ~~affected has a right of review by the superior court of Thurston county~~
4 ~~on petition for reinstatement or other remedy filed within thirty days~~
5 ~~of receipt of such written reasons.~~

6 (+5)) All employees of the office except the chief administrative
7 law judge ((and the administrative law judges)) are subject to chapter
8 41.06 RCW.

9 ((+6)) (5) The office may adopt rules for its own operation and in
10 furtherance of this chapter in accordance with chapter 34.05 RCW.

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