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HOUSE BILL 1798

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Appelwick and Dickerson

Read first time 02/08/95. Referred to Committee on Health Care.

1            AN ACT Relating to the regulation of mental health care providers;  
2 amending RCW 18.130.180, 18.130.020, and 18.130.160; adding new  
3 sections to chapter 7.70 RCW; adding a new section to chapter 18.130  
4 RCW; and creating a new section.

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

6            NEW SECTION.    **Sec. 1.** The legislature declares that to promote the  
7 public interest and to preserve and enhance the integrity of the health  
8 care professions, it is right and proper to protect vulnerable  
9 consumers of health care services from sexual misconduct by providers  
10 who abuse their positions of trust, and to assure that persons injured  
11 by such an abuse of trust are compensated for the harm they suffer.

12            **Sec. 2.** RCW 18.130.180 and 1993 c 367 s 22 are each amended to  
13 read as follows:

14            The following conduct, acts, or conditions constitute  
15 unprofessional conduct for any license holder or applicant under the  
16 jurisdiction of this chapter:

17            (1) The commission of any act involving moral turpitude,  
18 dishonesty, or corruption relating to the practice of the person's

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

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

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

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

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

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

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

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

37 (a) Not furnishing any papers or documents;

- 1 (b) Not furnishing in writing a full and complete explanation  
2 covering the matter contained in the complaint filed with the  
3 disciplining authority; or
- 4 (c) Not responding to subpoenas issued by the disciplining  
5 authority, whether or not the recipient of the subpoena is the accused  
6 in the proceeding;
- 7 (9) Failure to comply with an order issued by the disciplinary  
8 authority or a stipulation for informal disposition entered into with  
9 the disciplinary authority;
- 10 (10) Aiding or abetting an unlicensed person to practice when a  
11 license is required;
- 12 (11) Violations of rules established by any health agency;
- 13 (12) Practice beyond the scope of practice as defined by law or  
14 rule;
- 15 (13) Misrepresentation or fraud in any aspect of the conduct of the  
16 business or profession;
- 17 (14) Failure to adequately supervise auxiliary staff to the extent  
18 that the consumer's health or safety is at risk;
- 19 (15) Engaging in a profession involving contact with the public  
20 while suffering from a contagious or infectious disease involving  
21 serious risk to public health;
- 22 (16) Promotion for personal gain of any unnecessary or  
23 inefficacious drug, device, treatment, procedure, or service;
- 24 (17) Conviction of any gross misdemeanor or felony relating to the  
25 practice of the person's profession. For the purposes of this  
26 subsection, conviction includes all instances in which a plea of guilty  
27 or nolo contendere is the basis for conviction and all proceedings in  
28 which the sentence has been deferred or suspended. Nothing in this  
29 section abrogates rights guaranteed under chapter 9.96A RCW;
- 30 (18) The procuring, or aiding or abetting in procuring, a criminal  
31 abortion;
- 32 (19) The offering, undertaking, or agreeing to cure or treat  
33 disease by a secret method, procedure, treatment, or medicine, or the  
34 treating, operating, or prescribing for any health condition by a  
35 method, means, or procedure which the licensee refuses to divulge upon  
36 demand of the disciplining authority;
- 37 (20) The willful betrayal of a practitioner-patient privilege as  
38 recognized by law;
- 39 (21) Violation of chapter 19.68 RCW;

1 (22) Interference with an investigation or disciplinary proceeding  
2 by willful misrepresentation of facts before the disciplining authority  
3 or its authorized representative, or by the use of threats or  
4 harassment against any patient or witness to prevent them from  
5 providing evidence in a disciplinary proceeding or any other legal  
6 action;

7 (23) Current misuse of:

8 (a) Alcohol;

9 (b) Controlled substances; or

10 (c) Legend drugs;

11 (24) Abuse of a client or patient or sexual contact with a client  
12 or patient, and in the case of health care providers who have provided  
13 mental health care to a client or patient, abuse of a client or patient  
14 or sexual contact with a client or patient within two years of the  
15 termination of treatment;

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

23 **Sec. 3.** RCW 18.130.020 and 1994 sp.s. c 9 s 602 are each amended  
24 to read as follows:

25 Unless the context clearly requires otherwise, the definitions in  
26 this section apply throughout this chapter.

27 (1) "Disciplining authority" means the agency, board, or commission  
28 having the authority to take disciplinary action against a holder of,  
29 or applicant for, a professional or business license upon a finding of  
30 a violation of this chapter or a chapter specified under RCW  
31 18.130.040.

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

33 (3) "Secretary" means the secretary of health or the secretary's  
34 designee.

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

36 (5) "Commission" means any of the commissions specified in RCW  
37 18.130.040.

38 (6) "Unlicensed practice" means:

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

4 (b) Representing to a consumer, through offerings, advertisements,  
5 or use of a professional title or designation, that the individual is  
6 qualified to practice a profession or operate a business identified in  
7 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and  
8 unsuspended license to do so.

9 (7) "Disciplinary action" means sanctions identified in RCW  
10 18.130.160.

11 (8) "Practice review" means an investigative audit of records  
12 related to the complaint, without prior identification of specific  
13 patient or consumer names, to determine whether unprofessional conduct  
14 may have been committed.

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

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

21 (11) "Mental health care" means the use of psychotherapy,  
22 counseling, or medication to treat substance abuse and/or mental,  
23 emotional, or interpersonal problems.

24 NEW SECTION. Sec. 4. A new section is added to chapter 7.70 RCW  
25 to read as follows:

26 Any health care provider who has engaged in unprofessional conduct  
27 as set forth in RCW 18.130.180(24) shall be liable in a civil cause of  
28 action for damages sustained as a result of the conduct.

29 NEW SECTION. Sec. 5. A new section is added to chapter 7.70 RCW  
30 to read as follows:

31 In a civil action under section 4 of this act, it is not a defense  
32 that:

33 (1) The sexual contact or sexual intercourse occurred outside of  
34 treatment or therapy;

35 (2) The sexual contact or sexual intercourse occurred outside or  
36 off the premises regularly used for treatment or therapy; or

1 (3) The patient or client knowingly consented to or invited the  
2 sexual contact or sexual intercourse.

3 Fault shall not be attributed or assigned to the plaintiff for any  
4 of the reasons in subsections (1) through (3) of this section.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.130 RCW  
6 to read as follows:

7 No policy of professional liability insurance issued to health care  
8 providers subject to chapter . . . , Laws of 1995 (this act), or to the  
9 employer of such health care providers, may exclude from coverage any  
10 claim based on unprofessional conduct as set forth in RCW  
11 18.130.180(24), nor shall any policy of professional liability  
12 insurance provide lower policy limits for any claim based on  
13 unprofessional conduct as set forth in RCW 18.130.180(24) than provided  
14 for other acts or omissions covered by the policy.

15 **Sec. 7.** RCW 18.130.160 and 1993 c 367 s 6 are each amended to read  
16 as follows:

17 Upon a finding, after hearing, that a license holder or applicant  
18 has committed unprofessional conduct or is unable to practice with  
19 reasonable skill and safety due to a physical or mental condition, the  
20 disciplining authority may issue an order providing for one or any  
21 combination of the following:

- 22 (1) Revocation of the license;
- 23 (2) Suspension of the license for a fixed or indefinite term;
- 24 (3) Restriction or limitation of the practice;
- 25 (4) Requiring the satisfactory completion of a specific program of  
26 remedial education or treatment;
- 27 (5) The monitoring of the practice by a supervisor approved by the  
28 disciplining authority;
- 29 (6) Censure or reprimand;
- 30 (7) Compliance with conditions of probation for a designated period  
31 of time;
- 32 (8) Payment of a fine for each violation of this chapter, not to  
33 exceed five thousand dollars per violation, or payment of all costs  
34 incurred by the disciplining authority arising out of the complaint or  
35 report of unprofessional conduct, including without limitation, the  
36 costs of investigation, the costs of preparing a statement of charges,  
37 and the costs of preparing for and conducting a hearing, or payment of

1 both fine and costs. Funds received shall be placed in the health  
2 professions account;

3 (9) Denial of the license request;

4 (10) Corrective action;

5 (11) Refund of fees billed to and collected from the consumer.

6 Any of the actions under this section may be totally or partly  
7 stayed by the disciplining authority. In determining what action is  
8 appropriate, the disciplining authority must first consider what  
9 sanctions are necessary to protect or compensate the public. Only  
10 after such provisions have been made may the disciplining authority  
11 consider and include in the order requirements designed to rehabilitate  
12 the license holder or applicant. All costs associated with compliance  
13 with orders issued under this section are the obligation of the license  
14 holder or applicant.

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

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