
SENATE BILL 5365

State of Washington

54th Legislature

1995 Regular Session

By Senators Fairley, Deccio, Wojahn and Winsley; by request of Department of Health

Read first time 01/20/95. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the uniform disciplinary act; amending RCW
2 18.130.020, 18.130.095, 18.130.098, 18.130.170, and 18.130.180; and
3 reenacting and amending RCW 18.130.040 and 18.130.050.

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

5 **Sec. 1.** RCW 18.130.020 and 1994 1st sp.s. c 9 s 602 are each
6 amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Disciplining authority" means the agency, board, or commission
10 having the authority to take disciplinary action against a holder of,
11 or applicant for, a professional or business license upon a finding of
12 a violation of this chapter or a chapter specified under RCW
13 18.130.040.

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

15 (3) "Secretary" means the secretary of health or the secretary's
16 designee.

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

18 (5) "Commission" means any of the commissions specified in RCW
19 18.130.040.

1 (6) "Unlicensed practice" means:

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

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

10 (7) "Disciplinary action" means sanctions identified in RCW
11 18.130.160.

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

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

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

23 **Sec. 2.** RCW 18.130.040 and 1994 1st sp.s. c 9 s 603 and 1994 c 17
24 s 19 are each reenacted and amended to read as follows:

25 (1) This chapter applies only to the secretary and the boards and
26 commissions having jurisdiction in relation to the professions licensed
27 under the chapters specified in this section. This chapter does not
28 apply to any business or profession not licensed under the chapters
29 specified in this section.

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

32 (i) Dispensing opticians licensed under chapter 18.34 RCW;

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

34 (iii) Midwives licensed under chapter 18.50 RCW;

35 (iv) Ocularists licensed under chapter 18.55 RCW;

36 (v) Massage operators and businesses licensed under chapter 18.108
37 RCW;

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

1 (vii) Acupuncturists certified under chapter 18.06 RCW;
2 (viii) Radiologic technologists certified and x-ray technicians
3 registered under chapter 18.84 RCW;
4 (ix) Respiratory care practitioners certified under chapter 18.89
5 RCW;
6 (x) Persons registered or certified under chapter 18.19 RCW;
7 (xi) Persons registered as nursing pool operators under chapter
8 18.52C RCW;
9 (xii) Nursing assistants registered or certified under chapter
10 18.79 RCW;
11 (xiii) Health care assistants certified under chapter 18.135 RCW;
12 (xiv) Dietitians and nutritionists certified under chapter 18.138
13 RCW;
14 (xv) Sex offender treatment providers certified under chapter
15 18.155 RCW; and
16 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
17 18.71.205.
18 (b) The boards and commissions having authority under this chapter
19 are as follows:
20 (i) The podiatric medical board as established in chapter 18.22
21 RCW;
22 (ii) The chiropractic quality assurance commission as established
23 in chapter 18.25 RCW;
24 (iii) The dental quality assurance commission as established in
25 chapter 18.32 RCW;
26 (iv) The board on fitting and dispensing of hearing aids as
27 established in chapter 18.35 RCW;
28 (v) The board of examiners for nursing home administrators as
29 established in chapter 18.52 RCW;
30 (vi) The optometry board as established in chapter 18.54 RCW
31 governing licenses issued under chapter 18.53 RCW;
32 (vii) The board of osteopathic medicine and surgery as established
33 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
34 18.57A RCW;
35 (viii) The board of pharmacy as established in chapter 18.64 RCW
36 governing licenses issued under chapters 18.64 and 18.64A RCW;
37 (ix) The medical quality assurance commission as established in
38 chapter 18.71 RCW governing licenses and registrations issued under
39 chapters 18.71 and 18.71A RCW;

1 (x) The board of physical therapy as established in chapter 18.74
2 RCW;

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

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

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

9 (xiv) The veterinary board of governors as established in chapter
10 18.92 RCW.

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

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 **Sec. 3.** RCW 18.130.050 and 1993 c 367 s 21 and 1993 c 367 s 5 are
24 each reenacted and amended to read as follows:

25 The disciplining authority has the following authority:

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

28 (2) To investigate all complaints or reports of unprofessional
29 conduct as defined in this chapter and to hold hearings as provided in
30 this chapter;

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

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

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

37 (6) In the course of investigating a complaint or report of
38 unprofessional conduct, to conduct practice reviews;

1 (7) To take emergency action ordering summary suspension of a
2 license, or restriction or limitation of the licensee's practice
3 pending proceedings by the disciplining authority;

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

10 (9) To use individual members of the boards to direct
11 investigations. However, the member of the board shall not
12 subsequently participate in the hearing of the case;

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

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

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

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

25 (14) To designate individuals authorized to sign subpoenas and
26 statements of charges;

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

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

1 **Sec. 4.** RCW 18.130.095 and 1993 c 367 s 2 are each amended to read
2 as follows:

3 (1) The secretary, in consultation with the disciplining
4 authorities, shall develop uniform procedural rules to respond to
5 public inquiries concerning complaints and their disposition, active
6 investigations, statement of charges, findings of fact, and final
7 orders involving a licensee, applicant, or unlicensed person. The
8 uniform procedural rules adopted under this subsection apply to all
9 adjudicative proceedings conducted under this chapter and shall include
10 provisions for the establishing time ~~((lines))~~ periods for assessment,
11 investigation, charging, discovery, settlement, and ~~((scheduling~~
12 ~~hearings))~~ adjudication of complaints, and shall include enforcement
13 provisions for violations of the specific time periods by the
14 department, the disciplining authority, and the respondent.

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

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

23 (b) From a witness or potential witness in an investigation under
24 this chapter, the investigator shall inform the person, in writing,
25 that the statement may be released to the licensee, applicant, or
26 unlicensed person under investigation if a statement of charges is
27 issued.

28 (3) Only upon the authorization of a ~~((disciplinary))~~ disciplining
29 authority identified in RCW 18.130.040(2)(b), the secretary, or his or
30 her designee, may serve as the presiding officer for any disciplinary
31 proceedings of the ~~((disciplinary))~~ disciplining authority authorized
32 under this chapter. Except as provided in RCW 18.130.050(8), the
33 presiding officer shall not vote on or make any final decision. All
34 functions performed by the presiding officer shall be subject to
35 chapter 34.05 RCW. The secretary, in consultation with the
36 ~~((disciplinary))~~ disciplining authorities, shall adopt procedures for
37 implementing this subsection. ~~((This subsection shall not apply to the~~
38 board of funeral directors and embalmers.))

1 (4) The uniform procedural rules shall be adopted by all
2 disciplining authorities listed in RCW 18.130.040(2), and shall be used
3 for all adjudicative proceedings conducted under this chapter, as
4 defined by chapter 34.05 RCW. The uniform procedural rules shall
5 address the use of a presiding officer authorized in subsection (3) of
6 this section to determine and issue decisions on all legal issues and
7 motions arising during adjudicative proceedings.

8 **Sec. 5.** RCW 18.130.098 and 1994 1st sp.s. c 9 s 604 are each
9 amended to read as follows:

10 (1) The settlement process must be substantially uniform for
11 licensees governed by ~~((regulatory entities having authority))~~
12 disciplining authorities under this chapter. The disciplinary
13 authorities may also use alternative dispute resolution to resolve
14 complaints during adjudicative proceedings.

15 (2) Disclosure of the identity of reviewing disciplining authority
16 members who participate in the settlement process is available to the
17 respondent~~((s))~~ or ~~((their legal))~~ his or her representative upon
18 request.

19 (3) The settlement conference will occur only if a settlement is
20 not achieved through written documents. The respondent~~((s))~~ will have
21 the opportunity to conference either by phone or in person with the
22 reviewing disciplining authority member if the respondent chooses. The
23 respondent~~((s))~~ may also have ~~((their))~~ his or her attorney conference
24 either by phone or in person with the reviewing disciplining authority
25 member without the respondent being present personally.

26 (4) If the respondent wants to meet in person with the reviewing
27 disciplining authority member, he or she will travel to the reviewing
28 ~~((disciplinary))~~ disciplining authority member and have such a
29 conference with ~~((the attorney general))~~ a department representative in
30 attendance either by phone or in person.

31 **Sec. 6.** RCW 18.130.170 and 1987 c 150 s 6 are each amended to read
32 as follows:

33 (1) If the disciplining authority believes a license holder or
34 applicant may be unable to practice with reasonable skill and safety to
35 consumers by reason of any mental or physical condition, a statement of
36 charges in the name of the disciplining authority shall be served on
37 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 applicant to
3 practice with reasonable skill and safety. If the disciplining
4 authority determines that the license holder or applicant is unable to
5 practice with reasonable skill and safety for one of the reasons stated
6 in this subsection, the disciplining authority shall impose such
7 sanctions under RCW 18.130.160 as is deemed necessary to protect the
8 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 reasonable
11 skill or safety by reason of any mental or physical condition, the
12 disciplining authority may require a license holder or applicant to
13 submit to a mental or physical examination by one or more licensed or
14 certified health professionals designated by the disciplining
15 authority. The license holder or applicant shall be provided written
16 notice of the disciplining authority's intent to order a mental or
17 physical examination, which notice shall include: (i) A statement of
18 the specific conduct, event, or circumstances justifying an
19 examination; (ii) a summary of the evidence supporting the disciplining
20 authority's concern that the license holder or applicant may be unable
21 to practice with reasonable skill and safety by reason of a mental or
22 physical condition, and the grounds for believing such evidence to be
23 credible and reliable; (iii) a statement of the nature, purpose, scope,
24 and content of the intended examination; (iv) a statement that the
25 license holder or applicant has the right to respond in writing within
26 twenty days to challenge the disciplining authority's grounds for
27 ordering an examination or to challenge the manner or form of the
28 examination; and (v) a statement that if the license holder or
29 applicant timely responds to the notice of intent, then the license
30 holder or applicant will not be required to submit to the examination
31 while the response is under consideration.

32 (b) Upon submission of a timely response to the notice of intent
33 to 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
39 allegations against the license holder or applicant or a neutral

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

10 (c) Upon receipt by the disciplining authority of the written
11 decision, or upon the failure of the license holder or applicant to
12 timely respond to the notice of intent, the disciplining authority may
13 issue an order requiring the license holder or applicant to undergo a
14 mental or physical examination. All such mental or physical
15 examinations shall be narrowly tailored to address only the alleged
16 mental or physical condition and the ability of the license holder or
17 applicant to practice with reasonable skill and safety. An order of
18 the disciplining authority requiring the license holder or applicant to
19 undergo a mental or physical examination is not a final order for
20 purposes of appeal. The cost of the examinations ordered by the
21 disciplining authority shall be paid out of the health professions
22 account. In addition to any examinations ordered by the disciplining
23 authority, the licensee may submit physical or mental examination
24 reports from licensed or certified health professionals of the license
25 holder's or applicant's choosing and expense. ((Failure of a license
26 holder or applicant to submit to examination when directed constitutes
27 grounds for immediate suspension or denial of the license, consequent
28 upon which a default and final order may be entered without the taking
29 of testimony or presentations of evidence, unless the failure was due
30 to circumstances beyond the person's control.))

31 (d) If the disciplining authority finds that a license holder or
32 applicant has failed to submit to a properly ordered mental or physical
33 examination, then the disciplining authority may order appropriate
34 action or discipline under RCW 18.130.180(9), unless the failure was
35 due to circumstances beyond the person's control. However, no such
36 action or discipline may be imposed unless the license holder or
37 applicant has had the notice and opportunity to challenge the
38 disciplining authority's grounds for ordering the examination, to
39 challenge the manner and form, to assert any other defenses, and to

1 have such challenges or defenses considered by either a panel of the
2 disciplining authority members who have not been involved with the
3 allegations against the license holder or applicant or a neutral
4 decision maker approved by the disciplining authority, as previously
5 set forth in this section. Further, the action or discipline ordered
6 by the disciplining authority shall not be more severe than a
7 suspension of the license, certification, registration or application
8 until such time as the license holder or applicant complies with the
9 properly ordered mental or physical examination.

10 (e) Nothing in this section shall restrict the power of a
11 disciplining authority to act in an emergency under RCW 34.05.422(4),
12 34.05.479, and 18.130.050(7).

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

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

30 **Sec. 7.** RCW 18.130.180 and 1993 c 367 s 22 are each amended to
31 read as follows:

32 The following conduct, acts, or conditions constitute
33 unprofessional conduct for any license holder or applicant under the
34 jurisdiction of this chapter:

35 (1) The commission of any act involving moral turpitude,
36 dishonesty, or corruption relating to the practice of the person's
37 profession, whether the act constitutes a crime or not. If the act
38 constitutes a crime, conviction in a criminal proceeding is not a

1 condition precedent to disciplinary action. Upon such a conviction,
2 however, the judgment and sentence is conclusive evidence at the
3 ensuing disciplinary hearing of the guilt of the license holder or
4 applicant of the crime described in the indictment or information, and
5 of the person's violation of the statute on which it is based. For the
6 purposes of this section, conviction includes all instances in which a
7 plea of guilty or nolo contendere is the basis for the conviction and
8 all proceedings in which the sentence has been deferred or suspended.
9 Nothing in this section abrogates rights guaranteed under chapter 9.96A
10 RCW;

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

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

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

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

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

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

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

35 (a) Not furnishing any papers or documents;

36 (b) Not furnishing in writing a full and complete explanation
37 covering the matter contained in the complaint filed with the
38 disciplining authority; ((or))

- 1 (c) Not responding to subpoenas issued by the disciplining
2 authority, whether or not the recipient of the subpoena is the accused
3 in the proceeding; or
- 4 (d) Not providing reasonable and timely access for authorized
5 representatives of the disciplining authority seeking to perform
6 practice reviews at facilities utilized by the license holder;
- 7 (9) Failure to comply with an order issued by the ((disciplinary))
8 disciplining authority or a stipulation for informal disposition
9 entered into with the ((disciplinary)) disciplining 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, or by the use of financial inducements to any patient or
7 witness to prevent or attempt to prevent him or her from providing
8 evidence in a disciplinary proceeding;

9 (23) Current misuse of:

10 (a) Alcohol;

11 (b) Controlled substances; or

12 (c) Legend drugs;

13 (24) Abuse of a client or patient or sexual contact with a client
14 or patient;

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

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