

2 **2SHB 1618** - S COMM AMD

3 By Committee on Health & Long-Term Care

4 ADOPTED 3/4/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the self-imposed
8 license surcharge on physician licenses to fund a program to help
9 physicians with chemical dependency or mental illness is not being
10 fully spent on that program. It is the intent of the legislature that
11 the program be fully funded and that funds collected into the impaired
12 physician account be spent only on the program.

13 **Sec. 2.** RCW 18.71.0195 and 1994 sp.s. c 9 s 328 are each amended
14 to read as follows:

15 (1) The contents of any report ((file)) filed under RCW 18.130.070
16 shall be confidential and exempt from public disclosure pursuant to
17 chapter 42.17 RCW, except that it may be reviewed (a) by the licensee
18 involved or his or her counsel or authorized representative who may
19 submit any additional exculpatory or explanatory statements or other
20 information, which statements or other information shall be included in
21 the file, or (b) by a representative of the commission, or investigator
22 thereof, who has been assigned to review the activities of a licensed
23 physician.

24 Upon a determination that a report is without merit, the
25 commission's records may be purged of information relating to the
26 report.

27 (2) Every individual, medical association, medical society,
28 hospital, medical service bureau, health insurance carrier or agent,
29 professional liability insurance carrier, professional standards review
30 organization, ((and)) agency of the federal, state, or local government
31 ((shall be)), or the entity established by RCW 18.71.300 and its
32 officers, agents, and employees are immune from civil liability,
33 whether direct or derivative, for providing information to the
34 commission under RCW 18.130.070, or for which an individual health care

1 provider has immunity under the provisions of RCW 4.24.240, 4.24.250,
2 or 4.24.260.

3 **Sec. 3.** RCW 18.71.300 and 1994 sp.s. c 9 s 329 are each amended to
4 read as follows:

5 ~~((Unless the context clearly requires otherwise,))~~ The definitions
6 in this section apply throughout RCW 18.71.310 through 18.71.340 unless
7 the context clearly requires otherwise.

8 (1) ~~(("Committee"))~~ "Entity" means a nonprofit corporation formed
9 by physicians who have expertise in the areas of ~~((alcoholism))~~ alcohol
10 abuse, drug abuse, ((or)) alcoholism, other drug addictions, and mental
11 illness and who broadly represent the physicians of the state and that
12 has been designated to perform any or all of the activities set forth
13 in RCW 18.71.310(1) ~~((pursuant to rules adopted))~~ by the commission
14 ~~((under chapter 34.05 RCW)).~~

15 (2) "Impaired" or "impairment" means the ~~((presence of the diseases~~
16 ~~of alcoholism, drug abuse, mental illness))~~ inability to practice
17 medicine with reasonable skill and safety to patients by reason of
18 physical or mental illness including alcohol abuse, drug abuse,
19 alcoholism, other drug addictions, or other debilitating conditions.

20 (3) "Impaired physician program" means the program for the
21 prevention, detection, intervention, ~~((and))~~ monitoring, and treatment
22 of impaired physicians established by the commission pursuant to RCW
23 18.71.310(1).

24 (4) "Physician" or "practitioner" means a person licensed under
25 this chapter, chapter 18.71A RCW, or a professional licensed under
26 another chapter of Title 18 RCW whose disciplining authority has a
27 contract with the entity for an impaired practitioner program for its
28 license holders.

29 (5) "Treatment program" means a plan of care and rehabilitation
30 services provided by those organizations or persons authorized to
31 provide such services to be approved by the commission or entity for
32 impaired physicians taking part in the impaired physician program
33 created by RCW 18.71.310.

34 **Sec. 4.** RCW 18.71.310 and 1997 c 79 s 2 are each amended to read
35 as follows:

36 (1) The commission shall enter into a contract with the
37 ~~((committee))~~ entity to implement an impaired physician program. The

1 commission may enter into a contract with the entity for up to six
2 years in length. The impaired physician program may include any or all
3 of the following:

4 (a) ~~((Contracting))~~ Entering into relationships supportive of the
5 impaired physician program with ~~((providers of))~~ professionals who
6 provide either evaluation or treatment ~~((programs))~~ services, or both;

7 (b) Receiving and ~~((evaluating))~~ assessing reports of suspected
8 impairment from any source;

9 (c) Intervening in cases of verified impairment, or in cases where
10 there is reasonable cause to suspect impairment;

11 (d) Upon reasonable cause, referring suspected or verified impaired
12 physicians ~~((to))~~ for evaluation or treatment ~~((programs))~~;

13 (e) Monitoring the treatment and rehabilitation of impaired
14 physicians including those ordered by the commission;

15 (f) Providing ~~((post-treatment))~~ monitoring and continuing
16 treatment and rehabilitative support of ~~((rehabilitative impaired))~~
17 physicians;

18 (g) Performing such other activities as agreed upon by the
19 commission and the ~~((committee))~~ entity; and

20 (h) Providing prevention and education services.

21 (2) A contract entered into under subsection (1) of this section
22 shall be financed by a surcharge of ~~((up to))~~ twenty-five dollars per
23 year on each license renewal or issuance of a new license to be
24 collected by the department of health from every physician and surgeon
25 licensed under this chapter in addition to other license fees. These
26 moneys shall be placed in the ~~((health professions))~~ impaired physician
27 account to be used solely for the implementation of the impaired
28 physician program.

29 **Sec. 5.** RCW 18.71.320 and 1994 sp.s. c 9 s 331 are each amended to
30 read as follows:

31 The ~~((committee))~~ entity shall develop procedures in consultation
32 with the commission for:

33 (1) Periodic reporting of statistical information regarding
34 impaired physician activity;

35 (2) Periodic disclosure and joint review of such information as the
36 commission may deem appropriate regarding reports received, contacts or
37 investigations made, and the disposition of each report~~((:—PROVIDED,~~
38 That)). However, the ~~((committee))~~ entity shall not disclose any

1 personally identifiable information except as provided in subsections
2 (3) and (4) of this section;

3 (3) Immediate reporting to the commission of the name and results
4 of any contact or investigation regarding any suspected or verified
5 impaired physician who is reasonably believed probably to constitute an
6 imminent danger to himself or herself or to the public;

7 (4) Reporting to the commission, in a timely fashion, any suspected
8 or verified impaired physician who (~~(refuses)~~) fails to cooperate with
9 the (~~(committee, refuses)~~) entity, fails to submit to evaluation or
10 treatment, or whose impairment is not substantially alleviated through
11 treatment, (~~(and)~~) or who, in the opinion of the (~~(committee)~~) entity,
12 is probably unable to practice medicine with reasonable skill and
13 safety(~~(. However, impairment, in and of itself, shall not give rise~~
14 ~~to a presumption of the inability to practice medicine with reasonable~~
15 ~~skill and safety))~~);

16 (5) Informing each participant of the impaired physician program of
17 the program procedures, the responsibilities of program participants,
18 and the possible consequences of noncompliance with the program.

19 **Sec. 6.** RCW 18.71.330 and 1994 sp.s. c 9 s 332 are each amended to
20 read as follows:

21 If the commission has reasonable cause to believe that a physician
22 is impaired, the commission shall cause an evaluation of such physician
23 to be conducted by the (~~(committee)~~) entity or the (~~(committee's)~~)
24 entity's designee or the commission's designee for the purpose of
25 determining if there is an impairment. The (~~(committee)~~) entity or
26 appropriate designee shall report the findings of its evaluation to the
27 commission.

28 **Sec. 7.** RCW 18.71.340 and 1987 c 416 s 6 are each amended to read
29 as follows:

30 All (~~(committee)~~) entity records are not subject to disclosure
31 pursuant to chapter 42.17 RCW.

32 **Sec. 8.** RCW 18.130.070 and 1989 c 373 s 19 are each amended to
33 read as follows:

34 (1) The disciplining authority may adopt rules requiring any
35 person, including, but not limited to, licensees, corporations,
36 organizations, health care facilities, impaired practitioner programs,

1 or voluntary substance abuse monitoring programs approved by the
2 disciplining authority and state or local governmental agencies, to
3 report to the disciplining authority any conviction, determination, or
4 finding that a license holder has committed an act which constitutes
5 unprofessional conduct, or to report information to the disciplining
6 authority, an impaired practitioner program, or voluntary substance
7 abuse monitoring program approved by the disciplining authority, which
8 indicates that the license holder may not be able to practice his or
9 her profession with reasonable skill and safety to consumers as a
10 result of a mental or physical condition. To facilitate meeting the
11 intent of this section, the cooperation of agencies of the federal
12 government is requested by reporting any conviction, determination, or
13 finding that a federal employee or contractor regulated by the
14 disciplinary authorities enumerated in this chapter has committed an
15 act which constituted unprofessional conduct and reporting any
16 information which indicates that a federal employee or contractor
17 regulated by the disciplinary authorities enumerated in this chapter
18 may not be able to practice his or her profession with reasonable skill
19 and safety as a result of a mental or physical condition.

20 (2) If a person fails to furnish a required report, the
21 disciplining authority may petition the superior court of the county in
22 which the person resides or is found, and the court shall issue to the
23 person an order to furnish the required report. A failure to obey the
24 order is a contempt of court as provided in chapter 7.21 RCW.

25 (3) A person is immune from civil liability, whether direct or
26 derivative, for providing information to the disciplining authority
27 pursuant to the rules adopted under subsection (1) of this section.

28 (4) The holder of a license subject to the jurisdiction of this
29 chapter shall report to the disciplining authority any conviction,
30 determination, or finding that the licensee has committed
31 unprofessional conduct or is unable to practice with reasonable skill
32 or safety. Failure to report within thirty days of notice of the
33 conviction, determination, or finding constitutes grounds for
34 disciplinary action.

35 **Sec. 9.** RCW 18.130.080 and 1986 c 259 s 5 are each amended to read
36 as follows:

37 A person, including but not limited to consumers, licensees,
38 corporations, organizations, health care facilities, impaired

1 practitioner programs, or voluntary substance abuse monitoring programs
2 approved by disciplining authorities, and state and local governmental
3 agencies, may submit a written complaint to the disciplining authority
4 charging a license holder or applicant with unprofessional conduct and
5 specifying the grounds therefor or to report information to the
6 disciplining authority, or voluntary substance abuse monitoring
7 program, or an impaired practitioner program approved by the
8 disciplining authority, which indicates that the license holder may not
9 be able to practice his or her profession with reasonable skill and
10 safety to consumers as a result of a mental or physical condition. If
11 the disciplining authority determines that the complaint merits
12 investigation, or if the disciplining authority has reason to believe,
13 without a formal complaint, that a license holder or applicant may have
14 engaged in unprofessional conduct, the disciplining authority shall
15 investigate to determine whether there has been unprofessional conduct.
16 A person who files a complaint or reports information under this
17 section in good faith is immune from suit in any civil action related
18 to the filing or contents of the complaint.

19 **Sec. 10.** RCW 18.130.175 and 1993 c 367 s 3 are each amended to
20 read as follows:

21 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
22 disciplining authority determines that the unprofessional conduct may
23 be the result of substance abuse, the disciplining authority may refer
24 the license holder to a voluntary substance abuse monitoring program
25 approved by the disciplining authority.

26 The cost of the treatment shall be the responsibility of the
27 license holder, but the responsibility does not preclude payment by an
28 employer, existing insurance coverage, or other sources. Primary
29 alcoholism or other drug addiction treatment shall be provided by
30 approved treatment programs under RCW 70.96A.020(~~(:—PROVIDED, That)~~)
31 or by any other provider approved by the entity or the commission.
32 However, nothing shall prohibit the disciplining authority from
33 approving additional services and programs as an adjunct to primary
34 alcoholism or other drug addiction treatment. The disciplining
35 authority may also approve the use of out-of-state programs. Referral
36 of the license holder to the program shall be done only with the
37 consent of the license holder. Referral to the program may also
38 include probationary conditions for a designated period of time. If

1 the license holder does not consent to be referred to the program or
2 does not successfully complete the program, the disciplining authority
3 may take appropriate action under RCW 18.130.160. The secretary shall
4 adopt uniform rules for the evaluation by the disciplinary authority of
5 a relapse or program violation on the part of a license holder in the
6 substance abuse monitoring program. The evaluation shall encourage
7 program participation with additional conditions, in lieu of
8 disciplinary action, when the disciplinary authority determines that
9 the license holder is able to continue to practice with reasonable
10 skill and safety.

11 (2) In addition to approving substance abuse monitoring programs
12 that may receive referrals from the disciplining authority, the
13 disciplining authority may establish by rule requirements for
14 participation of license holders who are not being investigated or
15 monitored by the disciplining authority for substance abuse. License
16 holders voluntarily participating in the approved programs without
17 being referred by the disciplining authority shall not be subject to
18 disciplinary action under RCW 18.130.160 for their substance abuse, and
19 shall not have their participation made known to the disciplining
20 authority, if they meet the requirements of this section and the
21 program in which they are participating.

22 (3) The license holder shall sign a waiver allowing the program to
23 release information to the disciplining authority if the licensee does
24 not comply with the requirements of this section or is unable to
25 practice with reasonable skill or safety. The substance abuse program
26 shall report to the disciplining authority any license holder who fails
27 to comply with the requirements of this section or the program or who,
28 in the opinion of the program, is unable to practice with reasonable
29 skill or safety. License holders shall report to the disciplining
30 authority if they fail to comply with this section or do not complete
31 the program's requirements. License holders may, upon the agreement of
32 the program and disciplining authority, reenter the program if they
33 have previously failed to comply with this section.

34 (4) The treatment and pretreatment records of license holders
35 referred to or voluntarily participating in approved programs shall be
36 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
37 shall not be subject to discovery by subpoena or admissible as evidence
38 except for monitoring records reported to the disciplining authority
39 for cause as defined in subsection (3) of this section. Monitoring

1 records relating to license holders referred to the program by the
2 disciplining authority or relating to license holders reported to the
3 disciplining authority by the program for cause, shall be released to
4 the disciplining authority at the request of the disciplining
5 authority. Records held by the disciplining authority under this
6 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
7 not be subject to discovery by subpoena except by the license holder.

8 (5) "Substance abuse," as used in this section, means the
9 impairment, as determined by the disciplining authority, of a license
10 holder's professional services by an addiction to, a dependency on, or
11 the use of alcohol, legend drugs, or controlled substances.

12 (6) This section does not affect an employer's right or ability to
13 make employment-related decisions regarding a license holder. This
14 section does not restrict the authority of the disciplining authority
15 to take disciplinary action for any other unprofessional conduct.

16 (7) A person who, in good faith, reports information or takes
17 action in connection with this section is immune from civil liability
18 for reporting information or taking the action.

19 (a) The immunity from civil liability provided by this section
20 shall be liberally construed to accomplish the purposes of this section
21 and the persons entitled to immunity shall include:

- 22 (i) An approved monitoring treatment program;
- 23 (ii) The professional association operating the program;
- 24 (iii) Members, employees, or agents of the program or association;
- 25 (iv) Persons reporting a license holder as being possibly impaired
26 or providing information about the license holder's impairment; and
- 27 (v) Professionals supervising or monitoring the course of the
28 impaired license holder's treatment or rehabilitation.

29 (b) The courts are strongly encouraged to impose sanctions on
30 clients and their attorneys whose allegations under this subsection are
31 not made in good faith and are without either reasonable objective,
32 substantive grounds, or both.

33 (c) The immunity provided in this section is in addition to any
34 other immunity provided by law.

35 **Sec. 11.** RCW 18.130.300 and 1994 sp.s. c 9 s 605 are each amended
36 to read as follows:

37 (1) The secretary, members of the boards or commissions, or
38 individuals acting on their behalf are immune from suit in any action,

1 civil or criminal, based on any disciplinary proceedings or other
2 official acts performed in the course of their duties.

3 (2) A voluntary substance abuse monitoring program or an impaired
4 practitioner program approved by a disciplining authority, or
5 individuals acting on their behalf, are immune from suit in a civil
6 action based on any disciplinary proceedings or other official acts
7 performed in the course of their duties.

8 NEW SECTION. Sec. 12. A new section is added to chapter 18.71 RCW
9 to read as follows:

10 The impaired physician account is created in the custody of the
11 state treasurer. All receipts from RCW 18.71.310 from license
12 surcharges on physicians and physician assistants shall be deposited
13 into the account. Expenditures from the account may only be used for
14 the impaired physician program under this chapter. Only the secretary
15 of health or the secretary's designee may authorize expenditures from
16 the account. No appropriation is required for expenditures from this
17 account.

18 **Sec. 13.** RCW 18.57A.020 and 1996 c 191 s 39 are each amended to
19 read as follows:

20 (1) The board shall adopt rules fixing the qualifications and the
21 educational and training requirements for licensure as an osteopathic
22 physician assistant or for those enrolled in any physician assistant
23 training program. The requirements shall include completion of an
24 accredited physician assistant training program approved by the board
25 and eligibility to take an examination approved by the board, providing
26 such examination tests subjects substantially equivalent to the
27 curriculum of an accredited physician assistant training program.

28 (2)(a) The board shall adopt rules governing the extent to which:

29 (i) Physician assistant students may practice medicine during
30 training; and

31 (ii) Physician assistants may practice after successful completion
32 of a training course.

33 (b) Such rules shall provide:

34 (i) That the practice of an osteopathic physician assistant shall
35 be limited to the performance of those services for which he or she is
36 trained; and

1 (ii) That each osteopathic physician assistant shall practice
2 osteopathic medicine only under the supervision and control of an
3 osteopathic physician licensed in this state, but such supervision and
4 control shall not be construed to necessarily require the personal
5 presence of the supervising physicians at the place where services are
6 rendered. The board may authorize the use of alternative supervisors
7 who are licensed either under chapter 18.57 or 18.71 RCW.

8 (3) Applicants for licensure shall file an application with the
9 board on a form prepared by the secretary with the approval of the
10 board, detailing the education, training, and experience of the
11 physician assistant and such other information as the board may
12 require. The application shall be accompanied by a fee determined by
13 the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge
14 of twenty-five dollars per year may be charged on each license renewal
15 or issuance of a new license to be collected by the department of
16 health for physician assistant participation in an impaired
17 practitioner program. Each applicant shall furnish proof satisfactory
18 to the board of the following:

19 (a) That the applicant has completed an accredited physician
20 assistant program approved by the board and is eligible to take the
21 examination approved by the board;

22 (b) That the applicant is of good moral character; and

23 (c) That the applicant is physically and mentally capable of
24 practicing osteopathic medicine as an osteopathic physician assistant
25 with reasonable skill and safety. The board may require any applicant
26 to submit to such examination or examinations as it deems necessary to
27 determine an applicant's physical and/or mental capability to safely
28 practice as an osteopathic physician assistant.

29 (4) The board may approve, deny, or take other disciplinary action
30 upon the application for a license as provided in the uniform
31 disciplinary act, chapter 18.130 RCW. The license shall be renewed as
32 determined under RCW 43.70.250 and 43.70.280.

33 **Sec. 14.** RCW 18.71A.020 and 1996 c 191 s 57 are each amended to
34 read as follows:

35 (1) The commission shall adopt rules fixing the qualifications and
36 the educational and training requirements for licensure as a physician
37 assistant or for those enrolled in any physician assistant training
38 program. The requirements shall include completion of an accredited

1 physician assistant training program approved by the commission and
2 eligibility to take an examination approved by the commission, if the
3 examination tests subjects substantially equivalent to the curriculum
4 of an accredited physician assistant training program. Physician
5 assistants licensed by the board of medical examiners as of June 7,
6 1990, shall continue to be licensed.

7 (2)(a) The commission shall adopt rules governing the extent to
8 which:

9 (i) Physician assistant students may practice medicine during
10 training; and

11 (ii) Physician assistants may practice after successful completion
12 of a physician assistant training course.

13 (b) Such rules shall provide:

14 (i) That the practice of a physician assistant shall be limited to
15 the performance of those services for which he or she is trained; and

16 (ii) That each physician assistant shall practice medicine only
17 under the supervision and control of a physician licensed in this
18 state, but such supervision and control shall not be construed to
19 necessarily require the personal presence of the supervising physician
20 or physicians at the place where services are rendered.

21 (3) Applicants for licensure shall file an application with the
22 commission on a form prepared by the secretary with the approval of the
23 commission, detailing the education, training, and experience of the
24 physician assistant and such other information as the commission may
25 require. The application shall be accompanied by a fee determined by
26 the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge
27 of twenty-five dollars per year shall be charged on each license
28 renewal or issuance of a new license to be collected by the department
29 and deposited into the impaired physician account for physician
30 assistant participation in the impaired physician program. Each
31 applicant shall furnish proof satisfactory to the commission of the
32 following:

33 (a) That the applicant has completed an accredited physician
34 assistant program approved by the commission and is eligible to take
35 the examination approved by the commission;

36 (b) That the applicant is of good moral character; and

37 (c) That the applicant is physically and mentally capable of
38 practicing medicine as a physician assistant with reasonable skill and
39 safety. The commission may require an applicant to submit to such

1 examination or examinations as it deems necessary to determine an
2 applicant's physical or mental capability, or both, to safely practice
3 as a physician assistant.

4 (4) The commission may approve, deny, or take other disciplinary
5 action upon the application for license as provided in the Uniform
6 Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as
7 determined under RCW 43.70.250 and 43.70.280. The commission may
8 authorize the use of alternative supervisors who are licensed either
9 under chapter 18.57 or 18.71 RCW.

10 NEW SECTION. **Sec. 15.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

14 **2SHB 1618** - S COMM AMD

15 By Committee on Health & Long-Term Care

16 ADOPTED 3/4/98

17 On page 1, line 1 of the title, after "physicians;" strike the
18 remainder of the title and insert "amending RCW 18.71.0195, 18.71.300,
19 18.71.310, 18.71.320, 18.71.330, 18.71.340, 18.130.070, 18.130.080,
20 18.130.175, 18.130.300, 18.57A.020, and 18.71A.020; adding a new
21 section to chapter 18.71 RCW; and creating a new section."

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