
SUBSTITUTE HOUSE BILL 2879

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Campbell and Schual-Berke; by request of Department of Health)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to health professions disciplinary procedures;
2 amending RCW 18.130.090 and 18.130.190; and providing an effective
3 date.

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

5 **Sec. 1.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to read
6 as follows:

7 (1) If the disciplining authority determines, upon investigation,
8 that there is reason to believe a violation of RCW 18.130.180 has
9 occurred, a statement of charge or charges (~~shall~~) may be prepared
10 and served upon the license holder or applicant at the earliest
11 practical time. The statement of charge or charges shall be
12 accompanied by a notice that the license holder or applicant may
13 request (~~a hearing~~) an adjudicative proceeding to contest the charge
14 or charges.

15 (a) The license holder or applicant must file a request for
16 (~~hearing~~) an adjudicative proceeding with the disciplining authority
17 within twenty days after being served the statement of charges. If the
18 twenty-day limit results in a hardship upon the license holder or

1 applicant, he or she may request for good cause an extension not to
2 exceed sixty additional days. If the disciplining authority finds that
3 there is good cause, it shall grant the extension.

4 (b) The failure to request ((a hearing)) an adjudicative proceeding
5 constitutes a default((, whereupon)). The disciplining authority may
6 then enter a decision on the basis of the facts available to it.

7 (2) As an alternative to filing a statement of charge or charges,
8 the disciplining authority may issue to a license holder or applicant
9 a written notice of action identifying the allegations and proposed
10 sanction, except revocation, authorized under RCW 18.130.160. The
11 notice shall state the reasons for the action. The notice shall be
12 sent to the license holder or applicant by certified mail, with return
13 receipt requested.

14 (a) The applicant or license holder has the right to an
15 adjudicative proceeding. If an adjudicative proceeding is requested,
16 the action will be of no effect, other than to identify the allegations
17 and proposed sanctions. The license holder or applicant must file a
18 request for an adjudicative proceeding with the disciplining authority
19 within twenty days after being served the action. If the twenty-day
20 limit results in a hardship upon the license holder or applicant, he or
21 she may request for good cause an extension not to exceed sixty
22 additional days. If the disciplining authority finds that there is
23 good cause, it shall grant the extension.

24 (b) In the event no request for an adjudicative proceeding is filed
25 within the time allowed by (a) of this subsection, the action becomes
26 effective.

27 (3) If ((a hearing)) an adjudicative proceeding is requested, the
28 time of the ((hearing)) adjudicative proceeding shall be fixed by the
29 disciplining authority as soon as convenient, but the ((hearing))
30 adjudicative proceeding shall not be held earlier than thirty days
31 after service of the charges or notice of action upon the license
32 holder or applicant.

33 **Sec. 2.** RCW 18.130.190 and 2003 c 53 s 141 are each amended to
34 read as follows:

35 (1) The secretary shall investigate complaints concerning practice
36 by unlicensed persons of a profession or business for which a license
37 is required by the chapters specified in RCW 18.130.040. In the

1 investigation of the complaints, the secretary shall have the same
2 authority as provided the secretary under RCW 18.130.050 and
3 18.130.060.

4 (2) The secretary may issue a notice of intention to issue a cease
5 and desist order to any person whom the secretary has reason to believe
6 is engaged in the unlicensed practice of a profession or business for
7 which a license is required by the chapters specified in RCW
8 18.130.040. The person to whom such notice is issued may request an
9 adjudicative proceeding to contest the charges. The request for
10 hearing must be filed within twenty days after service of the notice of
11 intention to issue a cease and desist order. The failure to request a
12 hearing constitutes a default, whereupon the secretary may enter a
13 permanent cease and desist order, which may include a civil fine. All
14 proceedings shall be conducted in accordance with chapter 34.05 RCW.

15 (3) If the secretary makes a final determination that a person has
16 engaged or is engaging in unlicensed practice, the secretary may issue
17 a cease and desist order. In addition, the secretary may impose a
18 civil fine in an amount not exceeding one thousand dollars for each day
19 upon which the person engaged in unlicensed practice of a business or
20 profession for which a license is required by one or more of the
21 chapters specified in RCW 18.130.040. The proceeds of such fines shall
22 be deposited to the health professions account.

23 (4) If the secretary makes a written finding of fact that the
24 public interest will be irreparably harmed by delay in issuing an
25 order, the secretary may issue a temporary cease and desist order. The
26 person receiving a temporary cease and desist order shall be provided
27 an opportunity for a prompt hearing. The temporary cease and desist
28 order shall remain in effect until further order of the secretary. The
29 failure to request a prompt or regularly scheduled hearing constitutes
30 a default, whereupon the secretary may enter a permanent cease and
31 desist order, which may include a civil fine.

32 (5) Neither the issuance of a cease and desist order nor payment of
33 a civil fine shall relieve the person so practicing or operating a
34 business without a license from criminal prosecution therefor, but the
35 remedy of a cease and desist order or civil fine shall be in addition
36 to any criminal liability. The cease and desist order is conclusive
37 proof of unlicensed practice and may be enforced under RCW 7.21.060.

1 This method of enforcement of the cease and desist order or civil fine
2 may be used in addition to, or as an alternative to, any provisions for
3 enforcement of agency orders set out in chapter 34.05 RCW.

4 (6) The attorney general, a county prosecuting attorney, the
5 secretary, a board, or any person may in accordance with the laws of
6 this state governing injunctions, maintain an action in the name of
7 this state to enjoin any person practicing a profession or business for
8 which a license is required by the chapters specified in RCW 18.130.040
9 without a license from engaging in such practice or operating such
10 business until the required license is secured. However, the
11 injunction shall not relieve the person so practicing or operating a
12 business without a license from criminal prosecution therefor, but the
13 remedy by injunction shall be in addition to any criminal liability.

14 (7)(a) Unlicensed practice of a profession or operating a business
15 for which a license is required by the chapters specified in RCW
16 18.130.040, unless otherwise exempted by law, constitutes a gross
17 misdemeanor for a single violation.

18 (b) Each subsequent violation, whether alleged in the same or in
19 subsequent prosecutions, is a class C felony punishable according to
20 chapter 9A.20 RCW.

21 (8) All fees, fines, forfeitures, and penalties collected or
22 assessed by a court because of a violation of this section shall be
23 remitted to the health professions account.

24 NEW SECTION. **Sec. 3.** Section 2 of this act takes effect January
25 1, 2005.

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