
SENATE BILL 6361

State of Washington 60th Legislature 2008 Regular Session

By Senators Pflug, Carrell, Stevens, Swecker, Delvin, and Schoesler

Read first time 01/15/08. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to exercise of religious beliefs and conscience in
2 the practice of pharmacy; amending RCW 18.64.005, 18.64.160, and
3 18.130.180; adding a new section to chapter 18.64 RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that Planned
7 Parenthood and the Oregon state board of pharmacy have reached an
8 agreement after careful, thoughtful, and skilled negotiations on how to
9 ensure that patients receive their prescription drugs in a reasonable
10 and timely manner while respecting the religious and moral beliefs of
11 health care providers. We applaud their efforts. The patients and
12 providers in Washington will benefit greatly from a similar compromise.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.64 RCW
14 to read as follows:

15 (1) The legislature recognizes that every pharmacist and pharmacy
16 possesses a fundamental right to exercise the pharmacist's or
17 pharmacy's religious beliefs and conscience. The legislature further
18 recognizes that in developing public policy, conflicting religious and

1 moral beliefs must be respected. Therefore, while recognizing the
2 right of conscientious objection to participating in specific health
3 services, the state also recognizes the right of patients to receive
4 health services.

5 (2)(a) No individual licensed pharmacist or pharmacy may be
6 required by law or contract in any circumstances to participate in the
7 provision of a specific service if the pharmacist or pharmacy objects
8 to so doing for reason of conscience or religion. No person may be
9 discriminated against in employment or professional privileges because
10 of such objection.

11 (b) The provisions of this section are not intended to result in
12 interference with a patient's right to receive approved and lawfully
13 prescribed medications and information or drugs and devices approved by
14 the United States food and drug administration for restricted or
15 over-the-counter distribution by pharmacies in a timely and
16 professional manner and that the patients are not burdened by the
17 pharmacist's individual beliefs.

18 (3) Each pharmacist or pharmacy shall:

19 (a) Adopt a written policy and procedures that address the issues
20 of pharmacists' moral, ethical, and professional responsibilities and,
21 if appropriate, allowing the pharmacist to exercise his or her choice
22 to not participate, and at the same time not interfere with a patient's
23 right to receive appropriate and lawfully prescribed or
24 over-the-counter drug therapy or drugs and devices approved by the
25 United States food and drug administration for restricted or
26 over-the-counter distribution by pharmacies. These policies may
27 include dispensing of drugs and devices by another pharmacist on site
28 or arranging for the prescription to be dispensed by a pharmacist at
29 another site;

30 (b) Provide a written notice to patients listing services that the
31 pharmacist or pharmacy refuses to dispense for reason of conscience or
32 religion;

33 (c) Provide written information describing how an enrollee may
34 directly access services in an expeditious manner; and

35 (d) Ensure that enrollees refused services under this section have
36 prompt access to the information developed pursuant to (c) of this
37 subsection.

1 (4) The board shall establish a mechanism or mechanisms to
2 recognize the right of pharmacists and pharmacies to exercise religious
3 beliefs and conscience while ensuring patients timely access to
4 services and to assure prompt payment to service providers.

5 **Sec. 3.** RCW 18.64.005 and 1990 c 83 s 1 are each amended to read
6 as follows:

7 The board shall:

8 (1) Regulate the practice of pharmacy and enforce all laws placed
9 under its jurisdiction;

10 (2) Prepare or determine the nature of, and supervise the grading
11 of, examinations for applicants for pharmacists' licenses;

12 (3) Establish the qualifications for licensure of pharmacists or
13 pharmacy interns;

14 (4) Conduct hearings for the revocation or suspension of licenses,
15 permits, registrations, certificates, or any other authority to
16 practice granted by the board, which hearings may also be conducted by
17 an administrative law judge appointed under chapter 34.12 RCW;

18 (5) Issue subpoenas and administer oaths in connection with any
19 hearing, or disciplinary proceeding held under this chapter or any
20 other chapter assigned to the board;

21 (6) Assist the regularly constituted enforcement agencies of this
22 state in enforcing all laws pertaining to drugs, controlled substances,
23 and the practice of pharmacy, or any other laws or rules under its
24 jurisdiction;

25 (7) (~~Promulgate~~) Adopt rules for the dispensing, distribution,
26 wholesaling, and manufacturing of drugs and devices and the practice of
27 pharmacy for the protection and promotion of the public health, safety,
28 and welfare. Violation of any such rules shall constitute grounds for
29 refusal, suspension, or revocation of licenses or any other authority
30 to practice issued by the board. However, it shall not be a violation
31 for a pharmacist or pharmacy to exercise the pharmacist's or pharmacy's
32 fundamental right to exercise religious beliefs or conscience when
33 choosing to not dispense drugs, devices, medication, or information;

34 (8) Adopt rules that allow a pharmacist to exercise his or her
35 choice not to dispense a restricted or over-the-counter drug or device
36 while accommodating the needs of the patient. Rules and policies must
37 require any objecting pharmacist to inform the pharmacist in charge in

1 advance so that the pharmacist in charge can reasonably accommodate
2 that objection before a patient presents a prescription or makes a
3 request for drugs or devices approved by the United States food and
4 drug administration for restricted and over-the-counter distribution by
5 pharmacies;

6 (9) Adopt rules establishing and governing continuing education
7 requirements for pharmacists and other licensees applying for renewal
8 of licenses under this chapter;

9 ((+9)) (10) Be immune, collectively and individually, from suit in
10 any action, civil or criminal, based upon any disciplinary proceedings
11 or other official acts performed as members of such board. Such
12 immunity shall apply to employees of the department when acting in the
13 course of disciplinary proceedings;

14 ((+10)) (11) Suggest strategies for preventing, reducing, and
15 eliminating drug misuse, diversion, and abuse, including professional
16 and public education, and treatment of persons misusing and abusing
17 drugs;

18 ((+11)) (12) Conduct or encourage educational programs to be
19 conducted to prevent the misuse, diversion, and abuse of drugs for
20 health care practitioners and licensed or certified health care
21 facilities;

22 ((+12)) (13) Monitor trends of drug misuse, diversion, and abuse
23 and make periodic reports to disciplinary boards of licensed health
24 care practitioners and education, treatment, and appropriate law
25 enforcement agencies regarding these trends;

26 ((+13)) (14) Enter into written agreements with all other state
27 and federal agencies with any responsibility for controlling drug
28 misuse, diversion, or abuse and with health maintenance organizations,
29 health care service contractors, and health care providers to assist
30 and promote coordination of agencies responsible for ensuring
31 compliance with controlled substances laws and to monitor observance of
32 these laws and cooperation between these agencies. The department of
33 social and health services, the department of labor and industries, and
34 any other state agency including licensure disciplinary boards, shall
35 refer all apparent instances of over-prescribing by practitioners and
36 all apparent instances of legend drug overuse to the department. The
37 department shall also encourage such referral by health maintenance
38 organizations, health service contractors, and health care providers.

1 **Sec. 4.** RCW 18.64.160 and 1993 c 367 s 13 are each amended to read
2 as follows:

3 In addition to the grounds under RCW 18.130.170 and 18.130.180, the
4 board of pharmacy may take disciplinary action against the license of
5 any pharmacist or intern upon proof that:

6 (1) His or her license was procured through fraud,
7 misrepresentation, or deceit;

8 (2) In the event that a pharmacist is determined by a court of
9 competent jurisdiction to be mentally incompetent, the pharmacist shall
10 automatically have his or her license suspended by the board upon the
11 entry of the judgment, regardless of the pendency of an appeal;

12 (3) He or she has knowingly violated or permitted the violation of
13 any provision of any state or federal law, rule, or regulation
14 governing the possession, use, distribution, or dispensing of drugs,
15 including, but not limited to, the violation of any provision of this
16 chapter, Title 69 RCW, or rule or regulation of the board. However,
17 the board shall not adopt any rule that infringes in any way on a
18 pharmacist's or pharmacy's fundamental legal right to exercise the
19 pharmacist's or pharmacy's religious beliefs with regard to dispensing
20 lawfully prescribed or over-the-counter drug therapy, drugs, devices,
21 medication, or information;

22 (4) He or she has knowingly allowed any unlicensed person to take
23 charge of a pharmacy or engage in the practice of pharmacy, except a
24 pharmacy intern or pharmacy assistant acting as authorized in this
25 chapter or chapter 18.64A RCW in the presence of and under the
26 immediate supervision of a licensed pharmacist;

27 (5) He or she has compounded, dispensed, or caused the compounding
28 or dispensing of any drug or device which contains more or less than
29 the equivalent quantity of ingredient or ingredients specified by the
30 person who prescribed such drug or device: PROVIDED, HOWEVER, That
31 nothing herein shall be construed to prevent the pharmacist from
32 exercising professional judgment in the preparation or providing of
33 such drugs or devices.

34 **Sec. 5.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to read
35 as follows:

36 The following conduct, acts, or conditions constitute

1 unprofessional conduct for any license holder or applicant under the
2 jurisdiction of this chapter:

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

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

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

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

26 (5) Suspension, revocation, or restriction of the individual's
27 license to practice any health care profession by competent authority
28 in any state, federal, or foreign jurisdiction, a certified copy of the
29 order, stipulation, or agreement being conclusive evidence of the
30 revocation, suspension, or restriction;

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

36 (7) Violation of any state or federal statute or administrative
37 rule regulating the profession in question, including any statute or

1 rule defining or establishing standards of patient care or professional
2 conduct or practice;

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

4 (a) Not furnishing any papers or documents;

5 (b) Not furnishing in writing a full and complete explanation
6 covering the matter contained in the complaint filed with the
7 disciplining authority;

8 (c) Not responding to subpoenas issued by the disciplining
9 authority, whether or not the recipient of the subpoena is the accused
10 in the proceeding; or

11 (d) Not providing reasonable and timely access for authorized
12 representatives of the disciplining authority seeking to perform
13 practice reviews at facilities utilized by the license holder;

14 (9) Failure to comply with an order issued by the disciplining
15 authority or a stipulation for informal disposition entered into with
16 the disciplining authority;

17 (10) Aiding or abetting an unlicensed person to practice when a
18 license is required;

19 (11) Violations of rules established by any health agency;

20 (12) Practice beyond the scope of practice as defined by law or
21 rule;

22 (13) Misrepresentation or fraud in any aspect of the conduct of the
23 business or profession;

24 (14) Failure to adequately supervise auxiliary staff to the extent
25 that the consumer's health or safety is at risk;

26 (15) Engaging in a profession involving contact with the public
27 while suffering from a contagious or infectious disease involving
28 serious risk to public health;

29 (16) Promotion for personal gain of any unnecessary or
30 inefficacious drug, device, treatment, procedure, or service;

31 (17) Conviction of any gross misdemeanor or felony relating to the
32 practice of the person's profession. For the purposes of this
33 subsection, conviction includes all instances in which a plea of guilty
34 or nolo contendere is the basis for conviction and all proceedings in
35 which the sentence has been deferred or suspended. Nothing in this
36 section abrogates rights guaranteed under chapter 9.96A RCW;

37 (18) The procuring, or aiding or abetting in procuring, a criminal
38 abortion;

1 (19) The offering, undertaking, or agreeing to cure or treat
2 disease by a secret method, procedure, treatment, or medicine, or the
3 treating, operating, or prescribing for any health condition by a
4 method, means, or procedure which the licensee refuses to divulge upon
5 demand of the disciplining authority;

6 (20) The willful betrayal of a practitioner-patient privilege as
7 recognized by law;

8 (21) Violation of chapter 19.68 RCW;

9 (22) Interference with an investigation or disciplinary proceeding
10 by willful misrepresentation of facts before the disciplining authority
11 or its authorized representative, or by the use of threats or
12 harassment against any patient or witness to prevent them from
13 providing evidence in a disciplinary proceeding or any other legal
14 action, or by the use of financial inducements to any patient or
15 witness to prevent or attempt to prevent him or her from providing
16 evidence in a disciplinary proceeding;

17 (23) Current misuse of:

18 (a) Alcohol;

19 (b) Controlled substances; or

20 (c) Legend drugs;

21 (24) Abuse of a client or patient or sexual contact with a client
22 or patient;

23 (25) Acceptance of more than a nominal gratuity, hospitality, or
24 subsidy offered by a representative or vendor of medical or health-
25 related products or services intended for patients, in contemplation of
26 a sale or for use in research publishable in professional journals,
27 where a conflict of interest is presented, as defined by rules of the
28 disciplining authority, in consultation with the department, based on
29 recognized professional ethical standards;

30 (26) Interference with a patient's right to receive expeditious,
31 professional prescription services and information on drugs and devices
32 approved by the United States food and drug administration for
33 restricted distribution by pharmacies. The legal fundamental right by
34 pharmacists or pharmacies to exercise the pharmacist's or pharmacy's
35 religious beliefs and conscience and to choose whether or not to
36 participate in activities the pharmacist or pharmacy finds morally or
37 ethically objectionable, including but not limited to the dispensing of
38 a drug, medication, information, or device, does not constitute

1 unprofessional conduct; provided that accommodation has been offered
2 and it does not result in injury to a patient or create an unreasonable
3 risk that a patient will be harmed; and provided further that
4 accommodation does not include permission to lecture the patient;

5 (27) Lecturing by a pharmacist to a patient about the pharmacist's
6 moral or religious beliefs, violating the patient's privacy, or
7 destroying, confiscating, or otherwise tampering with the patient's
8 prescription.

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