

# HOUSE BILL REPORT

## HB 1493

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### As Reported by House Committee On: Health Care & Wellness

**Title:** An act relating to providing greater transparency to the health professions disciplinary process.

**Brief Description:** Providing greater transparency to the health professions disciplinary process.

**Sponsors:** Representatives Pedersen, Bailey, Kagi, Clibborn, Ryu, Jenkins, Hinkle, Moeller, Van De Wege, Roberts, Stanford and Kenney.

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 2/2/11, 2/10/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Allows a complainant in a disciplinary proceeding under the Uniform Disciplinary Act to supplement the contents of his or her complaint and allows the license holder to respond.
- Requires a disciplining authority to promptly respond to inquiries regarding the status of a complaint.
- Requires a disciplining authority to provide a complainant or a license holder with the file relating to the complaint.
- Requires a disciplining authority to allow a complainant to submit an oral or written impact statement.
- Requires a disciplining authority to inform the complainant with a report on the complaint's final disposition.
- Allows the complainant to make a request for reconsideration of the disciplining authority's decision under certain circumstances and allows the license holder to respond.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Jinkins, Vice Chair; Hinkle, Assistant Ranking Minority Member; Bailey, Clibborn, Green, Kelley, Moeller and Van De Wege.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Harris.

**Staff:** Jim Morishima (786-7191).

### **Background:**

#### Overview of the Health Professions Disciplinary Process.

Credentialed health care providers are subject to professional discipline under the Uniform Disciplinary Act (UDA). Under the UDA, the disciplining authority may take action against a provider for a variety of reasons, including unprofessional conduct, unlicensed practice, and the mental or physical inability to practice skillfully or safely. The Department of Health is the disciplining authority for many providers and various boards and commissions are the disciplining authority for the remainder.

The UDA allows (and in some cases requires) individuals and organizations to file reports or complaints about health care providers. Once a disciplining authority receives a complaint, it makes a threshold determination as to whether the conduct in the complaint constitutes a violation of the law and whether the disciplining authority has the legal authority to take action. If a complaint does not meet this threshold, it is closed. If it does, the disciplining authority conducts an investigation.

After the investigation, if the evidence supports the complaint, the disciplining authority may institute disciplinary proceedings against the provider. Disciplinary proceedings may be resolved in a variety of ways, including a formal hearing (pursuant to the Administrative Procedures Act) or a stipulated agreement.

#### Disclosure of Documents Related to Disciplinary Proceedings.

A complaint submitted to a disciplining authority is exempt from public disclosure until a determination of whether to investigate is made. Complaints determined to warrant no cause of action after an investigation must include an explanation of the decision to close the complaint. Disciplinary files are generally open to public inspection and copying, except for certain information such as patient information and the name, address, and Social Security number of the provider.

#### Notifications to Complainants.

A disciplining authority must provide notification to a complainant in several stages of a disciplinary proceeding. For example, the disciplining authority must provide a complainant with notice as soon as the initial assessment of the complaint is complete. Also, the disciplining authority must report the issuance of statements of charges and final orders to the complainant.

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### **Summary of Substitute Bill:**

A disciplining authority must:

- provide a complainant with a reasonable opportunity to supplement or amend the contents of the complaint and must allow the license holder to respond;
- promptly respond to the inquiries as to the status of the complaint; and
- provide the complainant or the license holder with a copy of the file relating to the complaint upon request, including any response submitted by the subject of the complaint. The disciplining authority may not disclose any confidential or privileged information or any information exempt from public disclosure. The complainant or license holder may be charged a fee for copying the file.

Prior to any final decision in any disciplinary proceeding, the disciplining authority must provide the complainant or his or her representative an opportunity to be heard through an oral or written impact statement. If the license holder who is the subject of the proceeding is not present at the proceeding, the disciplining authority must transmit the impact statement to him or her. The license holder must certify to the disciplining authority that he or she has received and read it.

The disciplining authority must inform the complainant in writing of the final disposition of the complaint. If the complaint was closed prior to a statement of charges or allegations being filed, the complainant may, within 30 days of receiving the notice of final disposition, make a request for reconsideration on the basis of new information. Within 30 days of receiving the request for reconsideration, the disciplining authority must notify the license holder of the request and provide the license holder with 30 days to respond. The disciplining authority must notify the complainant and the license holder in writing of its final decision on the request for reconsideration, including an explanation of the reasoning behind the decision.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- allows the license holder to respond to any supplemental information submitted by the complainant;
- requires the disciplining authority to promptly respond to status inquiries by the license holder (in addition to the complainant);
- requires the disciplining authority to provide a copy of the file to the license holder (in addition to the complainant);
- changes "victim impact statement" to "impact statement;"
- limits the circumstances in which the complainant may request reconsideration to situations in which: (a) there has been no statement of charges or allegations; and (b) there is new information relating to the original complaint or report; and
- requires the disciplining authority to notify the license holder of any request for reconsideration and allows the license holder to respond.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 10, 2011.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill provides complainants with notice and the opportunity to be heard. Complainants currently experience problems in the disciplinary process due to lack of transparency and lack of an appeal process. It often can be difficult to obtain information from a disciplining authority. The disciplining authorities should be required to provide complainants with a complete summary of the final decision, including which evidence was considered, which evidence was considered false, and the laws that were considered. This bill will allow both parties to be more involved in the process and will increase trust. Complainants should have more than 30 days to request reconsideration. This bill will provide concrete benefits to people and will help prevent patient injuries through better risk management.

(With concerns) People involved in the disciplinary process already have access to this information. Changing the Uniform Disciplinary Act could create a budget and manpower issue.

(Opposed) Without fine tuning the disciplinary process, practitioners can face harm. This bill may further complicate the disciplinary process and end up costing practitioners more money by creating more steps in the process.

**Persons Testifying:** (In support) Representative Pederson, prime sponsor; Rex Johnson; Yanling Yu; Bill Sherman; and Larry Shannon, Washington State Association of Justice.

(With concerns) Melissa Johnson, Washington State Nurses Association, American Physical Therapy Association, and Washington Speech and Hearing Association; and Tim Layton, Washington State Medical Association.

(Opposed) Ezra Eickmeyer, Advocates for Advancement for Asian Medicine.

**Persons Signed In To Testify But Not Testifying:** None.