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ENGROSSED SUBSTITUTE HOUSE BILL 1381

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State of Washington

63rd Legislature

2013 Regular Session

**By** House Government Accountability & Oversight (originally sponsored by Representatives Jenkins, Hunt, Wylie, Morrell, Cody, Green, Roberts, Clibborn, Ormsby, Reykdal, and Ryu)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to administrative adjudicatory proceedings coming  
2 before the department of health; amending RCW 18.130.050, 18.130.095,  
3 34.05.425, and 34.12.040; and adding a new section to chapter 43.70  
4 RCW.

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

6 **Sec. 1.** RCW 18.130.050 and 2008 c 134 s 3 are each amended to read  
7 as follows:

8 Except as provided in RCW 18.130.062, the disciplining authority  
9 has the following authority:

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

12 (2) To investigate all complaints or reports of unprofessional  
13 conduct as defined in this chapter;

14 (3) To hold hearings as provided in this chapter;

15 (4) To issue subpoenas and administer oaths in connection with any  
16 investigation, consideration of an application for license, hearing, or  
17 proceeding held under this chapter;

18 (5) To take or cause depositions to be taken and use other

1 discovery procedures as needed in any investigation, hearing, or  
2 proceeding held under this chapter;

3 (6) To compel attendance of witnesses at hearings;

4 (7) In the course of investigating a complaint or report of  
5 unprofessional conduct, to conduct practice reviews and to issue  
6 citations and assess fines for failure to produce documents, records,  
7 or other items in accordance with RCW 18.130.230;

8 (8) To take emergency action ordering summary suspension of a  
9 license, or restriction or limitation of the license holder's practice  
10 pending proceedings by the disciplining authority. Within fourteen  
11 days of a request by the affected license holder, the disciplining  
12 authority must provide a show cause hearing in accordance with the  
13 requirements of RCW 18.130.135. Consistent with RCW 18.130.370, a  
14 disciplining authority shall issue a summary suspension of the license  
15 or temporary practice permit of a license holder prohibited from  
16 practicing a health care profession in another state, federal, or  
17 foreign jurisdiction because of an act of unprofessional conduct that  
18 is substantially equivalent to an act of unprofessional conduct  
19 prohibited by this chapter or any of the chapters specified in RCW  
20 18.130.040. The summary suspension remains in effect until proceedings  
21 by the Washington disciplining authority have been completed;

22 (9) To conduct show cause hearings in accordance with RCW  
23 18.130.062 or 18.130.135 to review an action taken by the disciplining  
24 authority to suspend a license or restrict or limit a license holder's  
25 practice pending proceedings by the disciplining authority;

26 (10) To use a presiding officer as authorized in RCW 18.130.095(3)  
27 or the office of administrative hearings as authorized in chapter 34.12  
28 RCW to conduct hearings. ~~((The))~~ Disciplining ~~((authority))~~  
29 authorities identified in RCW 18.130.040(2) shall make the final  
30 decision regarding disposition of the license unless the disciplining  
31 authority elects to delegate in writing the final decision to the  
32 presiding officer. Disciplining authorities identified in RCW  
33 18.130.040(2)(b) may not delegate the final decision regarding  
34 disposition of the license or imposition of sanctions to a presiding  
35 officer in any case pertaining to standards of practice or where  
36 clinical expertise is necessary, including deciding any motion that  
37 results in dismissal of any allegation contained in the statement of  
38 charges. Presiding officers acting on behalf of the secretary shall

1 enter initial orders. The secretary may, by rule, provide that initial  
2 orders in specified classes of cases may become final without further  
3 agency action unless, within a specified time period:

4 (a) The secretary upon his or her own motion determines that the  
5 initial order should be reviewed; or

6 (b) A party to the proceedings files a petition for administrative  
7 review of the initial order;

8 (11) To use individual members of the boards to direct  
9 investigations and to authorize the issuance of a citation under  
10 subsection (7) of this section. However, the member of the board shall  
11 not subsequently participate in the hearing of the case;

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

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

19 (14) To adopt standards of professional conduct or practice;

20 (15) To grant or deny license applications, and in the event of a  
21 finding of unprofessional conduct by an applicant or license holder, to  
22 impose any sanction against a license applicant or license holder  
23 provided by this chapter. After January 1, 2009, all sanctions must be  
24 issued in accordance with RCW 18.130.390;

25 (16) To restrict or place conditions on the practice of new  
26 licensees in order to protect the public and promote the safety of and  
27 confidence in the health care system;

28 (17) To designate individuals authorized to sign subpoenas and  
29 statements of charges;

30 (18) To establish panels consisting of three or more members of the  
31 board to perform any duty or authority within the board's jurisdiction  
32 under this chapter;

33 (19) To review and audit the records of licensed health facilities'  
34 or services' quality assurance committee decisions in which a license  
35 holder's practice privilege or employment is terminated or restricted.  
36 Each health facility or service shall produce and make accessible to  
37 the disciplining authority the appropriate records and otherwise

1 facilitate the review and audit. Information so gained shall not be  
2 subject to discovery or introduction into evidence in any civil action  
3 pursuant to RCW 70.41.200(3).

4 **Sec. 2.** RCW 18.130.095 and 2008 c 134 s 9 are each amended to read  
5 as follows:

6 (1)(a) The secretary, in consultation with the disciplining  
7 authorities, shall develop uniform procedural rules to respond to  
8 public inquiries concerning complaints and their disposition, active  
9 investigations, statement of charges, findings of fact, and final  
10 orders involving a license holder, applicant, or unlicensed person.  
11 The uniform procedural rules adopted under this subsection apply to all  
12 adjudicative proceedings conducted under this chapter and shall include  
13 provisions for establishing time periods for initial assessment,  
14 investigation, charging, discovery, settlement, and adjudication of  
15 complaints, and shall include enforcement provisions for violations of  
16 the specific time periods by the department, the disciplining  
17 authority, and the respondent. A license holder must be notified upon  
18 receipt of a complaint, except when the notification would impede an  
19 effective investigation. At the earliest point of time the license  
20 holder must be allowed to submit a written statement about that  
21 complaint, which statement must be included in the file. Complaints  
22 filed after July 27, 1997, are exempt from public disclosure under  
23 chapter 42.56 RCW until the complaint has been initially assessed and  
24 determined to warrant an investigation by the disciplining authority.  
25 Complaints determined not to warrant an investigation by the  
26 disciplining authority are no longer considered complaints, but must  
27 remain in the records and tracking system of the department.  
28 Information about complaints that did not warrant an investigation,  
29 including the existence of the complaint, may be released only upon  
30 receipt of a written public disclosure request or pursuant to an  
31 interagency agreement as provided in (b) of this subsection.  
32 Complaints determined to warrant no cause for action after  
33 investigation are subject to public disclosure, must include an  
34 explanation of the determination to close the complaint, and must  
35 remain in the records and tracking system of the department.

36 (b) The secretary, on behalf of the disciplining authorities, shall  
37 enter into interagency agreements for the exchange of records, which

1 may include complaints filed but not yet assessed, with other state  
2 agencies if access to the records will assist those agencies in meeting  
3 their federal or state statutory responsibilities. Records obtained by  
4 state agencies under the interagency agreements are subject to the  
5 limitations on disclosure contained in (a) of this subsection.

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

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

14 (b) From a witness or potential witness in an investigation under  
15 this chapter, the investigator shall inform the person, in writing,  
16 that the statement may be released to the license holder, applicant, or  
17 unlicensed person under investigation if a statement of charges is  
18 issued.

19 (3) Only upon the authorization of a disciplining authority  
20 identified in RCW 18.130.040(2)(b), the secretary, or his or her  
21 designee, may serve as the presiding officer for any disciplinary  
22 proceedings of the disciplining authority authorized under this  
23 chapter. The presiding officer shall not vote on or make any final  
24 decision in cases pertaining to standards of practice or where clinical  
25 expertise is necessary. All functions performed by the presiding  
26 officer shall be subject to chapter 34.05 RCW. The secretary, in  
27 consultation with the disciplining authorities, shall adopt procedures  
28 for implementing this subsection.

29 (4) Upon delegation from the secretary, a presiding officer may  
30 conduct disciplinary proceedings for professions identified in RCW  
31 18.130.040(2)(a). All functions performed by the presiding officer are  
32 subject to chapter 34.05 RCW. Decisions of the presiding officer are  
33 initial decisions subject to review by the secretary. The secretary  
34 shall adopt procedures for implementing this subsection.

35 (5) The uniform procedural rules shall be adopted by all  
36 disciplining authorities listed in RCW 18.130.040(2), and shall be used  
37 for all adjudicative proceedings conducted under this chapter, as  
38 defined by chapter 34.05 RCW. The uniform procedural rules shall

1 address the use of a presiding officer authorized in subsections (3)  
2 and (4) of this section to determine and issue decisions on all legal  
3 issues and motions arising during adjudicative proceedings.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70 RCW  
5 to read as follows:

6 In all adjudicative proceedings before the secretary or the  
7 department, the secretary may delegate initial decision-making  
8 authority to a presiding officer. The presiding officer shall enter an  
9 initial order pursuant to RCW 34.05.461 subject to the review of the  
10 secretary or his or her designee. Pursuant to RCW 34.05.464, the  
11 secretary may, by rule, provide that initial orders in specified  
12 classes of cases may become final without further agency action unless,  
13 within a specified time period:

14 (1) The secretary upon his or her own motion determines that the  
15 initial order should be reviewed; or

16 (2) A party to the proceedings files a petition for administrative  
17 review of the initial order.

18 **Sec. 4.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to read  
19 as follows:

20 (1) Except as provided in subsection (2) of this section, in the  
21 discretion of the agency head, the presiding officer in an  
22 administrative hearing shall be:

23 (a) The agency head or one or more members of the agency head;

24 (b) If the agency has statutory authority to do so, a person other  
25 than the agency head or an administrative law judge designated by the  
26 agency head to make the final decision and enter the final order;  
27 (~~(c)~~)

28 (c) One or more administrative law judges assigned by the office of  
29 administrative hearings in accordance with chapter 34.12 RCW; or

30 (d) A person or persons designated by the secretary of health  
31 pursuant to section 3 of this act.

32 (2) An agency expressly exempted under RCW 34.12.020(4) or other  
33 statute from the provisions of chapter 34.12 RCW or an institution of  
34 higher education shall designate a presiding officer as provided by  
35 rules adopted by the agency.

1 (3) Any individual serving or designated to serve alone or with  
2 others as presiding officer is subject to disqualification for bias,  
3 prejudice, interest, or any other cause provided in this chapter or for  
4 which a judge is disqualified.

5 (4) Any party may petition for the disqualification of an  
6 individual promptly after receipt of notice indicating that the  
7 individual will preside or, if later, promptly upon discovering facts  
8 establishing grounds for disqualification.

9 (5) The individual whose disqualification is requested shall  
10 determine whether to grant the petition, stating facts and reasons for  
11 the determination.

12 (6) When the presiding officer is an administrative law judge, the  
13 provisions of this section regarding disqualification for cause are in  
14 addition to the motion of prejudice available under RCW 34.12.050.

15 (7) If a substitute is required for an individual who becomes  
16 unavailable as a result of disqualification or any other reason, the  
17 substitute must be appointed by the appropriate appointing authority.

18 (8) Any action taken by a duly appointed substitute for an  
19 unavailable individual is as effective as if taken by the unavailable  
20 individual.

21 **Sec. 5.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read  
22 as follows:

23 Except pursuant to section 3 of this act, whenever a state agency  
24 conducts a hearing which is not presided over by officials of the  
25 agency who are to render the final decision, the hearing shall be  
26 conducted by an administrative law judge assigned under this chapter.  
27 In assigning administrative law judges, the chief administrative law  
28 judge shall wherever practical (1) use personnel having expertise in  
29 the field or subject matter of the hearing, and (2) assign  
30 administrative law judges primarily to the hearings of particular  
31 agencies on a long-term basis.

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