
SENATE BILL 5870

State of Washington

64th Legislature

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By Senators Liiias, Litzow, Pedersen, Fain, Ranker, Rivers, Frockt, Cleveland, Mullet, Kohl-Welles, Keiser, Chase, Billig, Hasegawa, Darneille, and Habib

Read first time 02/06/15. Referred to Committee on Health Care.

1 AN ACT Relating to protecting youth from aversive mental health
2 therapies; amending RCW 18.130.020 and 18.130.180; adding a new
3 section to chapter 18.130 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature intends to regulate
6 the professional conduct of licensed health care providers with
7 respect to performing aversive mental health therapies, including
8 sexual orientation change efforts, on patients under age eighteen.

9 (2) The legislature finds and declares that Washington has a
10 compelling interest in protecting the physical and psychological
11 well-being of minors and in protecting its minors against exposure to
12 serious harms caused by aversive mental health therapies, including
13 sexual orientation change efforts, while maintaining a patient-driven
14 process.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130
16 RCW to read as follows:

17 RCW 18.130.180(26) may not be construed to apply to:

18 (1) Speech that does not constitute performing aversive mental
19 health therapies, including sexual orientation change efforts, by
20 licensed health care providers on patients under age eighteen;

1 (2) Religious practices or counseling under the auspices of a
2 religious denomination, church, or organization that do not
3 constitute performing aversive mental health therapies, including
4 sexual orientation change efforts, by licensed health care providers
5 on patients under age eighteen; and

6 (3) Nonlicensed counselors acting under the auspices of a
7 religious denomination or church.

8 **Sec. 3.** RCW 18.130.020 and 2008 c 134 s 2 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

12 (1) "Board" means any of those boards specified in RCW
13 18.130.040.

14 (2) "Clinical expertise" means the proficiency or judgment that a
15 license holder in a particular profession acquires through clinical
16 experience or clinical practice and that is not possessed by a lay
17 person.

18 (3) "Commission" means any of the commissions specified in RCW
19 18.130.040.

20 (4) "Department" means the department of health.

21 (5) "Disciplinary action" means sanctions identified in RCW
22 18.130.160.

23 (6) "Disciplining authority" means the agency, board, or
24 commission having the authority to take disciplinary action against a
25 holder of, or applicant for, a professional or business license upon
26 a finding of a violation of this chapter or a chapter specified under
27 RCW 18.130.040.

28 (7) "Health agency" means city and county health departments and
29 the department of health.

30 (8) "License," "licensing," and "licensure" shall be deemed
31 equivalent to the terms "license," "licensing," "licensure,"
32 "certificate," "certification," and "registration" as those terms are
33 defined in RCW 18.120.020.

34 (9) "Practice review" means an investigative audit of records
35 related to the complaint, without prior identification of specific
36 patient or consumer names, or an assessment of the conditions,
37 circumstances, and methods of the professional's practice related to
38 the complaint, to determine whether unprofessional conduct may have
39 been committed.

1 (10) "Prohibited aversion therapy" means a practice, treatment,
2 or therapy involving sexual orientation change efforts, or electrical
3 shock or extreme temperatures intending to cause pain, discomfort, or
4 unpleasant sensations to the client or patient, except
5 electroconclusive therapies provided in accordance with guidelines
6 set forward by the American psychiatric association and national
7 institute of mental health.

8 (11) "Secretary" means the secretary of health or the secretary's
9 designee.

10 (~~(11)~~) (12)(a) "Sexual orientation change efforts" means a
11 regime that seeks to change an individual's sexual orientation. The
12 term includes efforts to change behaviors or gender expressions, or
13 to eliminate or reduce sexual or romantic attractions or feelings
14 toward individuals of the same sex.

15 (b) The term does not include psychotherapies that (i) provide
16 acceptance, support, and understanding of clients or the facilitation
17 of clients' coping, social support, and identity exploration and
18 development, including sexual orientation-neutral interventions to
19 prevent or address unlawful conduct or unsafe sexual practices; and
20 (ii) do not seek to change sexual orientation.

21 (13) "Standards of practice" means the care, skill, and learning
22 associated with the practice of a profession.

23 (~~(12)~~) (14) "Unlicensed practice" means:

24 (a) Practicing a profession or operating a business identified in
25 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and
26 unsuspended license to do so; or

27 (b) Representing to a consumer, through offerings,
28 advertisements, or use of a professional title or designation, that
29 the individual is qualified to practice a profession or operate a
30 business identified in RCW 18.130.040, without holding a valid,
31 unexpired, unrevoked, and unsuspended license to do so.

32 **Sec. 4.** RCW 18.130.180 and 2010 c 9 s 5 are each amended to read
33 as follows:

34 The following conduct, acts, or conditions constitute
35 unprofessional conduct for any license holder under the jurisdiction
36 of this chapter:

37 (1) The commission of any act involving moral turpitude,
38 dishonesty, or corruption relating to the practice of the person's
39 profession, whether the act constitutes a crime or not. If the act

1 constitutes a crime, conviction in a criminal proceeding is not a
2 condition precedent to disciplinary action. Upon such a conviction,
3 however, the judgment and sentence is conclusive evidence at the
4 ensuing disciplinary hearing of the guilt of the license holder of
5 the crime described in the indictment or information, and of the
6 person's violation of the statute on which it is based. For the
7 purposes of this section, conviction includes all instances in which
8 a plea of guilty or nolo contendere is the basis for the conviction
9 and all proceedings in which the sentence has been deferred or
10 suspended. Nothing in this section abrogates rights guaranteed under
11 chapter 9.96A RCW;

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

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

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

21 (5) Suspension, revocation, or restriction of the individual's
22 license to practice any health care profession by competent authority
23 in any state, federal, or foreign jurisdiction, a certified copy of
24 the order, stipulation, or agreement being conclusive evidence of the
25 revocation, suspension, or restriction;

26 (6) Except when authorized by RCW 18.130.345, the possession,
27 use, prescription for use, or distribution of controlled substances
28 or legend drugs in any way other than for legitimate or therapeutic
29 purposes, diversion of controlled substances or legend drugs, the
30 violation of any drug law, or prescribing controlled substances for
31 oneself;

32 (7) Violation of any state or federal statute or administrative
33 rule regulating the profession in question, including any statute or
34 rule defining or establishing standards of patient care or
35 professional conduct or practice;

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

37 (a) Not furnishing any papers, documents, records, or other
38 items;

1 (b) Not furnishing in writing a full and complete explanation
2 covering the matter contained in the complaint filed with the
3 disciplining authority;

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

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

10 (9) Failure to comply with an order issued by the disciplining
11 authority or a stipulation for informal disposition entered into with
12 the disciplining authority;

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

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

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

18 (13) Misrepresentation or fraud in any aspect of the conduct of
19 the business or profession;

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

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

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

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

34 (18) The procuring, or aiding or abetting in procuring, a
35 criminal abortion;

36 (19) The offering, undertaking, or agreeing to cure or treat
37 disease by a secret method, procedure, treatment, or medicine, or the
38 treating, operating, or prescribing for any health condition by a
39 method, means, or procedure which the licensee refuses to divulge
40 upon demand of the disciplining authority;

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

3 (21) Violation of chapter 19.68 RCW;

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

12 (23) Current misuse of:

13 (a) Alcohol;

14 (b) Controlled substances; or

15 (c) Legend drugs;

16 (24) Abuse of a client or patient or sexual contact with a client
17 or patient;

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

25 (26) Performing prohibited aversion therapy on a patient under
26 age eighteen.

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