
SUBSTITUTE SENATE BILL 5948

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Health & Human Services (originally sponsored by Senators Deccio, Talmadge, Franklin, Prentice and McCaslin)

Read first time 03/03/93.

1 AN ACT Relating to procedures for responding to violations of the
2 uniform disciplinary act; amending RCW 18.130.090 and 18.130.175;
3 adding a new section to chapter 18.130 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 18.130.090 and 1986 c 259 s 6 are each amended to read
6 as follows:

7 ~~((+1))~~ If the disciplining authority determines, upon
8 investigation, that there is reason to believe a violation of RCW
9 18.130.180 has occurred, a statement of charge or charges shall be
10 prepared and served upon the license holder or applicant at the
11 earliest 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 to contest the charge or charges. The license holder
14 or applicant must file a request for hearing with the disciplining
15 authority within twenty days after being served the statement of
16 charges. ~~((The failure to request a hearing constitutes a default,
17 whereupon the disciplining authority may enter a decision on the basis
18 of the facts available to it.~~

1 ~~(2) If a hearing is requested, the time of the hearing shall be~~
2 ~~fixed by the disciplining authority as soon as convenient, but the~~
3 ~~hearing shall not be held earlier than thirty days after service of the~~
4 ~~charges upon the license holder or applicant. A notice of hearing~~
5 ~~shall be issued at least twenty days prior to the hearing, specifying~~
6 ~~the time, date, and place of the hearing. The notice shall also notify~~
7 ~~the license holder or applicant that a record of the proceeding will be~~
8 ~~kept, that he or she will have the opportunity to appear personally and~~
9 ~~to have counsel present, with the right to produce witnesses, who will~~
10 ~~be subject to cross examination, and evidence in his or her own behalf,~~
11 ~~to cross examine witnesses testifying against him or her, to examine~~
12 ~~such documentary evidence as may be produced against him or her, to~~
13 ~~conduct depositions, and to have subpoenas issued by the disciplining~~
14 ~~authority.))~~ If the twenty-day limit results in a hardship upon the
15 license holder or applicant, he or she may request for good cause an
16 extension not to exceed sixty additional days. If the disciplining
17 authority finds that there is good cause, it shall grant the extension.

18 NEW SECTION. Sec. 2. A new section is added to chapter 18.130 RCW
19 to read as follows:

20 DISCIPLINARY AUTHORITY--REQUIRED UNIFORM PROCEDURES. In the
21 performance of its responsibilities under this chapter, the
22 disciplinary authority shall:

23 (1) Develop a uniform procedure to respond to public inquiries
24 concerning complaints and their disposition, active investigations,
25 statement of charges, and findings of fact and final orders involving
26 a licensee, applicant, or unlicensed person provided that public
27 release of information related to disciplinary actions or violations of
28 this chapter are limited to revocations of licenses. Suspension of a
29 license or other conditions placed upon a license are not subject to
30 public release;

31 (2) Upon making contact with a licensee, applicant, or unlicensed
32 person for the purpose of investigation of a complaint, inform the
33 licensee, applicant, or unlicensed person of the nature of the
34 complaint and the individual's right to obtain legal counsel prior to
35 responding to any inquiries by the disciplinary authority. The
36 licensee, applicant, or unlicensed person shall also be informed that
37 responses to the disciplinary authority's inquiries may be used in
38 adjudicative proceedings;

1 (3) Upon issuance of a statement of charges to the licensee,
2 applicant, or unlicensed person, provide full disclosure of pertinent
3 records and other supporting information used in the investigation;

4 (4) Develop a uniform procedure for the timely and complete
5 response to a licensee, applicant, or unlicensed person request for
6 discovery, including reasonable interrogatories, request for production
7 and depositions, and reasonable and appropriate request for department
8 staff consultation concerning the investigation of the licensee,
9 applicant, or unlicensed person;

10 (5) Allow the respondent to have at least ninety days to submit
11 documents and any other evidence the respondent wishes to have
12 considered in a settlement conference. Extension may be granted with
13 showing of good cause.

14 (6) Not prohibit a licensee, applicant, or unlicensed person from
15 agreeing to sanctions without admitting to a violation of this chapter;

16 (7) Honor a settlement concerning violations of this chapter with
17 a licensee, applicant, or unlicensed person agreed to prior to a
18 hearing, except that such settlements may be disapproved by the
19 disciplinary authority for good cause. In any case, a licensee,
20 applicant, or unlicensed person shall not be denied a hearing in
21 accordance with chapter 34.05 RCW;

22 (8) Inform witnesses in an investigation that their responses to
23 inquiries may be released to the licensee, applicant, or unlicensed
24 person under investigation should a statement of charges be issued by
25 the disciplinary authority;

26 (9) Comply with restrictions on ex parte communications as provided
27 for under RCW 34.05.455.

28 **Sec. 3.** RCW 18.130.175 and 1991 c 3 s 270 are each amended to read
29 as follows:

30 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
31 disciplining authority determines that the unprofessional conduct may
32 be the result of substance abuse, the disciplining authority may refer
33 the license holder to a voluntary substance abuse monitoring program
34 approved by the disciplining authority.

35 The cost of the treatment shall be the responsibility of the
36 license holder, but the responsibility does not preclude payment by an
37 employer, existing insurance coverage, or other sources. Primary
38 alcoholism or drug treatment shall be provided by approved treatment

1 ((~~facilities~~)) programs under RCW ((~~70.96A.020(2)~~)) 70.96A.020:
2 PROVIDED, That nothing shall prohibit the disciplining authority from
3 approving additional services and programs as an adjunct to primary
4 alcoholism or drug treatment. The disciplining authority may also
5 approve the use of out-of-state programs. Referral of the license
6 holder to the program shall be done only with the consent of the
7 license holder. Referral to the program may also include probationary
8 conditions for a designated period of time. If the license holder does
9 not consent to be referred to the program or does not successfully
10 complete the program, the disciplining authority may take appropriate
11 action under RCW 18.130.160. If the license holder has a setback in
12 complying with the program, but program records indicate continuing
13 progress toward the successful completion of the program, the
14 disciplinary authority shall encourage the license holder to continue
15 participation in the program and may impose additional conditions on
16 the license holder, but shall not take action under RCW 18.130.160
17 unless the license holder is deemed unable to continue to practice with
18 reasonable skill and safety under the conditions imposed on his or her
19 license.

20 (2) In addition to approving substance abuse monitoring programs
21 that may receive referrals from the disciplining authority, the
22 disciplining authority may establish by rule requirements for
23 participation of license holders who are not being investigated or
24 monitored by the disciplining authority for substance abuse. License
25 holders voluntarily participating in the approved programs without
26 being referred by the disciplining authority shall not be subject to
27 disciplinary action under RCW 18.130.160 for their substance abuse, and
28 shall not have their participation made known to the disciplining
29 authority, if they meet the requirements of this section and the
30 program in which they are participating.

31 (3) The license holder shall sign a waiver allowing the program to
32 release information to the disciplining authority if the licensee does
33 not comply with the requirements of this section or is unable to
34 practice with reasonable skill or safety. The substance abuse program
35 shall report to the disciplining authority any license holder who fails
36 to comply with the requirements of this section or the program or who,
37 in the opinion of the program, is unable to practice with reasonable
38 skill or safety. License holders shall report to the disciplining
39 authority if they fail to comply with this section or do not complete

1 the program's requirements. License holders may, upon the agreement of
2 the program and disciplining authority, reenter the program if they
3 have previously failed to comply with this section.

4 (4) The treatment and pretreatment records of license holders
5 referred to or voluntarily participating in approved programs shall be
6 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
7 shall not be subject to discovery by subpoena or admissible as evidence
8 except for monitoring records reported to the disciplining authority
9 for cause as defined in subsection (3) of this section. Monitoring
10 records relating to license holders referred to the program by the
11 disciplining authority or relating to license holders reported to the
12 disciplining authority by the program for cause, shall be released to
13 the disciplining authority at the request of the disciplining
14 authority. Records held by the disciplining authority under this
15 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
16 not be subject to discovery by subpoena except by the license holder.

17 (5) "Substance abuse," as used in this section, means the
18 impairment, as determined by the disciplining authority, of a license
19 holder's professional services by an addiction to, a dependency on, or
20 the use of alcohol, legend drugs, or controlled substances.

21 (6) This section does not affect an employer's right or ability to
22 make employment-related decisions regarding a license holder. This
23 section does not restrict the authority of the disciplining authority
24 to take disciplinary action for any other unprofessional conduct.

25 (7) A person who, in good faith, reports information or takes
26 action in connection with this section is immune from civil liability
27 for reporting information or taking the action.

28 (a) The immunity from civil liability provided by this section
29 shall be liberally construed to accomplish the purposes of this section
30 and the persons entitled to immunity shall include:

- 31 (i) An approved monitoring treatment program;
- 32 (ii) The professional association operating the program;
- 33 (iii) Members, employees, or agents of the program or association;
- 34 (iv) Persons reporting a license holder as being impaired or
35 providing information about the license holder's impairment; and
- 36 (v) Professionals supervising or monitoring the course of the
37 impaired license holder's treatment or rehabilitation.

38 (b) The immunity provided in this section is in addition to any
39 other immunity provided by law.

1 (8) In addition to health care professionals governed by this
2 chapter, this section also applies to pharmacists under chapter 18.64
3 RCW and pharmacy assistants under chapter 18.64A RCW. For that
4 purpose, the board of pharmacy shall be deemed to be the disciplining
5 authority and the substance abuse monitoring program shall be in lieu
6 of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of
7 pharmacy shall adjust license fees to offset the costs of this program.

8 NEW SECTION. **Sec. 4.** This act applies to all actions pending or
9 in process before a disciplinary authority on January 1, 1993, or all
10 actions initiated by a disciplinary authority on or after January 1,
11 1993, regardless of when the cause of action may have arisen. To this
12 extent, this act applies retroactively, but in all other respects it
13 applies prospectively.

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