

SHB 2326 - H AMD

By Representative Campbell

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The uniform disciplinary act provides
4 a uniform process for addressing acts of unprofessional conduct
5 affecting fifty-seven health professions regulated by the state.
6 The disciplinary authorities include the secretary of health and
7 sixteen boards and commissions charged with protecting the health
8 and safety of patients from unprofessional conduct. It is
9 recognized nationally as a model law and has worked well over time
10 to provide uniformity and efficiency to the disciplinary process.

11 The legislature finds that it is necessary to further
12 streamline the disciplinary process and ensure more equitable case
13 dispositions among health care providers. An efficient division of
14 responsibilities between the secretary of health with authority
15 over most preliminary complaint investigations and charging
16 decisions allows the health professionals sitting on the boards and
17 commissions to retain the final authority on issuing findings and
18 sanctions. These measures will ensure that investigations and
19 charging decisions are free of any potential conflicts of interest
20 and that sanctions are uniform across professional lines.

21 The legislature further finds that this act does not intend to
22 change or modify, in any way, the relationship as it exists on the
23 effective date of this section between boards and commissions and
24 contractors providing services to impaired providers.

25 **Sec. 2.** RCW 18.130.050 and 1995 c 336 s 4 are each amended to
26 read as follows:

27 The disciplining authority has the following authority:

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

1 (2) To ((investigate all)) provide consultation and assistance
2 with investigations of complaints or reports of unprofessional
3 conduct as defined in this chapter ((and)) as requested by the
4 secretary. If the secretary determines that the complaint involves
5 standards of practice or that clinical expertise is necessary, the
6 secretary shall assure that the board or commission is actively
7 involved in the investigation;

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

9 ((+3))) (4) To issue subpoenas and administer oaths in
10 connection with any investigation, hearing, or proceeding held
11 under this chapter;

12 ((+4))) (5) To take or cause depositions to be taken and use
13 other discovery procedures as needed in any investigation, hearing,
14 or proceeding held under this chapter;

15 ((+5))) (6) To compel attendance of witnesses at hearings;

16 ((+6))) (7) In the course of ((investigating)) consulting and
17 assisting with the investigation of a complaint or report of
18 unprofessional conduct, to conduct practice reviews as requested by
19 the secretary;

20 ((+7) To take emergency action ordering summary suspension of
21 a license, or restriction or limitation of the licensee's practice
22 pending proceedings by the disciplining authority;))

23 (8) To use a presiding officer as authorized in RCW
24 18.130.095(3) or the office of administrative hearings as
25 authorized in chapter 34.12 RCW to conduct hearings. The
26 disciplining authority shall make the final decision regarding
27 disposition of the license unless the disciplining authority elects
28 to delegate in writing the final decision to the presiding officer;

29 (9) To use individual members of the boards to ((direct))
30 provide consultation and assistance with investigations as
31 requested by the secretary. However, the member of the board shall
32 not subsequently participate in the hearing of the case;

33 (10) To enter into contracts for professional services
34 determined to be necessary for adequate enforcement of this
35 chapter;

36 (11) To contract with licensees or other persons or
37 organizations to provide services necessary for the monitoring and
38 supervision of licensees who are placed on probation, whose
39 professional activities are restricted, or who are for any

1 authorized purpose subject to monitoring by the disciplining
2 authority;

3 (12) To adopt standards of professional conduct or practice;

4 (13) To grant or deny license applications, and in the event of
5 a finding of unprofessional conduct by an applicant or license
6 holder, to impose any sanction against a license applicant or
7 license holder provided by this chapter;

8 (14) To designate individuals authorized to sign subpoenas and
9 statements of charges;

10 (15) To establish panels consisting of three or more members of
11 the board to perform any duty or authority within the board's
12 jurisdiction under this chapter;

13 (16) To review and audit the records of licensed health
14 facilities' or services' quality assurance committee decisions in
15 which a licensee's practice privilege or employment is terminated
16 or restricted. Each health facility or service shall produce and
17 make accessible to the disciplining authority the appropriate
18 records and otherwise facilitate the review and audit. Information
19 so gained shall not be subject to discovery or introduction into
20 evidence in any civil action pursuant to RCW 70.41.200(3).

21 **Sec. 3.** RCW 18.130.060 and 2001 c 101 s 1 are each amended to
22 read as follows:

23 In addition to the authority specified in RCW 18.130.050, the
24 secretary has the following additional authority:

25 (1) To employ such investigative, administrative, and clerical
26 staff as necessary for the enforcement of this chapter;

27 (2) Upon the request of a board, to appoint pro tem members to
28 participate as members of a panel of the board in connection with
29 proceedings specifically identified in the request. Individuals so
30 appointed must meet the same minimum qualifications as regular
31 members of the board. Pro tem members appointed for matters under
32 this chapter are appointed for a term of no more than one year. No
33 pro tem member may serve more than four one-year terms. While
34 serving as board members pro tem, persons so appointed have all the
35 powers, duties, and immunities, and are entitled to the emoluments,
36 including travel expenses in accordance with RCW 43.03.050 and
37 43.03.060, of regular members of the board. The chairperson of a
38 panel shall be a regular member of the board appointed by the board

1 chairperson. Panels have authority to act as directed by the board
2 with respect to all matters ((concerning the review, investigation,
3 and adjudication of all complaints, allegations, charges, and
4 matters)) subject to the jurisdiction of the board or commission.
5 The authority to act through panels does not restrict the authority
6 of the board to act as a single body at any phase of proceedings
7 within the board's jurisdiction. Board panels may ((make interim
8 orders and)) issue final orders and decisions with respect to
9 matters and cases delegated to the panel by the board. Final
10 decisions may be appealed as provided in chapter 34.05 RCW, the
11 Administrative Procedure Act;

12 (3) To establish fees to be paid for witnesses, expert
13 witnesses, and consultants used in any investigation and to
14 establish fees to witnesses in any agency adjudicative proceeding
15 as authorized by RCW 34.05.446;

16 (4) To conduct investigations and practice reviews ((at the
17 direction of the disciplining authority)) and to issue subpoenas,
18 administer oaths, and take depositions in the course of conducting
19 those investigations and practice reviews ((at the direction of the
20 disciplining authority)). The secretary may request the
21 consultation and assistance of the appropriate disciplining
22 authority, and where standards of practice or clinical expertise is
23 necessary, the secretary shall assure that the board or commission
24 is actively involved in the investigation;

25 (5) To review results of investigations conducted under this
26 chapter and determine the appropriate disposition, which may
27 include closure, notice of correction, stipulations permitted by
28 RCW 18.130.172, or issuance of a statement of charges;

29 (6) To take emergency action ordering summary suspension of a
30 license, or restriction or limitation of the license holder's
31 practice pending proceedings by the disciplining authority;

32 (7) To have the health professions regulatory program establish
33 a system to recruit potential public members, to review the
34 qualifications of such potential members, and to provide
35 orientation to those public members appointed pursuant to law by
36 the governor or the secretary to the boards and commissions
37 specified in RCW 18.130.040(2)(b), and to the advisory committees
38 and ((councils)) for professions specified in RCW 18.130.040(2)(a).

1 **Sec. 4.** RCW 18.130.080 and 1998 c 132 s 9 are each amended to
2 read as follows:

3 A person, including but not limited to consumers, ((licensees))
4 license holders, corporations, organizations, health care
5 facilities, impaired practitioner programs, or voluntary substance
6 abuse monitoring programs approved by disciplining authorities, and
7 state and local governmental agencies, may submit a written
8 complaint to the ((disciplining authority)) secretary charging a
9 license holder or applicant with unprofessional conduct and
10 specifying the grounds therefor or to report information to the
11 ((disciplining authority)) secretary, or voluntary substance abuse
12 monitoring program, or an impaired practitioner program approved by
13 the disciplining authority, which indicates that the license holder
14 may not be able to practice his or her profession with reasonable
15 skill and safety to consumers as a result of a mental or physical
16 condition. If the ((disciplining authority)) secretary determines
17 that the complaint merits investigation, or if the ((disciplining
18 authority)) secretary has reason to believe, without a formal
19 complaint, that a license holder or applicant may have engaged in
20 unprofessional conduct, the ((disciplining authority)) secretary
21 shall investigate to determine whether there has been
22 unprofessional conduct. A person who files a complaint or reports
23 information under this section in good faith is immune from suit in
24 any civil action related to the filing or contents of the
25 complaint.

26 **Sec. 5.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to
27 read as follows:

28 (1) If the ((disciplining authority)) secretary determines,
29 upon investigation, that there is reason to believe a violation of
30 RCW 18.130.180 has occurred, a statement of charge or charges shall
31 be prepared and served upon the license holder or applicant at the
32 earliest practical time. The statement of charge or charges shall
33 be accompanied by a notice that the license holder or applicant may
34 request a hearing to contest the charge or charges. The license
35 holder or applicant must file a request for hearing with the
36 disciplining authority within twenty days after being served the
37 statement of charges. If the twenty-day limit results in a
38 hardship upon the license holder or applicant, he or she may

1 request for good cause an extension not to exceed sixty additional
2 days. If the disciplining authority finds that there is good
3 cause, it shall grant the extension. The failure to request a
4 hearing constitutes a default, whereupon the disciplining authority
5 may enter a decision on the basis of the facts available to it.

6 (2) If a hearing is requested, the time of the hearing shall be
7 fixed by the disciplining authority as soon as convenient, but the
8 hearing shall not be held earlier than thirty days after service of
9 the charges upon the license holder or applicant.

10 **Sec. 6.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to
11 read as follows:

12 Upon a finding, after hearing, that a license holder or
13 applicant has committed unprofessional conduct or is unable to
14 practice with reasonable skill and safety due to a physical or
15 mental condition, the disciplining authority may issue an order
16 providing for one or any combination of the following:

17 (1) Revocation of the license;

18 (2) Suspension of the license for a fixed or indefinite term;

19 (3) Restriction or limitation of the practice;

20 (4) Requiring the satisfactory completion of a specific program
21 of remedial education or treatment;

22 (5) The monitoring of the practice by a supervisor approved by
23 the disciplining authority;

24 (6) Censure or reprimand;

25 (7) Compliance with conditions of probation for a designated
26 period of time;

27 (8) Payment of a fine for each violation of this chapter, not
28 to exceed five thousand dollars per violation. Funds received
29 shall be placed in the health professions account;

30 (9) Denial of the license request;

31 (10) Corrective action;

32 (11) Refund of fees billed to and collected from the consumer;

33 (12) A surrender of the practitioner's license in lieu of other
34 sanctions, which must be reported to the federal data bank.

35 Except as otherwise provided in section 9 of this act, any of
36 the actions under this section may be totally or partly stayed by
37 the disciplining authority. In determining what action is
38 appropriate, the disciplining authority must first consider what

1 sanctions are necessary to protect or compensate the public. Only
2 after such provisions have been made may the disciplining authority
3 consider and include in the order requirements designed to
4 rehabilitate the license holder or applicant. All costs associated
5 with compliance with orders issued under this section are the
6 obligation of the license holder or applicant.

7 The licensee or applicant may enter into a stipulated
8 disposition of charges that includes one or more of the sanctions
9 of this section, but only after a statement of charges has been
10 issued and the licensee has been afforded the opportunity for a
11 hearing and has elected on the record to forego such a hearing.
12 The stipulation shall either contain one or more specific findings
13 of unprofessional conduct or inability to practice, or a statement
14 by the licensee acknowledging that evidence is sufficient to
15 justify one or more specified findings of unprofessional conduct or
16 inability to practice. The stipulation entered into pursuant to
17 this subsection shall be considered formal disciplinary action for
18 all purposes.

19 **Sec. 7.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to
20 read as follows:

21 (1) If the ((disciplining authority)) secretary believes a
22 license holder or applicant may be unable to practice with
23 reasonable skill and safety to consumers by reason of any mental or
24 physical condition, a statement of charges in the name of the
25 ((disciplining authority)) secretary shall be served on the license
26 holder or applicant and notice shall also be issued providing an
27 opportunity for a hearing. The hearing shall be limited to the
28 sole issue of the capacity of the license holder or applicant to
29 practice with reasonable skill and safety. If the disciplining
30 authority determines that the license holder or applicant is unable
31 to practice with reasonable skill and safety for one of the reasons
32 stated in this subsection, the disciplining authority shall impose
33 such sanctions under RCW 18.130.160 as is deemed necessary to
34 protect the public.

35 (2)(a) In investigating or adjudicating a complaint or report
36 that a license holder or applicant may be unable to practice with
37 reasonable skill or safety by reason of any mental or physical
38 condition, the ((disciplining authority)) secretary may require a

1 license holder or applicant to submit to a mental or physical
2 examination by one or more licensed or certified health
3 professionals designated by the ((disciplining authority))
4 secretary. The license holder or applicant shall be provided
5 written notice of the ((disciplining authority's)) secretary's
6 intent to order a mental or physical examination, which notice
7 shall include: (i) A statement of the specific conduct, event, or
8 circumstances justifying an examination; (ii) a summary of the
9 evidence supporting the ((disciplining authority's)) secretary's
10 concern that the license holder or applicant may be unable to
11 practice with reasonable skill and safety by reason of a mental or
12 physical condition, and the grounds for believing such evidence to
13 be credible and reliable; (iii) a statement of the nature, purpose,
14 scope, and content of the intended examination; (iv) a statement
15 that the license holder or applicant has the right to respond in
16 writing within twenty days to challenge the ((disciplining
17 authority's)) secretary's grounds for ordering an examination or to
18 challenge the manner or form of the examination; and (v) a
19 statement that if the license holder or applicant timely responds
20 to the notice of intent, then the license holder or applicant will
21 not be required to submit to the examination while the response is
22 under consideration.

23 (b) Upon submission of a timely response to the notice of
24 intent to order a mental or physical examination, the license
25 holder or applicant shall have an opportunity to respond to or
26 refute such an order by submission of evidence or written argument
27 or both. The evidence and written argument supporting and opposing
28 the mental or physical examination shall be reviewed by either a
29 panel of the disciplining authority members who have not been
30 involved with the allegations against the license holder or
31 applicant or a neutral decision maker approved by the disciplining
32 authority. The reviewing panel of the disciplining authority or
33 the approved neutral decision maker may, in its discretion, ask for
34 oral argument from the parties. The reviewing panel of the
35 disciplining authority or the approved neutral decision maker shall
36 prepare a written decision as to whether: There is reasonable
37 cause to believe that the license holder or applicant may be unable
38 to practice with reasonable skill and safety by reason of a mental

1 or physical condition, or the manner or form of the mental or
2 physical examination is appropriate, or both.

3 (c) Upon receipt by the ((disciplining authority)) secretary of
4 the written decision, or upon the failure of the license holder or
5 applicant to timely respond to the notice of intent, the
6 ((disciplining authority)) secretary may issue an order requiring
7 the license holder or applicant to undergo a mental or physical
8 examination. All such mental or physical examinations shall be
9 narrowly tailored to address only the alleged mental or physical
10 condition and the ability of the license holder or applicant to
11 practice with reasonable skill and safety. An order of the
12 ((disciplining authority)) secretary requiring the license holder
13 or applicant to undergo a mental or physical examination is not a
14 final order for purposes of appeal. The cost of the examinations
15 ordered by the ((disciplining authority)) secretary shall be paid
16 out of the health professions account. In addition to any
17 examinations ordered by the ((disciplining authority)) secretary,
18 the licensee may submit physical or mental examination reports from
19 licensed or certified health professionals of the license holder's
20 or applicant's choosing and expense.

21 (d) If the disciplining authority finds that a license holder
22 or applicant has failed to submit to a properly ordered mental or
23 physical examination, then the disciplining authority may order
24 appropriate action or discipline under RCW 18.130.180(9), unless
25 the failure was due to circumstances beyond the person's control.
26 However, no such action or discipline may be imposed unless the
27 license holder or applicant has had the notice and opportunity to
28 challenge the ((disciplining authority's)) secretary's grounds for
29 ordering the examination, to challenge the manner and form, to
30 assert any other defenses, and to have such challenges or defenses
31 considered by either a panel of the disciplining authority members
32 who have not been involved with the allegations against the license
33 holder or applicant or a neutral decision maker approved by the
34 disciplining authority, as previously set forth in this section.
35 Further, the action or discipline ordered by the disciplining
36 authority shall not be more severe than a suspension of the
37 license, certification, registration or application until such time
38 as the license holder or applicant complies with the properly
39 ordered mental or physical examination.

1 (e) Nothing in this section shall restrict the power of ((a
2 disciplining authority)) the secretary to act in an emergency under
3 RCW 34.05.422(4), 34.05.479, and ((18.130.050(7))) 18.130.060(6).

4 (f) A determination by a court of competent jurisdiction that
5 a license holder or applicant is mentally incompetent or mentally
6 ill is presumptive evidence of the license holder's or applicant's
7 inability to practice with reasonable skill and safety. An
8 individual affected under this section shall at reasonable
9 intervals be afforded an opportunity, at his or her expense, to
10 demonstrate that the individual can resume competent practice with
11 reasonable skill and safety to the consumer.

12 (3) For the purpose of subsection (2) of this section, an
13 applicant or license holder governed by this chapter, by making
14 application, practicing, or filing a license renewal, is deemed to
15 have given consent to submit to a mental, physical, or
16 psychological examination when directed in writing by the
17 ((disciplining authority)) secretary and further to have waived all
18 objections to the admissibility or use of the examining health
19 professional's testimony or examination reports by the
20 ((disciplining authority)) secretary on the ground that the
21 testimony or reports constitute privileged communications.

22 **Sec. 8.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
23 read as follows:

24 (1) Except for those acts of unprofessional conduct specified
25 in section 9 of this act, prior to serving a statement of charges
26 under RCW 18.130.090 or 18.130.170, the ((disciplinary authority))
27 secretary may furnish a statement of allegations to the licensee or
28 applicant along with a detailed summary of the evidence relied upon
29 to establish the allegations and a proposed stipulation for
30 informal resolution of the allegations. These documents shall be
31 exempt from public disclosure until such time as the allegations
32 are resolved either by stipulation or otherwise.

33 (2) The ((disciplinary authority)) secretary and the applicant
34 or licensee may stipulate that the allegations may be disposed of
35 informally in accordance with this subsection. The stipulation
36 shall contain a statement of the facts leading to the filing of the
37 complaint; the act or acts of unprofessional conduct alleged to
38 have been committed or the alleged basis for determining that the

1 applicant or licensee is unable to practice with reasonable skill
2 and safety; a statement that the stipulation is not to be construed
3 as a finding of either unprofessional conduct or inability to
4 practice; an acknowledgement that a finding of unprofessional
5 conduct or inability to practice, if proven, constitutes grounds
6 for discipline under this chapter; and an agreement on the part of
7 the licensee or applicant that the sanctions set forth in RCW
8 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be
9 imposed as part of the stipulation, except that no fine may be
10 imposed but the licensee or applicant may agree to reimburse the
11 ((disciplinary authority)) secretary the costs of investigation and
12 processing the complaint up to an amount not exceeding one thousand
13 dollars per allegation; and an agreement on the part of the
14 ((disciplinary authority)) secretary to forego further disciplinary
15 proceedings concerning the allegations. A stipulation entered into
16 pursuant to this subsection shall not be considered formal
17 disciplinary action.

18 (3) If the licensee or applicant declines to agree to
19 disposition of the charges by means of a stipulation pursuant to
20 subsection (2) of this section, the ((disciplinary authority))
21 secretary may proceed to formal disciplinary action pursuant to RCW
22 18.130.090 or 18.130.170.

23 (4) Upon execution of a stipulation under subsection (2) of
24 this section by both the licensee or applicant and the
25 ((disciplinary authority)) secretary, the complaint is deemed
26 disposed of and shall become subject to public disclosure on the
27 same basis and to the same extent as other records of the
28 ((disciplinary authority)) secretary. Should the licensee or
29 applicant fail to pay any agreed reimbursement within thirty days
30 of the date specified in the stipulation for payment, the
31 ((disciplinary authority)) secretary may seek collection of the
32 amount agreed to be paid in the same manner as enforcement of a
33 fine under RCW 18.130.165.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.130
35 RCW to read as follows:

36 (1) The disciplining authority shall revoke the license of a
37 license holder who is found to have committed three acts of

1 unprofessional conduct from the following list in any combination
2 within a ten-year period:

3 (a) Any act defined in RCW 18.130.180(4) that causes or
4 substantially contributes to the death of or severe injury to a
5 patient or creates a significant risk of harm to the public;

6 (b) Any act defined in RCW 18.130.180(6);

7 (c) Any act defined in RCW 18.130.180(7) that causes or
8 substantially contributes to the death of or severe injury to a
9 patient or creates a significant risk of harm to the public;

10 (d) Any act defined in RCW 18.130.180(17);

11 (e) Any act defined in RCW 18.130.180(23) that causes or
12 substantially contributes to the death of or severe injury to a
13 patient or creates a significant risk of harm to the public;

14 (f) Any act of abuse to a client or patient as defined in RCW
15 18.130.180(24); and

16 (g) Any sexual contact with a client or patient as defined in
17 RCW 18.130.180(24).

18 (2) For purposes of determining whether a license holder is
19 found to have committed three acts of unprofessional conduct for
20 purposes of this section:

21 (a) Under subsection (1)(g) of this section, one or more acts
22 with one patient or client that are charged as part of one
23 statement of charges shall be considered one act of unprofessional
24 conduct; and

25 (b) Under all other paragraphs of subsection (1) of this
26 section, each incident of unprofessional conduct shall be
27 considered one act of unprofessional conduct.

28 (3) A finding of mitigating circumstance for an act of
29 unprofessional conduct may be issued and, except for (a) of this
30 subsection, applied one time for any license holder or applicant
31 for a license, and if so, that finding of unprofessional conduct
32 shall not count as one of the three that triggers a license
33 revocation for purposes of this section. A finding of mitigating
34 circumstances under (a) of this subsection may be issued and
35 applied as many times as the license holder meets the criteria for
36 such a finding and shall not count as one of the three findings
37 that triggers the revocation of a license for the purposes of this
38 section. Except for (a) of this subsection, after a finding of
39 mitigating circumstances is issued and applied, no subsequent

1 findings under this section may consider any mitigating
2 circumstances. The following mitigating circumstances may be
3 considered:

4 (a) For subsection (1)(a) of this section, the act involved a
5 high-risk procedure, there was no lower-risk alternative to that
6 procedure, the patient was informed of the risks of the procedure
7 and consented to it anyway, and prior to the institution of
8 disciplinary actions the license holder took appropriate remedial
9 measures;

10 (b) There is a strong potential for rehabilitation of the
11 license holder; or

12 (c) There is a strong potential for remedial education and
13 training to prevent future harm to the public.

14 (4) Nothing in this section limits the authority of the
15 disciplining authority to revoke a license or take other
16 disciplinary action when the license holder has committed only one
17 or two acts of unprofessional conduct instead of three."

EFFECT: Eliminates the requirement that the Secretary of Health consult with the disciplining authority for matters pertaining to standards of practice or where clinical expertise are necessary. Requires that the Secretary of Health assure that health professions boards and commissions be actively involved in investigations pertaining to standards of practice or where clinical expertise are required. Specifies that one or more acts of sexual misconduct with the same patient or client that is charged as part of a single statement of charges is considered one act of unprofessional conduct for purposes of revoking a health care provider's license under the three strikes provisions. Allows the mitigating factor relating to high-risk procedures to be applied more than once.