

SHB 2974 - S COMM AMD

By Committee on Health & Long-Term Care

ADOPTED 03/03/2006

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

3 "Sec. 1. RCW 18.130.060 and 2001 c 101 s 1 are each amended to  
4 read as follows:

5 In addition to the authority specified in RCW 18.130.050, the  
6 secretary has the following additional authority:

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

9 (2) Upon the request of a board, to appoint pro tem members to  
10 participate as members of a panel of the board in connection with  
11 proceedings specifically identified in the request. Individuals so  
12 appointed must meet the same minimum qualifications as regular members  
13 of the board. Pro tem members appointed for matters under this chapter  
14 are appointed for a term of no more than one year. No pro tem member  
15 may serve more than four one-year terms. While serving as board  
16 members pro tem, persons so appointed have all the powers, duties, and  
17 immunities, and are entitled to the emoluments, including travel  
18 expenses in accordance with RCW 43.03.050 and 43.03.060, of regular  
19 members of the board. The chairperson of a panel shall be a regular  
20 member of the board appointed by the board chairperson. Panels have  
21 authority to act as directed by the board with respect to all matters  
22 concerning the review, investigation, and adjudication of all  
23 complaints, allegations, charges, and matters subject to the  
24 jurisdiction of the board. The authority to act through panels does  
25 not restrict the authority of the board to act as a single body at any  
26 phase of proceedings within the board's jurisdiction. Board panels may  
27 make interim orders and issue final decisions with respect to matters  
28 and cases delegated to the panel by the board. Final decisions may be  
29 appealed as provided in chapter 34.05 RCW, the administrative procedure  
30 act;

1 (3) To establish fees to be paid for witnesses, expert witnesses,  
2 and consultants used in any investigation and to establish fees to  
3 witnesses in any agency adjudicative proceeding as authorized by RCW  
4 34.05.446;

5 (4) To conduct investigations and practice reviews at the direction  
6 of the disciplining authority and to issue subpoenas, administer oaths,  
7 and take depositions in the course of conducting those investigations  
8 and practice reviews at the direction of the disciplining authority;

9 (5) To have the health professions regulatory program establish a  
10 system to recruit potential public members, to review the  
11 qualifications of such potential members, and to provide orientation to  
12 those public members appointed pursuant to law by the governor or the  
13 secretary to the boards and commissions specified in RCW  
14 18.130.040(2)(b), and to the advisory committees and councils for  
15 professions specified in RCW 18.130.040(2)(a); and

16 (6) To adopt rules, in consultation with the disciplining  
17 authorities, requiring every license holder to report information  
18 identified in RCW 18.130.070.

19 **Sec. 2.** RCW 18.130.070 and 2005 c 470 s 2 are each amended to read  
20 as follows:

21 (1)(a) The ~~((disciplining authority may))~~ secretary shall adopt  
22 rules requiring ~~((any person, including, but not limited to, licensees,~~  
23 ~~corporations, organizations, health care facilities, impaired~~  
24 ~~practitioner programs, or voluntary substance abuse monitoring programs~~  
25 ~~approved by the disciplining authority and state or local governmental~~  
26 ~~agencies,))~~ every license holder to report to the appropriate  
27 disciplining authority any conviction, determination, or finding that  
28 ((a)) another license holder has committed an act which constitutes  
29 unprofessional conduct, or to report information to the disciplining  
30 authority, an impaired practitioner program, or voluntary substance  
31 abuse monitoring program approved by the disciplining authority, which  
32 indicates that the other license holder may not be able to practice his  
33 or her profession with reasonable skill and safety to consumers as a  
34 result of a mental or physical condition.

35 (b) The secretary may adopt rules to require other persons,  
36 including corporations, organizations, health care facilities, impaired

1 practitioner programs, or voluntary substance abuse monitoring programs  
2 approved by a disciplining authority, and state or local government  
3 agencies to report:

4 (i) Any conviction, determination, or finding that a license holder  
5 has committed an act which constitutes unprofessional conduct; or

6 (ii) Information to the disciplining authority, an impaired  
7 practitioner program, or voluntary substance abuse monitoring program  
8 approved by the disciplining authority, which indicates that the  
9 license holder may not be able to practice his or her profession with  
10 reasonable skill and safety to consumers as a result of a mental or  
11 physical condition.

12 (c) If a report has been made by a hospital to the department  
13 pursuant to RCW 70.41.210, a report to the disciplining authority is  
14 not required. To facilitate meeting the intent of this section, the  
15 cooperation of agencies of the federal government is requested by  
16 reporting any conviction, determination, or finding that a federal  
17 employee or contractor regulated by the disciplining authorities  
18 enumerated in this chapter has committed an act which constituted  
19 unprofessional conduct and reporting any information which indicates  
20 that a federal employee or contractor regulated by the disciplining  
21 authorities enumerated in this chapter may not be able to practice his  
22 or her profession with reasonable skill and safety as a result of a  
23 mental or physical condition.

24 (d) Reporting under this section is not required by:

25 (i) Any entity with a peer review committee, quality improvement  
26 committee or other similarly designated professional review committee,  
27 or by a license holder who is a member of such committee, during the  
28 investigative phase of the respective committee's operations if the  
29 investigation is completed in a timely manner; or

30 (ii) An impaired practitioner program or voluntary substance abuse  
31 monitoring program approved by a disciplining authority under RCW  
32 18.130.175 if the license holder is currently enrolled in the treatment  
33 program, so long as the license holder actively participates in the  
34 treatment program and the license holder's impairment does not  
35 constitute a clear and present danger to the public health, safety, or  
36 welfare.

37 (2) If a person fails to furnish a required report, the  
38 disciplining authority may petition the superior court of the county in

1 which the person resides or is found, and the court shall issue to the  
2 person an order to furnish the required report. A failure to obey the  
3 order is a contempt of court as provided in chapter 7.21 RCW.

4 (3) A person is immune from civil liability, whether direct or  
5 derivative, for providing information to the disciplining authority  
6 pursuant to the rules adopted under subsection (1) of this section.

7 (4)(a) The holder of a license subject to the jurisdiction of this  
8 chapter shall report to the disciplining authority:

9 (i) Any conviction, determination, or finding that ((the licensee))  
10 he or she has committed unprofessional conduct or is unable to practice  
11 with reasonable skill or safety; and

12 (ii) Any disqualification from participation in the federal  
13 medicare program, under Title XVIII of the federal social security act  
14 or the federal medicaid program, under Title XIX of the federal social  
15 security act.

16 (b) Failure to report within thirty days of notice of the  
17 conviction, determination, ((or)) finding, or disqualification  
18 constitutes grounds for disciplinary action.

19 NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW  
20 to read as follows:

21 Any individual who applies for a license or temporary practice  
22 permit or holds a license or temporary practice permit and is  
23 prohibited from practicing a health care profession in another state  
24 because of an act of unprofessional conduct that is substantially  
25 equivalent to an act of unprofessional conduct prohibited by this  
26 chapter or any of the chapters specified in RCW 18.130.040 is  
27 prohibited from practicing a health care profession in this state until  
28 proceedings of the appropriate disciplining authority have been  
29 completed under RCW 18.130.050.

30 **Sec. 4.** RCW 18.130.050 and 1995 c 336 s 4 are each amended to read  
31 as follows:

32 The disciplining authority has the following authority:

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

35 (2) To investigate all complaints or reports of unprofessional

1 conduct as defined in this chapter and to hold hearings as provided in  
2 this chapter;

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

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

8 (5) To compel attendance of witnesses at hearings;

9 (6) In the course of investigating a complaint or report of  
10 unprofessional conduct, to conduct practice reviews;

11 (7) To take emergency action ordering summary suspension of a  
12 license, or restriction or limitation of the (~~licensee's~~) license  
13 holder's practice pending proceedings by the disciplining authority.  
14 Consistent with section 3 of this act, a disciplining authority shall  
15 issue a summary suspension of the license or temporary practice permit  
16 of a license holder prohibited from practicing a health care profession  
17 in another state, federal, or foreign jurisdiction because of an act of  
18 unprofessional conduct that is substantially equivalent to an act of  
19 unprofessional conduct prohibited by this chapter or any of the  
20 chapters specified in RCW 18.130.040. The summary suspension remains  
21 in effect until proceedings by the Washington disciplining authority  
22 have been completed;

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

29 (9) To use individual members of the boards to direct  
30 investigations. However, the member of the board shall not  
31 subsequently participate in the hearing of the case;

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

34 (11) To contract with licensees or other persons or organizations  
35 to provide services necessary for the monitoring and supervision of  
36 licensees who are placed on probation, whose professional activities  
37 are restricted, or who are for any authorized purpose subject to  
38 monitoring by the disciplining authority;

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

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

6 (14) To designate individuals authorized to sign subpoenas and  
7 statements of charges;

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

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

19 **Sec. 5.** RCW 18.130.080 and 1998 c 132 s 9 are each amended to read  
20 as follows:

21 (1) A person, including but not limited to consumers, licensees,  
22 corporations, organizations, health care facilities, impaired  
23 practitioner programs, or voluntary substance abuse monitoring programs  
24 approved by disciplining authorities, and state and local governmental  
25 agencies, may submit a written complaint to the disciplining authority  
26 charging a license holder or applicant with unprofessional conduct and  
27 specifying the grounds therefor or to report information to the  
28 disciplining authority, or voluntary substance abuse monitoring  
29 program, or an impaired practitioner program approved by the  
30 disciplining authority, which indicates that the license holder may not  
31 be able to practice his or her profession with reasonable skill and  
32 safety to consumers as a result of a mental or physical condition. If  
33 the disciplining authority determines that the complaint merits  
34 investigation, or if the disciplining authority has reason to believe,  
35 without a formal complaint, that a license holder or applicant may have  
36 engaged in unprofessional conduct, the disciplining authority shall  
37 investigate to determine whether there has been unprofessional conduct.

1 In determining whether or not to investigate, the disciplining  
2 authority shall consider any prior complaints received by the  
3 disciplining authority, any prior findings of fact under RCW  
4 18.130.110, any stipulations to informal disposition under RCW  
5 18.130.172, and any comparable action taken by other state disciplining  
6 authorities.

7 (2) Notwithstanding subsection (1) of this section, the  
8 disciplining authority shall initiate an investigation in every  
9 instance where the disciplining authority receives information that a  
10 health care provider has been disqualified from participating in the  
11 federal medicare program, under Title XVIII of the federal social  
12 security act, or the federal medicaid program, under Title XIX of the  
13 federal social security act.

14 (3) A person who files a complaint or reports information under  
15 this section in good faith is immune from suit in any civil action  
16 related to the filing or contents of the complaint.

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

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

- 24 (1) Revocation of the license;
- 25 (2) Suspension of the license for a fixed or indefinite term;
- 26 (3) Restriction or limitation of the practice;
- 27 (4) Requiring the satisfactory completion of a specific program of  
28 remedial education or treatment;
- 29 (5) The monitoring of the practice by a supervisor approved by the  
30 disciplining authority;
- 31 (6) Censure or reprimand;
- 32 (7) Compliance with conditions of probation for a designated period  
33 of time;
- 34 (8) Payment of a fine for each violation of this chapter, not to  
35 exceed five thousand dollars per violation. Funds received shall be  
36 placed in the health professions account;
- 37 (9) Denial of the license request;

1 (10) Corrective action;

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

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

5 Any of the actions under this section may be totally or partly  
6 stayed by the disciplining authority. Safeguarding the public's health  
7 and safety is the paramount responsibility of every disciplining  
8 authority and in determining what action is appropriate, the  
9 disciplining authority must first consider what sanctions are necessary  
10 to protect or compensate the public. Only after such provisions have  
11 been made may the disciplining authority consider and include in the  
12 order requirements designed to rehabilitate the license holder or  
13 applicant. All costs associated with compliance with orders issued  
14 under this section are the obligation of the license holder or  
15 applicant.

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

27 **Sec. 7.** RCW 18.130.175 and 2005 c 274 s 233 are each amended to  
28 read as follows:

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

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



1 approved treatment programs under RCW 70.96A.020 or by any other  
2 provider approved by the entity or the commission. However, nothing  
3 shall prohibit the disciplining authority from approving additional  
4 services and programs as an adjunct to primary alcoholism or other drug  
5 addiction treatment. The disciplining authority may also approve the  
6 use of out-of-state programs. Referral of the license holder to the  
7 program shall be done only with the consent of the license holder.  
8 Referral to the program may also include probationary conditions for a  
9 designated period of time. If the license holder does not consent to  
10 be referred to the program or does not successfully complete the  
11 program, the disciplining authority may take appropriate action under  
12 RCW 18.130.160 which includes suspension of the license unless or until  
13 the disciplining authority, in consultation with the director of the  
14 voluntary substance abuse monitoring program, determines the license  
15 holder is able to practice safely. The secretary shall adopt uniform  
16 rules for the evaluation by the disciplinary authority of a relapse or  
17 program violation on the part of a license holder in the substance  
18 abuse monitoring program. The evaluation shall encourage program  
19 participation with additional conditions, in lieu of disciplinary  
20 action, when the disciplinary authority determines that the license  
21 holder is able to continue to practice with reasonable skill and  
22 safety.

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

34 (3) The license holder shall sign a waiver allowing the program to  
35 release information to the disciplining authority if the licensee does  
36 not comply with the requirements of this section or is unable to  
37 practice with reasonable skill or safety. The substance abuse program  
38 shall report to the disciplining authority any license holder who fails

1 to comply with the requirements of this section or the program or who,  
2 in the opinion of the program, is unable to practice with reasonable  
3 skill or safety. License holders shall report to the disciplining  
4 authority if they fail to comply with this section or do not complete  
5 the program's requirements. License holders may, upon the agreement of  
6 the program and disciplining authority, reenter the program if they  
7 have previously failed to comply with this section.

8 (4) The treatment and pretreatment records of license holders  
9 referred to or voluntarily participating in approved programs shall be  
10 confidential, shall be exempt from chapter 42.56 RCW, and shall not be  
11 subject to discovery by subpoena or admissible as evidence except for  
12 monitoring records reported to the disciplining authority for cause as  
13 defined in subsection (3) of this section. Monitoring records relating  
14 to license holders referred to the program by the disciplining  
15 authority or relating to license holders reported to the disciplining  
16 authority by the program for cause, shall be released to the  
17 disciplining authority at the request of the disciplining authority.  
18 Records held by the disciplining authority under this section shall be  
19 exempt from chapter 42.56 RCW and shall not be subject to discovery by  
20 subpoena except by the license holder.

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

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

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

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

- 35 (i) An approved monitoring treatment program;
- 36 (ii) The professional association operating the program;
- 37 (iii) Members, employees, or agents of the program or association;

1 (iv) Persons reporting a license holder as being possibly impaired  
2 or providing information about the license holder's impairment; and

3 (v) Professionals supervising or monitoring the course of the  
4 impaired license holder's treatment or rehabilitation.

5 (b) The courts are strongly encouraged to impose sanctions on  
6 clients and their attorneys whose allegations under this subsection are  
7 not made in good faith and are without either reasonable objective,  
8 substantive grounds, or both.

9 (c) The immunity provided in this section is in addition to any  
10 other immunity provided by law.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.43 RCW  
12 to read as follows:

13 (1) Upon a guilty plea or conviction of a person for any felony  
14 crime involving homicide under chapter 9A.32 RCW, assault under chapter  
15 9A.36 RCW, kidnapping under chapter 9A.40 RCW, or sex offenses under  
16 chapter 9A.44 RCW, the prosecuting attorney shall notify the state  
17 patrol of such guilty pleas or convictions.

18 (2) When the state patrol receives information that a person has  
19 pled guilty to or been convicted of one of the felony crimes under  
20 subsection (1) of this section, the state patrol shall transmit that  
21 information to the department of health. It is the duty of the  
22 department of health to identify whether the person holds a credential  
23 issued by a disciplining authority listed under RCW 18.130.040, and  
24 provide this information to the disciplining authority that issued the  
25 credential to the person who pled guilty or was convicted of a crime  
26 listed in subsection (1) of this section.

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

29 (1) When developing its biennial budget request for appropriation  
30 of the health professions account created in RCW 43.70.320, beginning  
31 in the 2007-2009 budget and continuing in subsequent biennia, the  
32 department shall specify the number of full-time employees designated  
33 as investigators and attorneys and the costs associated with supporting  
34 their activities. The department shall also specify the additional  
35 full-time employees designated as investigators and attorneys that are  
36 required to achieve a staffing level that is able to respond promptly,

1 competently, and appropriately to the workload associated with health  
2 professions disciplinary activities and the costs associated with  
3 supporting disciplinary activities. In identifying the need for  
4 additional staff, the department shall develop a formula based on its  
5 prior experience with staff levels compared to the number of providers,  
6 complaints, investigations, and other criteria that the department  
7 determines is relevant to staffing level decisions. The department  
8 must request additional funds for activities that most critically  
9 impact public health and safety. The budget request must specify the  
10 methodology used for each biennium.

11 (2) The joint legislative audit and review committee, in  
12 consultation with the department, shall report to the legislature by  
13 December 1, 2010, with recommendations for formulas for determining  
14 appropriate staffing levels for investigators and attorneys at the  
15 department of health involved in the health professions disciplinary  
16 process to achieve prompt, competent, and appropriate responses to  
17 complaints of unprofessional conduct. The report must be based upon  
18 the department's prior experience with staff levels compared to the  
19 number of providers, complaints, investigations, and other criteria  
20 that the department finds are relevant to determining appropriate  
21 staffing levels.

22 (3) This section expires July 1, 2011.

23 NEW SECTION. **Sec. 10.** The following acts or parts of acts are  
24 each repealed:

25 (1) RCW 18.57.174 (Duty to report unprofessional conduct--  
26 Exceptions) and 2000 c 171 s 20 & 1986 c 300 s 9; and

27 (2) RCW 18.71.0193 (Duty to report unprofessional conduct--  
28 Exceptions) and 1994 sp.s. c 9 s 327 & 1986 c 300 s 5.

29 NEW SECTION. **Sec. 11.** Section 7 of this act takes effect July 1,  
30 2006."

**ADOPTED 03/03/2006**

1        On page 1, line 1 of the title, after "discipline;" strike the  
2 remainder of the title and insert "amending RCW 18.130.060, 18.130.070,  
3 18.130.050, 18.130.080, 18.130.160, and 18.130.175; adding new sections  
4 to chapter 18.130 RCW; adding a new section to chapter 43.43 RCW;  
5 repealing RCW 18.57.174 and 18.71.0193; providing an effective date;  
6 and providing an expiration date."

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