

SB 5722 - S AMD 353  
By Senator O'Ban

NOT ADOPTED 01/19/2018

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

3 "NEW SECTION. **Sec. 1.** The legislature intends to regulate the  
4 professional conduct of licensed health care providers with respect  
5 to performing aversive mental health therapies on patients under the  
6 age of eighteen. This includes, but is not limited to, aversive  
7 efforts that seek to change an individual's sexual orientation, that  
8 seek to stop an individual from using tobacco products, or that seek  
9 to stop an individual from using alcohol, prescription drugs, or  
10 other controlled substances.

11 **Sec. 2.** RCW 18.130.020 and 2008 c 134 s 2 are each amended to  
12 read as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) "Board" means any of those boards specified in RCW  
16 18.130.040.

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

21 (3) "Commission" means any of the commissions specified in RCW  
22 18.130.040.

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

24 (5) "Disciplinary action" means sanctions identified in RCW  
25 18.130.160.

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

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

1 (8) "License," "licensing," and "licensure" shall be deemed  
2 equivalent to the terms "license," "licensing," "licensure,"  
3 "certificate," "certification," and "registration" as those terms are  
4 defined in RCW 18.120.020.

5 (9) "Practice review" means an investigative audit of records  
6 related to the complaint, without prior identification of specific  
7 patient or consumer names, or an assessment of the conditions,  
8 circumstances, and methods of the professional's practice related to  
9 the complaint, to determine whether unprofessional conduct may have  
10 been committed.

11 (10)(a) "Prohibited aversion therapy" means a practice,  
12 treatment, or therapy involving electrical shock, extreme  
13 temperatures, prolonged isolation, chemically induced nausea or  
14 vomiting, assault as defined in chapter 9A.36 RCW, or other  
15 procedures intending to cause pain, discomfort, or unpleasant  
16 sensations to the client or patient.

17 (b) "Prohibited aversion therapy" does not include those  
18 practices, treatments, or therapies that are within the standards of  
19 practice for license holders under this chapter as provided in  
20 department rules.

21 (11) "Secretary" means the secretary of health or the secretary's  
22 designee.

23 ((+11)) (12) "Standards of practice" means the care, skill, and  
24 learning associated with the practice of a profession.

25 ((+12)) (13) "Unlicensed practice" means:

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

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

34 **Sec. 3.** RCW 18.130.180 and 2010 c 9 s 5 are each amended to read  
35 as follows:

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

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

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

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

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

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

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

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

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

- 1 (a) Not furnishing any papers, documents, records, or other  
2 items;
- 3 (b) Not furnishing in writing a full and complete explanation  
4 covering the matter contained in the complaint filed with the  
5 disciplining authority;
- 6 (c) Not responding to subpoenas issued by the disciplining  
7 authority, whether or not the recipient of the subpoena is the  
8 accused in the proceeding; or
- 9 (d) Not providing reasonable and timely access for authorized  
10 representatives of the disciplining authority seeking to perform  
11 practice reviews at facilities utilized by the license holder;
- 12 (9) Failure to comply with an order issued by the disciplining  
13 authority or a stipulation for informal disposition entered into with  
14 the disciplining authority;
- 15 (10) Aiding or abetting an unlicensed person to practice when a  
16 license is required;
- 17 (11) Violations of rules established by any health agency;
- 18 (12) Practice beyond the scope of practice as defined by law or  
19 rule;
- 20 (13) Misrepresentation or fraud in any aspect of the conduct of  
21 the business or profession;
- 22 (14) Failure to adequately supervise auxiliary staff to the  
23 extent that the consumer's health or safety is at risk;
- 24 (15) Engaging in a profession involving contact with the public  
25 while suffering from a contagious or infectious disease involving  
26 serious risk to public health;
- 27 (16) Promotion for personal gain of any unnecessary or  
28 inefficacious drug, device, treatment, procedure, or service;
- 29 (17) Conviction of any gross misdemeanor or felony relating to  
30 the practice of the person's profession. For the purposes of this  
31 subsection, conviction includes all instances in which a plea of  
32 guilty or nolo contendere is the basis for conviction and all  
33 proceedings in which the sentence has been deferred or suspended.  
34 Nothing in this section abrogates rights guaranteed under chapter  
35 9.96A RCW;
- 36 (18) The procuring, or aiding or abetting in procuring, a  
37 criminal abortion;
- 38 (19) The offering, undertaking, or agreeing to cure or treat  
39 disease by a secret method, procedure, treatment, or medicine, or the  
40 treating, operating, or prescribing for any health condition by a

1 method, means, or procedure which the licensee refuses to divulge  
2 upon demand of the disciplining authority;

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

5 (21) Violation of chapter 19.68 RCW;

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

14 (23) Current misuse of:

15 (a) Alcohol;

16 (b) Controlled substances; or

17 (c) Legend drugs;

18 (24) Abuse of a client or patient or sexual contact with a client  
19 or patient;

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

27 (26) Performing prohibited aversion therapy on a patient under  
28 age eighteen."

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29 On page 1, line 2 of the title, after "therapy;" strike the  
30 remainder of the title and insert "amending RCW 18.130.020 and  
31 18.130.180; and creating a new section."

EFFECT: Provides that the intent of the bill is to regulate the  
professional conduct of licensed health care providers with respect  
to performing aversive mental health therapies on patients under the

age of 18. Prohibited aversive therapies are defined as procedures intending to cause physical pain, discomfort, or unpleasant sensations to a person, but does not call out sexual orientation change efforts as an example of prohibited aversive therapy. References to sexual orientation change efforts are removed from the bill.

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