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HOUSE BILL 1968

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Sprenkle, Moyer, Zellinsky, Cooper, Heavey, Wilson and Ballard.

Read first time February 18, 1991. Referred to Committee on Health Care.

1            AN ACT Relating to delegation of preoperative and postoperative  
2 surgical care; amending RCW 18.130.180; adding a new chapter to Title  
3 18 RCW; and prescribing penalties.

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

5            NEW SECTION.    **Sec. 1.**            The legislature finds that some surgeons  
6 delegate preoperative and postoperative surgical care to nonsurgeons as  
7 part of a referral arrangement. The surgeon refers such care to  
8 practitioners not licensed to do surgery in exchange for surgical  
9 referrals. Irrespective of motive, the legislature finds that the  
10 delegation of such care to nonsurgeons must be done, if at all, with  
11 care and under circumstances in which the care of the patient is  
12 adequately provided for.

13            The legislature finds that the performance by practitioners without  
14 adequate training of preoperative and postoperative surgical care  
15 presents a threat to the safety of surgical patients, threatens to

1 increase health care costs through unnecessary complications, and aids  
2 and abets the unauthorized practice of surgical professions. The  
3 legislature has concluded that this chapter is necessary to minimize  
4 those risks while allowing flexibility in the provision of surgical  
5 care.

6 NEW SECTION. **Sec. 2.** Unless the context requires otherwise,  
7 the definitions in this section apply throughout this chapter.

8 (1) "Practitioners licensed to provide delegated tasks of  
9 preoperative and postoperative care" means registered nurses licensed  
10 pursuant to chapter 18.88 RCW, licensed practical nurses licensed  
11 pursuant to chapter 18.78 RCW, physician assistants licensed pursuant  
12 to chapter 18.71A RCW, or osteopathic physician assistants licensed  
13 pursuant to chapter 18.57A RCW, when performing tasks within their  
14 lawful scopes of practice.

15 (2) "Practitioners licensed to provide surgical care" and  
16 "surgeons" means doctors of medicine licensed pursuant to chapter 18.71  
17 RCW, doctors of osteopathic medicine and surgery licensed pursuant to  
18 chapter 18.57 RCW, doctors of podiatry licensed pursuant to chapter  
19 18.22 RCW, and doctors of dentistry licensed pursuant to chapter 18.32  
20 RCW, when performing surgery within their lawful scopes of practice.

21 (3) "Preoperative surgical care" includes, but is not limited to,  
22 evaluation, diagnosis, selection of treatment alternatives, discussion  
23 of advisability of surgery with the patient, and related tasks.

24 (4) "Postoperative surgical care" includes, but is not limited to,  
25 the evaluation, management, and treatment of the patient's condition  
26 related to the surgery and common sequelae and complications thereof  
27 and lasts until the healing and recuperation phases are complete, but  
28 does not include rehabilitation.

1 (5) "Surgical care" means that branch of medicine which, by way of  
2 illustration and not limitation, treats diseases, injuries, and  
3 deformities by manual operative methods or localized application of  
4 mechanical or other energy to repair, remove, disrupt, or otherwise  
5 physically alter biological tissue for the intended treatment of  
6 disease, injury, or deformity. An operation is the application of  
7 surgery and can include, by way of illustration, the following means:  
8 Mechanical, photo including any form of laser, thermal, cryotherapy or  
9 instrumentation, chemical, ultrasound, implantable devices, extricating  
10 or removing substances from tissue, and other means commonly accepted  
11 within the medical community.

12 NEW SECTION. **Sec. 3.** Preoperative and postoperative surgical  
13 care are integral parts of surgical care and may be delegated by a  
14 surgeon only under the following circumstances:

15 (1) Preoperative and postoperative surgical care may be performed  
16 away from the site of the surgical procedure only by practitioners  
17 licensed to provide the surgical care involved.

18 (2) Preoperative and postoperative surgical care may be performed  
19 at the site of the surgical care by practitioners licensed to provide  
20 the surgical care in question or by practitioners licensed to perform  
21 delegated tasks of preoperative and postoperative surgical care, but  
22 only under the supervision of the surgeon or a practitioner licensed to  
23 provide the surgical care involved.

24 (3) An exception has been granted by the examining board under  
25 section 4 of this act.

26 Nothing in this section invalidates the usual surgical procedures  
27 of a hospital licensed pursuant to chapter 70.41 RCW when operating  
28 pursuant to established protocols approved by its governing authority  
29 and subject to approval by the hospital licensing authority.

1        NEW SECTION.    **Sec. 4.**        The examining board under which the  
2 surgeon involved is licensed may grant exceptions to this chapter on a  
3 year-to-year basis, after a contested hearing, if:

4        (1) The rural or institutional residence of the patient and  
5 availability of practitioners licensed to provide the surgical care in  
6 the patient's locale make adherence to this chapter impractical or  
7 unduly costly given the risk involved; and

8        (2) The petitioner for the exception has instituted adequate  
9 circumstantial guarantees that the quality of the patient's care will  
10 be ensured.

11        No exception may authorize a practitioner to exceed his or her  
12 lawful scope of practice.

13        NEW SECTION.    **Sec. 5.**        The delegation of preoperative and  
14 postoperative care is a matter affecting the public interest for the  
15 purpose of applying chapter 19.86 RCW. Violation of this chapter is  
16 not reasonable in relation to the development and preservation of  
17 business. A violation of this chapter constitutes an unfair or  
18 deceptive act or practice in trade or commerce for the purpose of  
19 applying chapter 19.86 RCW.

20        NEW SECTION.    **Sec. 6.**        Any activity conducted in violation of  
21 any provision of this chapter may be enjoined in an action commenced by  
22 the disciplining authority with jurisdiction over the practitioner  
23 licensed to provide the surgical care.

24        NEW SECTION.    **Sec. 7.**        Violations of this chapter shall be  
25 considered negligence per se.

1       **Sec. 8.** RCW 18.130.180 and 1989 c 270 s 33 are each amended to  
2 read as follows:

3       The following conduct, acts, or conditions constitute  
4 unprofessional conduct for any license holder or applicant under the  
5 jurisdiction of this chapter:

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

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

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

23       (4) Incompetence, negligence, or malpractice which results in  
24 injury to a patient or which creates an unreasonable risk that a  
25 patient may be harmed;

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

1 (6) The possession, use, prescription for use, or distribution of  
2 controlled substances or legend drugs in any way other than for  
3 legitimate or therapeutic purposes, diversion of controlled substances  
4 or legend drugs, the violation of any drug law, or prescribing  
5 controlled substances for oneself;

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

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

11 (a) Not furnishing any papers or documents;

12 (b) Not furnishing in writing a full and complete explanation  
13 covering the matter contained in the complaint filed with the  
14 disciplining authority; or

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

18 (9) Failure to comply with an order issued by the disciplining  
19 authority or an assurance of discontinuance entered into with the  
20 disciplining authority;

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

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

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

26 (13) Misrepresentation or fraud in any aspect of the conduct of the  
27 business or profession;

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

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

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

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

12 (18) The procuring, or aiding or abetting in procuring, a criminal  
13 abortion;

14 (19) The offering, undertaking, or agreeing to cure or treat  
15 disease by a secret method, procedure, treatment, or medicine, or the  
16 treating, operating, or prescribing for any health condition by a  
17 method, means, or procedure which the licensee refuses to divulge upon  
18 demand of the disciplining authority;

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

21 (21) Violation of chapter 19.68 RCW;

22 (22) Interference with an investigation or disciplinary proceeding  
23 by willful misrepresentation of facts before the disciplining authority  
24 or its authorized representative, or by the use of threats or  
25 harassment against any patient or witness to prevent them from  
26 providing evidence in a disciplinary proceeding or any other legal  
27 action;

28 (23) Current misuse of:

29 (a) Alcohol;

30 (b) Controlled substances; or

1 (c) Legend drugs;

2 (24) Abuse of a client or patient or sexual contact with a client  
3 or patient;

4 (25) Violation of chapter 18.-- RCW (sections 1 through 7 of this  
5 act).

6 NEW SECTION. Sec. 9. Sections 1 through 7 of this act shall  
7 constitute a new chapter in Title 18 RCW.